

claims; they did not pretend they were private claims. They said that these claims were all of the same character, all arose out of the same transaction; that all belong in the same category, and the treaty of Washington admitted this. But they allowed one part of the claims and rejected the others, and they gave us a sum in gross.

In conclusion I desire to say that if Congress shall adopt the report of the minority of the Committee on the Judiciary and send these matters to the Court of Claims, it will shirk a great responsibility, and will give to that court a power which it should never give to any tribunal. This Congress is essentially the tribunal in which all these claims should be disposed of, so that we can control the funds of the Government. It is simply a mere act of grace on our part; but we should act justly and pay all those who are justly entitled to be paid. We should reject the claims of those who have suffered no losses and pay the claims of those who have suffered losses, and therefore show the people of this country that we will protect them as the wards of the Government equally with the class of claimants who are strong, who lift up their heads before us here, demanding that the other claimants have no rights because they come under the head of exculpated cruisers, while they themselves come under the head of inculpated cruisers.

The question which the Geneva tribunal disposed of was a question of international law. The law as determined by them we are bound by. They awarded us a sum of money as one of the results of that determination, as the damage the United States Government claimed of the British Government. The arbitrators had no power to indicate, nor did they attempt to indicate, the manner in which this Government should dispose of it. Then let this Government maintain its prerogative as well as its dignity and deal justly with these claimants.

Mr. GROUT obtained the floor.

Mr. CONVERSE. If the gentleman will yield, I will move that the House adjourn. He can proceed with his remarks in the morning.

Mr. GROUT. I will yield, retaining the right to the floor.

ORDER OF BUSINESS.

Mr. PEELLE. Will the gentleman from Ohio [Mr. CONVERSE] allow me to make a report?

Mr. RANDALL. I call for the regular order. We have been here six hours and a half.

ENROLLED BILLS SIGNED.

Pending the motion to adjourn,

Mr. ALDRICH, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled bills of the following titles; when the Speaker signed the same:

A bill (H. R. No. 5820) granting a pension to Hugo Eichholtz;
A bill (H. R. No. 2315) to provide for the appointment of a commission to investigate the question of the tariff;
A bill (S. No. 108) granting an increase of pension to Abigail S. Tilton;

A bill (S. No. 455) granting an increase of pension to Mary J. West;
A bill (S. No. 526) for the relief of Louisa Bainbridge Hoff;
A bill (S. No. 891) granting a pension to Earl S. Rathbun; and
A bill (S. No. 915) granting a pension to Jesse F. Phares.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted as follows:

To Mr. SMITH, of New York, for five days.
To Mr. MOREY, for two days, on account of illness.
To Mr. UPDEGRAFF, of Ohio, for four days, on account of important business.
To Mr. ORTH, for five days.
To Mr. MOULTON, for two weeks, commencing to-morrow, on account of important business.

WITHDRAWAL OF PAPERS.

Mr. BURROWS, of Missouri, by unanimous consent, obtained leave to withdraw from the files of the Committee on Claims papers accompanying the bill (H. R. No. 2479) for the relief of A. O. Siple.

ORDER OF BUSINESS.

Mr. CONVERSE. The gentleman from South Carolina, [Mr. TILLMAN,] desires unanimous consent to introduce a bill.

The SPEAKER. Is the call for regular order withdrawn?

Mr. PEELLE. If it is, I believe I have the floor.

Mr. RANDALL. I insist on the call for the regular order.

The question being taken on the motion of Mr. CONVERSE that the House adjourn, it was agreed to; and accordingly (at five o'clock and thirty minutes p. m.) the House adjourned.

PETITIONS, ETC.

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

By Mr. BINGHAM: The petition of Bridget Curtin, widow of John Curtin, for a pension—to the Committee on Invalid Pensions.

By Mr. DAWES: The petition of 65 citizens of Athens, Ohio, for an appropriation for educational purposes, the money to be distributed among the several States and Territories on the basis of illiteracy—to the Committee on Education and Labor.

By Mr. DEERING: Paper relating to the claim of S. B. Chase—to the Committee on Claims.

By Mr. DOWD: The petitions of A. H. Houston, W. H. Trott, and others, and of M. L. McCorkle, S. M. Finger, and others, for an appropriation for educational purposes—severally to the Committee on Education and Labor.

By Mr. C. B. FARWELL: The petition of Herman Reifenruth, for a pension—to the Committee on Invalid Pensions.

By Mr. HARDENBERGH: The resolutions adopted by the board of aldermen of Jersey City, New Jersey, relative to the removal to this country of the remains of the late General Judson Kilpatrick—to the Committee on Foreign Affairs.

By Mr. HOGE: The petition of Sleepy Creek district, Morgan County, West Virginia, for an appropriation for educational purposes—to the Committee on Education and Labor.

By Mr. HOOKER: The petition of citizens of Brandon, Mississippi, for an appropriation for educational purposes—to the same committee.

By Mr. KING: The petition of the police jury of Concordia Parish, Louisiana, asking that the Mississippi River be improved on the plans recommended by the Mississippi River Commission—to the Committee on Commerce.

By Mr. LACEY: Papers relating to the pension claim of Ellen M. Thiers—to the Committee on Invalid Pensions.

By Mr. MAGINNIS: The petition of Wilson B. Harlan, protesting against the passage of the Washburn bill for the repeal of the pre-emption laws—to the Committee on the Public Lands.

Also, the petition of citizens of Helena, Montana Territory, for an appropriation for educational purposes—to the Committee on Education and Labor.

By Mr. McLANE: The petition of the Baltimore City Board of Trade, protesting against the passage of the bill entitled "An act to prevent the introduction of contagious or infectious diseases into the United States"—to the Select Committee on the Public Health.

By Mr. O'NEILL: The petition of citizens of Philadelphia, Pennsylvania, urging the repeal of certain internal-revenue taxes and a reduction of the taxes on whisky and tobacco—to the Committee on Ways and Means.

By Mr. VAN AERNAM: The petition of Rev. F. W. Raikes and others, praying that a pension be granted to Mrs. Sarah Sinsfield—to the Committee on Invalid Pensions.

By Mr. YOUNG: The petition of John Mathes and 13 other firms of New Orleans, for the passage of the bill now pending providing for the taxation of glucose—to the Committee on Ways and Means.

SENATE.

THURSDAY, May 11, 1882.

Prayer by the Chaplain, Rev. J. J. BULLOCK, D. D.
The Journal of yesterday's proceedings was read and approved.

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate a letter from the Secretary of the Treasury, transmitting, in compliance with a resolution of December 21, 1881, the present rate of duties, in tabular form, imposed by France, Germany, and Mexico on the manufactures of the United States when imported to those countries, &c.; which was referred to the Committee on Finance, and ordered to be printed.

PETITIONS AND MEMORIALS.

The PRESIDENT *pro tempore*. The Chair presents resolutions of the Bar Association of the City of New York, which will be read.
The Acting Secretary read the resolutions, as follows:

NO. 7 WEST TWENTY-NINTH STREET, NEW YORK,
May 9, 1882.

At a meeting of the Association of the Bar of the City of New York, held on the 9th day of May, 1882, Mr. Everett P. Wheeler presented the following resolution:
Resolved, That this association would respectfully represent to the Senate and Representatives of the United States in Congress assembled the great and pressing importance of the enactment of a law providing for a review of the decisions of the circuit courts of the United States intermediate between the circuit courts and the Supreme Court.

Which was adopted.

Resolved, That the association respectfully recommend to Congress the adoption of the bill now under consideration in the Senate of the United States establishing a court of appeals, and introduced by Senator DAVIS of Illinois.

Which was unanimously adopted.

Extract from the minutes.

S. B. BROWNELL,
Recording Secretary.

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

Mr. GORMAN presented a petition of the sureties of George W. Sands, deceased, late a tax collector of the fifth district of Maryland, praying for relief as such sureties; which was referred to the Committee on Finance.

Mr. McPHERSON. I present a petition, in the form of a resolution, of the board of aldermen of Jersey City, New Jersey, which I ask shall be read.

The petition was read, as follows:

"Whereas the representative of our country to Chili, Judson Kilpatrick, a native Jerseyman, died while in the performance of his duty, and it is meet and proper that the soil of his native State should receive the remains of one who has served his country so faithfully and so well; and

"Whereas it is currently reported that his widow is willing to allow the removal to this country, but unable to bear the expense:

"Resolved, That the Senators from New Jersey and Members of Congress from Hudson County be requested to take such action in their respective assemblies as may seem best to accomplish the object set forth in the above preamble; and that the clerk be requested to send copies of this resolution to the Representatives above named."

I do hereby certify that the foregoing is a true copy of a preamble and resolution adopted by the board of aldermen of Jersey City at its meeting held April 27, 1882.

In witness whereof I have hereunto set my hand as city clerk of Jersey City, this 8th day of May, A. D. 1882.

[SEAL.]

JOHN E. SCOTT,
City Clerk of Jersey City.

Mr. McPHERSON. Allow me to ask the Committee on Foreign Relations to take action as soon as possible upon the resolution. I move its reference to that committee.

The motion was agreed to.

Mr. LAPHAM presented a petition of citizens of New York, favoring the passage of the bill to increase the pensions of all soldiers who have lost a limb or any part thereof; which was referred to the Committee on Pensions.

Mr. MILLER, of California, presented the petition of Messrs. Reed & Dougherty, of San Francisco, California, praying relief in the matter of losses suffered at the hands of the local authorities of the Government of Japan; which was referred to the Committee on Foreign Relations.

ENROLLED BILLS SIGNED.

A message from the House of Representatives, by Mr. McPHERSON, its Clerk, announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President *pro tempore*:

A bill (H. R. No. 5820) granting a pension to Hugo Eichholtz;

A bill (H. R. No. 2315) to provide for the appointment of a commission to investigate the question of a tariff;

A bill (S. No. 108) granting an increase of pension to Abigail S. Tilton;

A bill (S. No. 455) granting an increase of pension to Mary J. West;

A bill (S. No. 526) for the relief of Louisa Bainbridge Hoff;

A bill (S. No. 891) granting a pension to Earl S. Rathbun; and

A bill (S. No. 915) granting a pension to Jesse F. Phares.

REPORTS OF COMMITTEES.

Mr. McMILLAN, from the Committee on Commerce, to whom was referred the bill (H. R. No. 3831) to create a district for the inspection of hulls and boilers of steam-vessels, reported it without amendment.

Mr. PLATT, from the Committee on Patents, to whom was referred the bill (S. No. 673) for the relief of William Wheeler Hubbell, submitted an adverse report thereon, which was ordered to be printed; and the bill was postponed indefinitely.

Mr. HILL, of Colorado, from the Committee on Post-Offices and Post-Roads, to whom was referred the bill (S. No. 1845) to authorize the Postmaster-General to extend the mail service in certain cases, reported it without amendment.

Mr. PUGH, from the Committee on Claims, to whom was referred the bill (S. No. 956) for the relief of Columbus F. Perry and Elizabeth Gilmer, reported it with an amendment, and submitted a report thereon, which was ordered to be printed.

BILLS INTRODUCED.

Mr. GORMAN asked and, by unanimous consent, obtained leave to introduce a bill (S. No. 1867) for the relief of the sureties of George W. Sands, deceased; which was read twice by its title, and referred to the Committee on Finance.

Mr. JOHNSTON asked and, by unanimous consent, obtained leave to introduce a bill (S. No. 1868) to refund to Hamberger, Brother and Loram, and others, the additional tax on tobacco erroneously paid by them; which was read twice by its title, and referred to the Committee on Finance.

Mr. McPHERSON asked and, by unanimous consent, obtained leave to introduce a bill (S. No. 1869) granting a pension to the widow and dependent children of the late Lieutenant George W. Gilman; which was read twice by its title, and referred to the Committee on Pensions.

He also asked and, by unanimous consent, obtained leave to introduce a joint resolution (S. No. 63) authorizing Commodore R. W. Shufeldt, of the United States Navy, to accept a sword, a Persian carpet, and other articles, from the Sultan of Zanzibar; which was read twice by its title, and referred to the Committee on Foreign Relations.

PAPERS WITHDRAWN AND REFERRED.

On motion of Mr. INGALLS, it was

Ordered, That the papers in the case of Lewis Atkinson be withdrawn from the files of the Senate and referred to the Committee on Military Affairs.

TAX ON DISTILLED SPIRITS.

Mr. BECK. I offer the following resolution:

Whereas all branches of business connected with the production and consumption of distilled spirits are depressed and embarrassed by the uncertainty which prevails relative to the action of Congress on the subject: Therefore,

Resolved, That the Senate will consider and take action on House bill No. 5656, extending the bonded period on distilled spirits, as soon as practicable after the Finance Committee is able to report it.

Mr. President, I desire only to say in regard to the resolution that as the court of appeals bill perhaps will be finished to-day, before any other important measure is called up, to-morrow at two o'clock, unless there is something more urgent then pending, I shall ask the Senate to listen to me for about thirty minutes while I explain the provisions of the bill to which the resolution relates. If I cannot do so at that time I shall ask to be heard on Monday. I do not desire to make any long statement on the subject, but I hope to say something that will interest the Senate in regard to the true condition of the bill and the importance of action upon it. I ask that the resolution lie on the table and be printed.

Mr. SHERMAN. I should like to have the resolution read.

The Acting Secretary read the resolution.

Mr. BECK. I desire to say to the Senator that I have no disposition to hurry the committee at all in merely making a report or writing out anything in regard to it, but I thought perhaps to-morrow or some other time when I had an opportunity I would give my views on the bill, and perhaps the Senator from Ohio himself would like to say something upon it.

Mr. SHERMAN. I have no objection at all that the resolution lie over as the basis of remarks to be submitted to the Senate.

Mr. BECK. That is all I desire.

The PRESIDENT *pro tempore*. The resolution will lie on the table and be printed.

ORDER OF BUSINESS.

Mr. MORGAN. If there is no further routine morning business, in pursuance of the notice I gave yesterday I ask the Senate to proceed to the consideration of the bill (H. R. No. 1052) in relation to the Japanese indemnity fund.

The PRESIDENT *pro tempore*. The Senator from Alabama asks the Senate to proceed to the consideration of the bill indicated by him before proceeding regularly with the Calendar under the Anthony rule.

Mr. INGALLS. I desire to call the attention of the Senate to the condition of the public business and to the inadvisability of continuing longer to proceed as we have done for the last month, since the amendment of the Anthony rule. That rule was designed to secure a brief interval between the expiration of morning business proper and two o'clock, during which cases upon the Calendar to which there was no objection might be considered for the purpose of facilitating public business.

Prior to the adoption of the amendment offered by the Senator from Vermont [Mr. EDMUNDS] and advocated with so much zeal by the Senator from Massachusetts [Mr. HOAR] as indispensable to free speech and the preservation of constitutional liberty and civil government, we had transacted more business than at any other previous session during my experience in this body. The adoption of that amendment was the opening of Pandora's box, in a parliamentary sense, and since that time the interval between the expiration of formal morning business and two o'clock has been spent in diffusive, discursive, unsatisfactory, and unproductive debate, with almost an absolute cessation of business.

We considered for an indefinite period the political disabilities question arising on the bill for the relief of Dr. Tebbs. Nothing was done with that. For the past week we have been considering the case of L. Madison Day under the five-minute rule. Nothing has been done with that; and now the Senator from Alabama desires to continue this anarchy and chaos by taking up, while all these other matters have been discussed and not disposed of, the Japanese indemnity bill, which will result in the exclusion, for an indefinite period, perhaps, of the consideration of cases that require deliberation and that might be considered without difficulty and without delay.

I make these remarks for the purpose of saying that it appears to me we have had sufficient experience, both in regard to the value of the Anthony rule and the absolute inefficiency of the methods we have been pursuing for the last three weeks, to return to the good old methods when cases were called up and under the five-minute rule considered or sent over under objection. I ask, therefore, instead of calling such cases up at this time, that we may proceed to the consideration of cases on the Calendar under the Anthony rule, to the end that something may be done during the session that is so rapidly drawing to a close. It seems to me that, in view of the experience we have had in these inconclusive debates, there can be no doubt that the public interests will be best subserved by considering those cases on the Calendar to which there is no objection.

Mr. MORGAN. The modification which was made of the Anthony rule was by the almost unanimous consent of the Senate. It was that the Senate might take up by a vote, notwithstanding an objection which would postpone, a case which had been called up under the Anthony rule, and proceed with it without limitation of

debate within the morning hour or until two o'clock. The difficulty in proceeding under that amendment has simply been that the Senate has been indulgent to gentlemen who desired to discuss a measure *ad libitum*. The discussion on the military bill, whatever that was, and the discussion of the L. Madison Day case has gone on by unanimous consent. The Senator from Kansas had the right to object to the L. Madison Day case at any time.

Mr. INGALLS. No, the Senator is mistaken.

Mr. MORGAN. I think I am not.

Mr. INGALLS. On the L. Madison Day case it could have been done, but so far as the political disabilities bill was concerned, that was taken up by a vote, and debate was unlimited under the rule.

Mr. MORGAN. That is all right. The Senate ought to have the right to take up a case that demands attention and debate it as long as is necessary for a proper understanding of it. The debate on the L. Madison Day case could have been obstructed and the rule of five minutes' debate could have been applied at any time that the Senator from Kansas saw proper to ask for it.

Mr. INGALLS. Then any Senator could have moved to take it up, and a majority would have had control of it.

Mr. MORGAN. And if the majority did take control of it, the Senator from Kansas had no right to complain.

Mr. INGALLS. No, of course, I do not complain, but I address myself to the reason of every Senator on each side of the Chamber and ask a reply, whether in view of our experience it is not best for all interests involved to spend the brief interval between the expiration of the formal morning business and two o'clock in the consideration of measures which are confessedly important, and to which there is no objection?

Mr. MORGAN. The measure which I have had the honor frequently to bring to the attention of the Senate seems to have the approbation of a very large majority of this body as it had the approbation of almost the entire House of Representatives when that body passed the bill. It has been now recommended in twelve reports, all favorable, in the different branches of Congress and through many years. I was instructed by the Committee on Foreign Relations to try to bring the measure forward. I have made several ineffectual attempts, the reason being that Senators seem to have more interest in those cases which concern their constituents or their States than they have in a case which makes an appeal to nothing but to the honor of the country. If the Senate desires to take that view of the question I have no right to complain at it; but it has occurred to me that the Committee on Foreign Relations at least has a right to be heard upon the floor of the Senate.

This cause was called on the Calendar and passed without prejudice. I again ventured to go back to it and asked the Senate to consider it under the Anthony rule, and relied upon the indulgence of the Senate that they would allow some little time to those gentlemen who desired to debate the bill. I frequently said that so far as I was concerned I cared nothing about debating the question except to answer such questions or arguments as might be urged against the measure. The bill still stands in that attitude; it is still on the Calendar and subject to call under the Anthony rule, because it has been passed over twice now without prejudice. Yesterday I gave notice that I would call it up this morning to take effect before the Anthony rule began to operate, because I believed conscientiously that the case could be disposed of this morning and be gotten out of the way.

As to the course of business in the Senate, the Senator from Kansas correctly said that more business had been transacted at this session of the Senate than at any previous one, at least within my experience. My observation concurs with his on that point; but it must be remembered that we are yet very far ahead of the House in our action. Bill after bill that we have sent to the House of Representatives has never been reported from their committees and has never been considered. Only a few of the most important leading measures of this Congress have as yet received consideration in the House. We take up bills and pass them here for pensions whenever they are called without any objection; we do everything that every person requests, it seems to me, except to attend to this bill which has been reported by the Committee on Foreign Relations.

I think the Senator from Kansas ought to come up and meet this question fair and square, and not attempt by objections to postpone it from time to time. If the bill has no merit the Senator is certainly able to expose it. If the report which has now been before the Senate for days and days and was copied into the RECORD is not defensible the Senator from Kansas can expose it as well as any man on this floor.

Mr. INGALLS. May I make an observation?

Mr. MORGAN. Certainly.

Mr. INGALLS. I have no objection whatever to the consideration of the Japanese indemnity bill. The appeal that I have made is simply that we may be allowed to spend the interval between half past twelve and two o'clock in the consideration of cases on the Calendar. I am entirely ready to concur with a majority, whenever the court of appeals bill may be out of the way, to take up this case or any other that the Senate may desire to consider.

Mr. DAWES. Mr. President—

The PRESIDENT *pro tempore*. Does the Senator from Alabama yield to the Senator from Massachusetts?

Mr. MORGAN. Yes, sir.

Mr. DAWES. I understand that the Japanese bill is so situated that it can be called under the Anthony rule at any moment. I do wish that the Senator from Kansas would permit it to come before the Senate under the Anthony rule. I will agree with the Senator that if he will propose any modification of the Anthony rule that will bring more efficiency into the business here, I will take hold with him, and I presume all will, to so amend it; but the time spent discussing the defects of the Anthony rule is enough to secure the passage of a bill like this. It seems to me it is a reproach to the United States to decline to consider it or to defer its consideration. It is a bill which has been in substance before Congress for ten years, and it is a reproach to the United States that they hold on to that money which they confess themselves they have no right to retain. The time consumed in discussing the defects of the Anthony rule I am sure would be enough to pass the bill. I hope the Senator from Kansas will consent.

Mr. MORGAN. I will state to the Senator from Massachusetts and also to the Senator from Kansas that my object in making the motion before we reached the Anthony rule was simply to avoid the necessity of moving in the Senate to enlarge the time for debate, believing the bill could be disposed of this morning. I, of course, can call it under my privilege under the Anthony rule when that rule becomes operative, but it will be limited to five minutes' debate.

Mr. ALLISON. I ask the Senator from Alabama if the case can be called up under the Anthony rule, why not call it up and let us go on with it?

The PRESIDENT *pro tempore*. There is another case unfinished under the Anthony rule. This bill will be in order to be called up as soon as the pending case, which has the right of way, is disposed of. Does the Senator from Alabama withdraw his motion?

Mr. MORGAN. I withdraw my motion, and give notice that at the termination of the present bill I shall ask the Senate to take up the Japanese indemnity bill.

The PRESIDENT *pro tempore*. It will be in order to be taken up under the Anthony rule then, because it has been passed over without prejudice.

Mr. MORGAN. That is when the L. Madison Day case is disposed of, but I fear from the course of the debate on the L. Madison Day case that it will not be disposed of in a few months.

Mr. HARRIS. I give notice that if the debate on the L. Madison Day case is not promptly closed, I shall interpose an objection to the further consideration of that bill.

L. MADISON DAY.

The Senate resumed the consideration of the bill (S. No. 73) for the relief of L. Madison Day.

The PRESIDENT *pro tempore*. The pending question is on the motion of the Senator from Missouri [Mr. COCKRELL] to refer the bill to the Committee on the Judiciary.

Mr. GEORGE. Mr. President, I have great respect for the Judiciary Committee, for the talent and fidelity of its members, but this claim has been referred to the proper committee of this body, and if that committee does not rank—about which I express no opinion—if it is to be understood that it does not rank as high as the Judiciary Committee, it at least is supposed to be competent to discharge the duties which this body has imposed upon it. That committee has considered this matter very maturely and has made a report. We do not ask the Senate to adopt our report. We have reported the bill to the Senate in the discharge of our duties with such lights as were before us. We are willing that the Senate shall review and reverse our action, but so far as I am concerned as one of the members of the Committee on Claims, I am indisposed where a matter has been properly referred to us, and where it has been considered by that committee, that the Senate shall take such action as will amount to a reflection on the committee by granting an appeal to or a supervision of the work of that committee by another committee. I am willing to accord to the Judiciary Committee all the honor, and all the respect, and all the confidence that it is entitled to, but I am unwilling as a member of one of the properly organized committees of this body which has conscientiously and laboriously discharged its duties with reference to a matter referred to it by the Senate, to have that matter taken from it and referred to another committee. I hope the motion will not prevail.

I am informed by the Senator who sits at my left, [Mr. JONAS,] and who is more familiar with the proceedings of this body than I, that it would be proper now for me to submit such observations to the Senate as I may see proper in defense of the report made by the Committee on Claims, and that being in order, I shall now proceed to do so.

It seems to me, Mr. President, that there has been some strange misapprehension as to the rule which ought to govern this body in determining upon the propriety of the passage of this bill.

The PRESIDENT *pro tempore*. The Senator's time is out.

Mr. INGALLS. Mr. President, for the purpose of enabling this bill to be discussed I object to it in order to enable a majority to take it up. If the Senator will move to take the bill up, I shall vote with him.

Mr. GEORGE. I move to take it up.

Mr. SHERMAN. As all the other Senators who have spoken on

this bill against it have been allowed to go on more than five minutes, I think it would be very discourteous to the Senator from Mississippi, who is one of the committee who reported the bill, not to allow him to reply.

Mr. GEORGE. I claim no extra courtesy.

Mr. SHERMAN. I move that the rule be waived as to the Senator from Mississippi.

Mr. INGALLS. I withdraw my objection, then, if that is the understanding.

Several SENATORS. Go on! Go on!

The PRESIDENT *pro tempore*. The Senator from Mississippi can proceed by unanimous consent.

Mr. GEORGE. The case, sir, is a very simple one, and the rules of law, as I understand them, which are applicable to it are also very simple. The facts, as I understand them, are these: under an act of Congress which provided for the forfeiture of the lands and the estate of certain parties who were engaged on the confederate side in the late war proceedings were had for the purpose of enforcing the forfeiture and realizing the proceeds of the property in question to the United States Treasury. That law—and I desire to call the Senate's especial attention to this point—provided for a proceeding *in rem* for a seizure of the property. As the preliminary step in the judicial proceedings this property was seized. It was in the possession of the United States. It was brought before a United States court. A libel was filed charging it to be the property of Mr. Benjamin. A decree was rendered forfeiting the property to the United States and directing the sale of it for the purpose of getting the money into the Treasury. During the progress of that and similar causes the judge of the district court, the United States judge, the officer and agent and instrument of the United States, appointed by law for the purpose of asserting the rights of the United States to this property, made an order directing the cancellation of all mortgages and liens upon the property. The marshal who had seized the property as the officer and agent of the United States made the sale, and at the time of the sale he produced a certificate of cancellation of the mortgage to the purchaser, and sold it as exempt from the lien, the purchaser and the marshal and the court—that is, the purchaser and the United States, because the United States were acting through their court and through their marshal—all believing that this mortgage had been properly canceled.

Mr. LAPHAM. Right there will the Senator allow me to put an inquiry?

Mr. GEORGE. Certainly.

Mr. LAPHAM. Was the holder of the mortgage a party to the proceedings?

Mr. GEORGE. No, sir.

Mr. LAPHAM. Then how could any such order affect her or him?

Mr. GEORGE. I will explain that for the benefit of the Senator from New York. It was a proceeding *in rem*, and I will now read some authorities which go to show, and which do show, that in all proceedings *in rem*, when property is sold thereunder, it is sold exempt from all claims or liens of all persons, whether they be parties or not.

I read from an opinion delivered by Judge Story in 3d Wheaton:

Where property is seized and libeled as forfeited to the Government, the sole object of the suit is to ascertain whether the seizure be rightful and the forfeiture incurred or not. The decree of the court in such case acts upon the thing itself and binds the interests of all the world whether any party actually appears or not. If it is condemned the title of the property is completely changed, and the new title acquired by the forfeiture travels with the thing in all its future progress. (*Gelston vs. Hoyt*, 3 Wheaton, 318.)

This is a decision made by the Supreme Court of the United States. Now here is a similar decision made by the Supreme Court of Louisiana, in which State and under whose laws this sale was made.

The proceedings were *in rem*. By the motion, every one who could have asserted a right to or in the property libeled was a party to the suit, and the judgment, consequently, is a complete bar to all rights which could have been exercised there. (*Bauduc's Syndics vs. Nicholson et al.*, Louisiana Reports, volume 4, page 85.)

It is true that these rules, well-known rules, undisputed rules, recognized by the Supreme Court of the United States and by every other court as applicable to proceedings *in rem*, it has been since held did not apply to this case. I will read the statute, however, to show that the proceedings were directed to be *in rem*:

That to secure the condemnation and sale of any of such property, after the same shall have been seized, so that it may be made available for the purpose aforesaid, proceedings *in rem* shall be instituted, &c. (Section 7, act approved July 17, 1862, 12 Statutes at Large, page 591.)

I make this answer to the Senator from New York who has just put a question to me, that by well-settled principles of law Mr. Day had a right to presume and the judge of the court who made the order had a right to presume that he had the power to make this sale free from the mortgage. It is true that afterward these rules of law, universally applicable to proceedings *in rem*, were decided in the Supreme Court not to apply to this particular class of cases. But there was good ground to believe at the time, there was good ground for the conviction on the part of Mr. Day, there was good ground to justify the mistake if a mistake was made on the part of the judge, assuming that the power existed to cancel this mortgage when the mortgagee was not before the court, and I assert now that it was by a new and a strained and, I might say, an unanticipated

application of rules of law to these proceedings *in rem* which deprived that judgment of the force ordinarily allowed to judgments in proceedings of this sort.

It is to be remembered, Mr. President, that the court had good authority for holding that it had the power to make the order, that Mr. Day had good authority for supposing it had that power, and I say that under these circumstances it is not fair on the part of the United States, when one of its courts, its agent, selected by it for the purpose of acquiring this property, acting in good faith, according to well settled principles of law, made this decision—I say it is not fair under these circumstances for the United States now, having got the benefit of it, having got the money produced by it, through another court or because that other court of the United States has decided that the mortgage could not be cut out, to keep the money in their Treasury which was put there through this mistake.

I think on that ground alone we ought to refund this money. I do not think the Government of the United States can afford to keep in its Treasury money which was put there solely by an honest mistake made by its own judge and its own marshal by which a citizen of the United States was deluded into parting with money for which the United States parted with nothing.

But it is said that the doctrine of *caveat emptor* applies; that the law is that Mr. Day should have examined into this matter himself; that he should have been wiser than the judge; that he should have known that the representation made to him by the marshal was a fallacious one. I say, sir, that the doctrine of *caveat emptor* does not apply to such a case, and I will proceed to read from the very highest authority in the United States; and I speak deliberately and with measured terms when I say "the highest authority in the United States." Here is a decision made by Chancellor Kent, than whom there is no higher authority here or elsewhere, and never will be:

On the sale of premises, under two mortgages, it was represented that the property was free from all incumbrances; but after the sale and the master's report it was discovered that the property was subject to a city assessment and tax; and the purchaser, therefore, refused to complete the purchase unless the incumbrances were removed.

Those were the facts. Here is what the judge said on those facts:

The CHANCELLOR. The facts stated in the petition and report remain uncontradicted. The premises, at the time of the sale, were represented to be free and clear from all incumbrances—

As was the exact case here; the property was represented by the marshal to be free from all incumbrances—

and the master's report contains no allegation to the contrary. It likewise contains the evidence of the fact of such incumbrances, and the certificates show that the evidence of them came to the master's knowledge since the sale.

That master was the one who made the sale.

The purchaser ought not to be held to his purchase under these circumstances, and we must intend that the lot was sold, and was purchased with the understanding that the title was clear, and that the price bid is to be taken as a fair and adequate consideration for the premises, free from incumbrances. It is therefore just, and for the interest of all parties, that the purchaser, or the master for him, should be at liberty to apply part of the purchase-money in discharge of the incumbrances. (*Lawrence against Carnell and others*, 4 Johnson's Chancery Reports, 542, 543, and 544.)

And what is the difference between applying the purchase-money to remove the incumbrance and returning it to the purchasers when the incumbrance has been enforced and the property has been lost? Here is a case, sir, exactly in point. I read now from the decision of one of the ablest courts in the American Union, where a purchaser at a sheriff's sale was relieved simply because of a mistake of the plaintiff in the execution:

If the plaintiff points out—

Says the court—

and shows land, he holds out to the world that the land on which he directs his execution to be levied is subject to the payment of his debt. If he has been instrumental in causing land to be sold by the sheriff, when the defendant in the execution had no interest in it, he has no just cause of complaint when a purchaser resists the payment.

Mr. BUTLER. What case is that?

Mr. GEORGE. 2 J. J. Marshall's Reports, page 35, *Wolford vs. Phelps*.

It was the plaintiff's fault to endeavor to make his debt of property not owned by his debtor, and can only be regarded as a fraud on the rights of others.

It was the fault of the United States, who was plaintiff and whose officer was judge and whose officer was marshal, to endeavor to condemn and put into its Treasury property which did not belong to the defendant or the party who was charged with treason.

Again the court says:

We do not perceive any insuperable reason founded in public policy, we know of no express adjudication, and we cannot find any principle of morality which prohibits a purchaser at sheriff's sale from asking at the hands of the chancellor relief against a sale-bond executed without consideration, through a fraud practiced upon him or through mistake. Consequently, we shall not estop the complainant in this case by saying to him *caveat emptor*.

That is not all. I read next from another decision of that court, (*Dana's Report*, volume 3, page 550:)

If a plaintiff in execution has been instrumental in causing the property of a stranger to be sold, we can see no principle of reason or of law that would exonerate him from responsibility to the purchaser.

That is exactly what the United States did here. It caused to be sold the property of a stranger to the proceeding, not Mr. Benjamin.

The exhibition and sale of property by an individual as his own is regarded by law as sufficient to make him a warrantor of the title.

And here let me call the attention of the Senate to the fact that the United States was selling this property as its own. It had no money demand against Mr. Benjamin; it had no judgment against him which it was seeking to enforce and collect out of his property. It was seeking to enforce its own title to Mr. Benjamin's property, and the result of the decision was that the property belonged to the United States, not to Mr. Benjamin, and the sale made was a sale of United States property or of what interest the United States might have in it, when in fact the United States had no interest. The United States sold the property as their own; they induced the purchaser, through their own court, through their own marshal, to believe that they did own the property; they got the money; they parted with nothing for the money; and now it is said that we have a right to keep this money and to turn this party out of court because it is said he ought to have been wiser than the Federal judge, wiser than the Federal marshal; he ought to have been too astute, too smart to have parted with his money under the circumstances. I say, sir, the United States cannot afford to keep money obtained in that way.

Mr. LAPHAM. I ask the indulgence of the Senator to make an inquiry. The cases to which the honorable Senator has referred are obviously cases where there was a mistake in fact as to the existence of a tax or lien upon the property. This is a case where the title of the mortgagee was known, and the court assumed to sell in defiance of that title. Suppose it had been known that the legal title in the property was in a person loyal to the Government of the United States, and under a pretense of confiscating the title of Judah P. Benjamin the court was selling the property of a loyal man, and subsequently the true owner had asserted his title and recovered the property, would the purchaser have any remedy?

Mr. JONES, of Florida. Will the Senator permit me to inquire would the United States keep the money in that case?

Mr. LAPHAM. That is another question. I am only inquiring as to the rule of law.

Mr. GEORGE. If the money is in the Treasury of the United States, how then?

Mr. LAPHAM. That is another question. I am only suggesting the application of the legal principle which the Senator from Mississippi has been stating.

Mr. GEORGE. Well, Mr. President, if the parties believed that the United States had title, and if that belief was produced by the officer of the United States, by the judge of the United States, by the marshal of the United States, it seems to me that would be a mistake for which the purchaser ought to be relieved. It is impossible to suppose that the purchaser bought the property knowing that he was getting no title. It is impossible to suppose that the United States, through their judge and through their marshal, proposed to sell property to which they knew they had no title. Those would be mere sham proceedings; they would be the acts not of sensible men, but of lunatics, crazy people. The idea of a man setting up property for sale and declaring at the time "this is not my property;" and the idea that a man who is present and hears the declaration, and who knows the property and knows he gets no title, parted with the full value of the property in exchange for nothing. That can only be the act of a lunatic.

Mr. President, it is said that this order was void. Well, suppose it was void. The sale was made under it. Now, I desire to ask any lawyer in the Senate if there is a principle of law better settled than that a sale made under a void decree imposes no obligation on the purchaser to pay, and confers no right upon the vendor to receive the money. That never was disputed, and in the wildest application of the doctrine of *caveat emptor* it never has been applied to a case where a sale was made under a void order of a court; and the highest equity that Mr. Day has for the return of this money is the establishment of the fact that the proceedings were null and void. What is a null and void proceeding? It is just no proceeding at all, and the result—

Mr. VEST. I do not want to interrupt the line of the Senator's argument, but I wish to call his attention to the fact that this sale was not made under that order which eliminated the mortgage, but was made under a judgment of the court under the confiscation act. That judgment was good, and sold the interest of Judah P. Benjamin; but the collateral order, the order of the court as to canceling mortgages, was absolutely void and amounted to nothing.

Mr. GEORGE. I know very well the maxim that *utile per inutile non vitiatur*, but that has never been applied to this extent. Where that part of the proceeding which is acknowledged to be void was the foundation, the substratum under which they acted, then it has the same effect as if the whole was void.

Now, Mr. President, we are to construe the whole record together. The Senator from Missouri will understand that you cannot alone look at one part of it and say that is valid, and at another part of it and say that is invalid and void, unless they be separate and independent of each other. If one depends upon the other, if that which is valid can have no force and effect except in connection with and as modified by the invalid order, it is just the same as if the whole proceeding was invalid.

Mr. President, I have but one word more to say and then I will quit. We are not to try this question upon a point of law. The question is whether the United States can consistently and fairly and with justice to their citizens retain this money which they ac-

quired from him upon the pretense, upon the assertion, and upon the judgment made by their own judge, by their own marshal, their own instrument, selected for the purpose of enforcing their laws? Can they retain this money acquired under these circumstances when they parted with nothing for it? That is the question. If you can afford to do that, then you will reject this bill.

Mr. JONAS. Mr. President, this property purchased by Mr. Day was condemned in the district court of the United States as the property of J. P. Benjamin. The proceedings were not against J. P. Benjamin, but against certain lots of land alleged to be the property of J. P. Benjamin, and as such they were condemned, the court finding those lots to be the property of J. P. Benjamin. Whether Joseph Benjamin had any title to that property or not was a matter which concerned neither Mr. Day nor any other person. It was a matter for inquiry in the original proceeding, and when this property was exposed for sale by the marshal, and when it was purchased by Mr. Day, it was purchased, as the Senator from Mississippi says, as property belonging to the United States, condemned as rebel property, formerly the property of J. P. Benjamin, a rebel, and exposed for sale under the confiscation act as such condemned property.

Mr. Day bought that property. Mr. Smith, Mr. Brown, Mr. White, Mr. Jones, or any other person, might have purchased the property. It was exposed at judicial sale, and what representations were made by the marshal? It does not concern this case that Mr. Day is a lawyer, no matter how able or how industrious in his profession. The humblest and most ignorant man might have occupied Mr. Day's place, might have purchased the property. It did not become him, and it was no part of his duty, to inquire into the process by which this property had been confiscated. He found the United States, under United States process, and by its officers, offering this property for sale, and had a right to purchase provided we are prepared to admit, as I think we all are, that the United States had a right to pass the confiscation act, to confiscate property, and to sell that property, and that persons had a right to purchase it. Before the sale of this property the following order had been obtained:

On motion of Rufus Waples, United States attorney, and M. Taylor, esq., attorney for the marshal, on suggesting that the eighth section of the act to suppress insurrection, &c., approved July 17, 1862, that the several courts aforesaid (the United States district courts) shall have power to make such orders, establish such forms and decree and sale, and direct such deeds and conveyances to be executed and delivered by the marshal thereof, where real estate shall be the subject of sale, as shall fully and efficiently effect the purposes of this act, and vest in the purchasers of such property good and valid titles thereto, it is ordered that, in all cases where real estate is condemned and sold under the act aforesaid, the marshal shall cause all mortgages resting against the property to be sold to be canceled, and shall attach the certificate of the recorder of mortgages to the deeds given to the purchasers, showing the cancellation of the same. It is further ordered that purchasers of property deposit the amount of their bids with the marshal, subject to distribution by the court, after fixing the cost, the State, national, city, and drainage taxes to be paid, the receipts therefor to be attached to the deeds given.

It is not alleged that either Mr. Day in person or any other purchaser of confiscated property had anything to do with the procurement of this order. It was obtained on the motion of the district attorney, and it was also upon the motion of Hon. Miles Taylor, special counsel appointed by the United States. Mr. Miles Taylor was one of the most distinguished lawyers the State of Louisiana has ever produced, and he practiced law in that forum for forty years. He was a contemporary of Mr. Benjamin and a man distinguished in all the courts of the State as one of her most eminent lawyers. He was a man who sat for eight years in the other end of this Capitol as a member of Congress representing one of the districts of New Orleans, and who withdrew from his seat when his State seceded in company with Mr. Benjamin, also sharing the fortunes of the confederacy. Therefore, whether this order was improvident or not, whether the district court had the right to issue the order or not, it was obtained by eminent and honest counsel, one of whom at least stood the peer of any at the bar of Louisiana.

Under that order the marshal canceled the mortgage existing on this property, and the deed executed to Day was a deed which stipulated, as the marshal said at the sale, that the United States sold the fee of the property. The marshal annexed to the deed a certificate of the recorder of mortgages for the parish of Jefferson, in which the property was situated, dated May 12, 1865, stating that "the aforesaid mortgage from Benjamin to Micou has been this day canceled and annulled upon the record of this office."

The granting clause in the marshal's deed to Day is:

Now, therefore, know all men by these presents, that I, the United States marshal aforesaid, in consideration of the premises, and by virtue of the laws in such case made and provided, and under the authority of the acts of Congress of the 6th of August, 1861, the 17th of July, 1862, and the 3d of March, 1863, in relation to confiscation, do hereby sell, transfer, assign, and set over unto the said L. Madison Day, as aforesaid, his heirs, administrators, executors, and assigns, all and singular the above-described property, with all the buildings and improvements thereon, rights, ways, privileges, hereditaments, and appurtenances to the same belonging and in any wise appertaining, to have and to hold the above-described property, with all the buildings and improvements thereon, rights, ways, &c., unto the said L. Madison Day, his heirs and assigns, as aforesaid, to his and their proper use, benefit, and behoof forever.

Thus Mr. Day bought at public sale (made by an officer of the United States, executing the decree of the United States court) this property, with notice that there existed no lien or mortgage upon it, the mortgage having been canceled, and he bought what the court

ordered to be sold, whether it had the right to sell or not, the fee-simple title to this property.

It has been alleged, and much prejudice created by the allegation, that it is absurd to presume that Mr. Day, a prominent and experienced lawyer, should have supposed that he was buying or that the Government could sell the fee-simple to this property, or that the Government could sell this property free from the mortgage that existed upon it. I say, Mr. President, that if Mr. Day had this opinion he stood not single and alone, and it was pardonable in him if he should have had it, because, and it is within the knowledge of every lawyer who sits around me, that during the war when these confiscation sales were taking place, and after the war when the purchasers had entered into possession of the property, it was the opinion of a large portion of the bar of the Union, and perhaps of a majority, that despite the declaratory act of Congress and despite the message of President Lincoln, these sales, made under proceedings *in rem* against the property, had divested the whole title not only of the rebel, but of his heirs, and vested the fee-simple in the purchaser. Mr. Day was not the only person who carried his case to the Supreme Court and resisted the attempt there of the heirs or mortgagees to recover the property to the last extent.

Before this case of Mr. Day went to the Supreme Court of the United States there had been half a dozen or more cases decided on suits brought by the heirs of deceased persons whose estates had been confiscated to recover them back, and it was only some time after the war had ended, a long time after these sales in confiscation had ceased, before the Supreme Court of the United States—I think the first case was the case of *Bigelow vs. Forrest*—decided that it was only competent for Congress to confiscate the life estate of a rebel, and that the property after his death vested in his heirs. So this was not a mistake of Mr. Day alone.

It has been sought to reflect on Mr. Day because he purchased confiscated property. He is called a speculator. It is not alleged that he committed a crime. If the confiscation act was a legal one, if it existed on the statute-book, if the courts of the United States enforced it, Mr. Day or any other man, I submit, had a perfect right to purchase property sold under it; and it does not lie in our mouths here to-day to cavil either at those who executed the law or those who profited by it.

I know Mr. Day very well, and have known him for years. He was a respectable member of the bar of Louisiana; he was an old Whig and a Union man, and when secession came and the war he took the Union side, and took it consistently and honestly. I knew him well. He was a Union man at a time when there was danger and no profit in being a Union man; and he has not sought to draw profit from having been a Union man since the war has ended. He has always been, as far as I know, with his people, a good and law-abiding citizen.

Mr. Day in purchasing this property did no injury to Mr. Benjamin. If Mr. Day had not bought it, Mr. Brown, Mr. White, or Mr. Jones would have done so; and Mr. Benjamin had no interest in it, because it was forfeited to the United States by the act of Congress and proceedings taken thereunder; and Mr. Day bought this property as he had a right to do.

Mr. Day, it is said, bought it as a speculator, and paid a speculative price for it, and took the chances. Why, Mr. President, he paid the full cash value of the property at the time if he had bought the fee to him and his heirs forever. He paid some \$5,400, I think, for the property. He afterward spent some \$3,000 on it in making improvements and repairs, because he bought it to reside in, and he resided in it until he was dispossessed of it under the decision of the Supreme Court. That made it cost to him some \$8,400; and yet in times of comparative prosperity, in times when property had acquired a much larger value, that property was sold to my colleague, Mr. ELLIS, the present member of Congress from the second district of Louisiana, for \$10,000, one-half cash. Everybody knows that during the war, and with the doubtful issue of war, property had little or no value, and could not produce more than 50 per cent. of its actual value in the city of New Orleans.

Was it to be supposed that Mr. Day, at least a sensible business man, was going to put \$5,400 of his own into a property covered by a deed of mortgage to a larger amount, which would not bring any more than that under the hammer if the sale passed a title indefeasible to him and his heirs forever; that he was going to pay that for a mere life estate on the life of a man then over fifty years of age and a title that was not good and was subject to litigation and subject to defeasance by the enforcement of a mortgaged lien? Mr. President, it is preposterous. Mr. Day gave the best evidence of his sincerity by paying the full cash price for which he could have bought similar property, the fee simple, free from incumbrance, in that portion of the city anywhere that he chose to invest.

Now he is accused of having attempted to swindle a poor widow and orphans out of their money. I know the widow and orphans. They are my friends. I rejoice that they gained the case in yonder court. I rejoice that they recovered their money. I think they were entitled to it. They had no notice and they never came forward to take part in these proceedings in the United States courts. If they had come and taken part we never should have heard of this case, and Mr. Day would never have been dispossessed of his property. I

rejoice that they recovered the property; but in what has Mr. Day injured them? Mr. Day bought this property free from their mortgage so far as the action of the United States court could make it so. Mr. Day bought this property, and to the best of his knowledge and belief the money he paid for the property went to these mortgagees, and of course, no matter how large the mortgage, the mortgagee could only get what the property brought, having the right to come in and purchase herself.

Suppose Mrs. Micon and her children had been made parties to this suit; suppose they had been notified of this suit; suppose they had come in and under the privilege of mortgage creditors had purchased the property; suppose they had purchased it for the full extent of their mortgage, which they could have done without paying out a dollar; what would have become of their estate after the death of J. P. Benjamin? They would have purchased the life estate, as Mr. Day purchased the life estate, and they would not have been in as good a position as they are to-day.

Mr. President, as I said the other day, in Louisiana one who makes a sale is held to be a guarantor. He guarantees the existence of the thing he sells; he guarantees the title to it. If through any cause a party purchasing in good faith is evicted from the property, he has recourse against the seller as a guarantor; and the same thing applies to a judicial sale, with this exception, that in judicial sales he has his warranty against both the plaintiff and defendant, but he must first execute it against the defendant, and on a return that the defendant has no property he can then obtain a judgment against the plaintiff. Mr. Benjamin was no debtor; Mr. Benjamin owed nothing to the United States. Mr. Benjamin was a rebel, and the United States said that the property of rebels was forfeited. The United States took the property of Mr. Benjamin, and they had a right to use it so far as the United States was concerned, and no recourse could be had against the defendant.

All the property of Mr. Benjamin was exhausted; everything he had was confiscated. It is matter of history that since the war Mr. Benjamin has not lived in this country, but has attained great fame and fortune across the sea. Therefore it would have been a mere matter of supererogation to have issued an execution against Mr. Benjamin; nothing could have been effected. As a matter of course, Mr. Day could not sue the Government. He could not bring his action against the United States any more than he could bring his action against the State of Louisiana if the State of Louisiana had sold his property for taxes without a right to do so, but he could have gone to the Legislature of Louisiana and asked for a return of the money as he comes to Congress to make a similar demand. The court did not give that money to Mrs. Micon, the mortgagee; the money was turned over to the Treasury of the United States, where it is now.

The Senator from Missouri says that this case must be distinguished from that of an individual. There can be no question if an individual had made this sale he would have been held to warrant the title under the law of Louisiana. Will it be pretended that the United States can change the laws of Louisiana? She can enforce her judgment; she can sell property; she can issue execution; but if she issues executions she must do it under the State laws. Section 916 of the Revised Statutes says that judicial sales, proceedings, and remedies generally must be according to the laws of the State, provided such remedies existed before the passage of that statute.

Mr. President, there is no question of public policy which discriminates between the United States and the individual, except merely the privilege of the United States that she cannot be sued by a citizen; but the Senator says it is a matter of public policy. The Senator says that this money was used for the purpose of carrying on the war and maintaining the Union armies, and therefore it cannot be disposed of now. That was the policy of the confiscation act, and whose money did the confiscation act propose should be used for carrying on the war? It was the money of Mr. Benjamin; it was the forfeited property of Mr. Benjamin; it was to be confiscated; it was to be put into the Treasury; it was to be used for war purposes. Did the act contemplate that the property of Mr. Day, a loyal Union man, sympathizing and siding with the Government to the best of his ability, was to be used, that the money was to be taken from Mr. Day by forced contribution and used for the purpose of supporting the Government and carrying on the war? No, Mr. President, the money is in the Treasury.

Mr. Day has suffered this loss through the fault of the Government and the Government's officers; he has suffered it through such means as would give him a good action at law in the forum where the property was sold against any individual, and there is no reason why the Government, having this money and having sold Mr. Day nothing; having been the means through its officers of perpetrating a swindle upon Mr. Day by pretending to sell him something that did not exist, that is, the title of J. P. Benjamin to this property; and by pretending to sell him something free from lien when that property was covered with a mortgage which the Supreme Court held to be good, and which left it without any value whatever; the Government having perpetrated this wrong on Mr. Day, it is nothing more than just and equitable that his money should be restored by the Government.

I find in the sixty-ninth volume of Missouri Reports the case of

Griffith vs. Townley, even in Missouri, a case decided almost similar, except that the United States was not a party. The syllabus of the case is as follows:

An administrator sold lands of his intestate, supposing that it was the fee that he was selling. The purchaser supposed it was the fee that he was buying. It turned out that nothing passed by the sale but the equity of redemption. Held, that this was such a case of mixed and mutual mistake of law and fact as entitled the purchaser to relief in equity.

And he recovered his money back. The court in this decision quoted from two or three cases, which I will also quote from briefly:

In *King vs. Doolittle*, 1 Head (Tenn.) 77, it was held that where the mistake was one both of law and fact, though the latter is the result of the former, relief will be granted when justice and equity require it.

In this case representations were made in the bill of sale which did not exist, made by an administrator. They turned out to be misrepresentations, and the party purchasing claimed his money back.

And the court there said: "If a contract is entered into in good faith, by which it is mutually understood that, for an adequate consideration, the one party shall part with and the other acquire a valid title to property, and it turn out that at the time of the contract, by the operation of some settled principle of law of which they were alike ignorant, the supposed title was wholly valueless or did not exist in legal contemplation; in such cases, the mistake is not a mere mistake at law; it involves, in some measure, a mistake of fact as well as of law, as the very idea of title comprehends as well matter of fact as of law. * * * It is enough that there was a radical defect inherent in the subject-matter of the contract, of which the parties were mutually ignorant. * * * The contract, therefore, was not what either of the parties understood and intended it should be." In that case the mutual mistake arose because of an omission of an essential provision of the charter of a bank, the copy furnished being unintentionally imperfect. Here the mutual mistake occurred because of the inadvertent insertion of words of which both parties were ignorant; words in the order of sale at variance with the petition for that order, with the publication, and with the certificate of appraisement. The parties bargained for the fee and there was, under the administration proceedings, no fee for sale. The subject-matter of their contract had, in legal contemplation, no more existence than if it had been a dwelling already consumed by fire or a message already swept away by a flood. Both parties intended the purchase and sale of a subsisting thing, and implied its existence as the basis of their contract. It constituted, therefore, the very essence and condition of the obligation of their contract." (1 Story, Eq. Jur., sec. 142.)

The court says, speaking of the case at bar:

The mutual mistake is to be attributed to the agent of the defendants.

The marshal was an agent of the United States. The judge cannot be called an agent of the United States, but he was there administering justice in a suit in which the United States was a plaintiff, and the decree was the property of the United States.

He prepared the deed, and he assured the complainant that it was correct. There was no want of ordinary prudence in the complainant's relying upon his judgment. He was a lawyer by profession, and it was natural and becoming that the complainant should have confided in him. To the same effect are *Woodbury, &c., Bank vs. Charter Oak Insurance Company*, 31 Conn., 517; *Longhurst vs. Star Insurance Company*, 19 Iowa, 364. In conclusion, we are of opinion that there are, in this case, such elements of absence of consideration, of reliance on the representations of the agent of the estate, of surprise, mutual mistake and unconscionable advantage, as should in equity and good conscience take this case out of the general rule, and forbid our sanctioning the decree; for should we approve that decree, we would thereby, in effect, declare that the heirs of Lewis Welton's estate should retain the unconscionable advantage which they have gained, and become enriched by the very debt of their ancestor.

I think that this case in its main bearings is precisely a counterpart. I hope that the case of the claimant here will not be prejudiced by the exordium to his brief, which was read yesterday. It was not the first case, I submit, in which the old adage applies that "a man who is his own lawyer," &c. I will not continue the quotation.

Mr. VEST. Mr. President, I just wish to say a word in regard to the case stated by the Senator from Louisiana and the decision of the Supreme Court of Missouri. I say respectfully to my friend that the decision he has read has no more to do with this case than the laws of the Sandwich Islands or of Kamschatka. That was a case in which sale was made by an administrator, and there was an inadvertent mistake in regard to the facts of the case and both parties participated in it; exactly like the case in which there was a mistake in regard to the charter of a bank where the copy that was furnished to the banks left out material words containing certain important provisions.

What are the facts here? This man Day knew that the Constitution prohibited anything but the sale of the life estate of Judah P. Benjamin. He knew what the order of the court was to sell the property of Judah P. Benjamin. He knew what he was buying.

Mr. JONAS. Will my friend permit me to interrupt him?

Mr. VEST. Certainly.

Mr. JONAS. The order of the court, I submit, was not to sell the property of Judah P. Benjamin; the order of the court was to sell certain lots of ground, I do not know how many, the property of Judah P. Benjamin which had been confiscated.

Mr. VEST. I am a lawyer by profession, but I have never been able to draw the distinction quite as fine as my brother from Louisiana. The order of the court was to sell certain lots, the property of Judah P. Benjamin, and the Supreme Court of the United States construed that decree to mean, as it could only mean, that it sold the interest of Judah P. Benjamin and nothing more. Here is the judgment of the Supreme Court of the United States before me now, and the Supreme Court decides that the district court of Louisiana could not have sold anything else. There can be no pretense that they sold anything else.

What did Mr. Day claim? He claimed that he bought the interest

of Judah P. Benjamin and of Joseph Benjamin, and got rid of a mortgage of \$10,000, spread on the records in 1858, and he, a lawyer, says now that his ignorance ought to be protected. I hold the doctrine of equity to be that when facts exist which put any man on inquiry in regard to other facts, then he is bound to know them all, and if he does not know them it is gross negligence, willful and deliberate negligence. This is the case, and I desire to say nothing else about it. Mr. Day has made a bad speculation and wants to saddle the result of his bad judgment and his worse venture upon the Treasury of the United States.

Mr. HOAR. Mr. President, I have spoken once on this matter. Have I the right to speak again?

The PRESIDENT *pro tempore*. No, sir; not except by unanimous consent.

Mr. COCKRELL. The Senator has not spoken on the motion to recommit.

Mr. HOAR. I shall not ask unanimous consent; I would rather have a vote.

Mr. JONES, of Florida. The pending motion is to recommit the bill.

Mr. FRYE, and others. Let us have a vote.

Mr. HARRIS. This bill has taken up the morning hour for three or four mornings.

Mr. HOAR. The Senator will understand that I do not ask for unanimous consent; I waive my desire to speak.

Mr. HARRIS. I am not inclined to object to hearing the Senator, except that I am inclined to object to the further consideration of the bill unless we can come to a vote at once. I am ready to vote.

The PRESIDENT *pro tempore*. The question is on the motion to commit the bill to the Committee on the Judiciary. [Putting the question.] The yeas seem to have it.

Mr. COCKRELL. Let us have the yeas and nays.

Mr. JONES, of Florida. Let the yeas and nays be taken on the passage of the bill.

Mr. COCKRELL. I withdraw the request.

The PRESIDENT *pro tempore*. The motion is lost. The question is on ordering the bill to be engrossed for a third reading.

Mr. VEST and others. Let us have the yeas and nays on the passage of the bill.

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

The PRESIDENT *pro tempore*. The question is, Shall the bill pass, on which the yeas and nays are demanded.

The yeas and nays were ordered; and the Acting Secretary proceeded to call the roll.

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

Mr. MILLER, of California, (when his name was called.) I am paired with the Senator from Delaware, [Mr. BAYARD.] I do not know how he would vote if he were here.

Mr. PLATT, (when his name was called.) I am paired with the Senator from West Virginia, [Mr. CAMDEN.]

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

The roll-call was concluded.

Mr. FRYE. The Senator from Rhode Island [Mr. ANTHONY] is necessarily detained from the Senate for a portion of the day, and while absent he is paired with the Senator from Georgia, [Mr. HILL.]

Mr. ROLLINS. I am paired with the Senator from Tennessee, [Mr. JACKSON.]

The result was announced—yeas 27, nays 22; as follows:

YEAS—27.

| | | | |
|------------------|-------------------|------------------|----------|
| Blair, | George, | Jones of Nevada, | Morrill, |
| Call, | Groome, | Kellogg, | Pugh, |
| Cameron of Wis., | Hawley, | McDill, | Sawyer, |
| Chilcott, | Hill of Colorado, | McPherson, | Sewell, |
| Conger, | Hoar, | Mahone, | Sherman, |
| Dawes, | Jonas, | Miller of N. Y., | Windom. |
| Frye, | Jones of Florida, | Mitchell, | |

NAYS—22.

| | | | |
|--------------------|--------------------|------------|---------|
| Allison, | Davis of West Va., | Harris, | Slater, |
| Beck, | Farley, | Ingalls, | Vance, |
| Butler, | Garland, | Morgan, | Vest, |
| Cockrell, | Gorman, | Pendleton, | Walker. |
| Coke, | Grover, | Plumb, | |
| Davis of Illinois, | Hampton, | Ransom, | |

ABSENT—27.

| | | | |
|-----------------|------------------|-----------------|------------|
| Aldrich, | Fair, | Lamar, | Rollins, |
| Anthony, | Ferry, | Lapham, | Saulsbury, |
| Bayard, | Hale, | Logan, | Saunders, |
| Brown, | Harrison, | McMillan, | Van Wyck, |
| Cameron, | Hill of Georgia, | Maxe, | Voorhees, |
| Cameron of Pa., | Jackson, | Miller of Cal., | Williams. |
| Edmunds, | Johnston, | Platt, | |

So the bill was passed.

CHARLES M. BLAKE.

The PRESIDENT *pro tempore*. Does the Senator from Alabama [Mr. MORGAN] call up the Japanese indemnity bill, or will he wait until to-morrow?

Mr. MORGAN. I will not call it up under the Anthony rule today.

The PRESIDENT *pro tempore*. The next case on the Calendar will be called.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 1015) for the relief of Charles M. Blake.

The PRESIDENT *pro tempore*. The pending question is on the amendment of the Senator from California [Mr. MILLER] to the amendment reported by the Committee on Military Affairs.

Mr. MILLER, of California. I desire to modify my amendment by inserting, as the time at which the payment shall be made, from April 28, 1869, to July 2, 1870.

The PRESIDENT *pro tempore*. The amendment to the amendment will be read as modified.

The ACTING SECRETARY. At the end of the amendment of the committee it is proposed to add:

And the said Charles M. Blake shall be paid as post chaplain in the Army of the United States from the 28th day of April, 1869, to the 2d day of July, 1870; and the proper accounting officers of the United States are authorized and directed to audit and allow such payment when made.

Mr. COCKRELL. The Committee on Military Affairs decided the case, and this is a reversal of the decision of the committee whose report has been read. As I understand the amendment of the Senator from California, it is to allow Mr. Blake pay from the 28th day of April, 1869, to the 14th day of May, 1878.

Mr. MILLER, of California. No; I have changed that so as to pay him until July 2, 1870.

Mr. COCKRELL. I did not know the Senator had modified his amendment.

Mr. MILLER, of California. I have changed it so as to pay him from April 28, 1869, to July 2, 1870; which is the time that his successor was appointed and confirmed.

Mr. COCKRELL. I understand. That particular point was not specially passed upon by the committee. As the amendment has been modified from what it was originally, I have nothing further to say in the matter.

Mr. GROVER. I reported this bill by direction of the Committee on Military Affairs; but I myself was in favor of the proposition of the Senator from California before the committee, and I now favor it.

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from California to the amendment of the Committee on Military Affairs.

The amendment to the amendment was agreed to.

The amendment as amended 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.

NATIONAL BOARD OF HEALTH.

The bill (S. No. 1049) amending an act entitled "An act to prevent the introduction of contagious or infectious diseases into the United States" was announced as next in order upon the Calendar.

The PRESIDENT *pro tempore*. The bill is before the Senate as in Committee of the Whole, and will be read.

The Acting Secretary read the bill.

Mr. CAMERON, of Wisconsin. I was going to ask for the reading of the report, but I see it is somewhat lengthy and there will hardly be time to complete its reading before the hour of two o'clock will arrive.

Mr. HARRIS. As the hour of two is so nearly at hand, I have no objection to the bill going over at this time. I should like to have the report read in the morning and to make a very brief explanation of the change that this bill makes in the existing law.

Mr. CAMERON, of Wisconsin. That is precisely what I desired.

The PRESIDENT *pro tempore*. The bill will be the first case called in the morning when the Calendar is reached under the Anthony rule.

Mr. McMILLAN. The bill is not yet before the Senate.

The PRESIDENT *pro tempore*. Yes, it is reached on the Calendar.

Mr. McMILLAN. It is not to be taken up as one of the ordinary bills on the Calendar under the Anthony rule?

The PRESIDENT *pro tempore*. It is taken up now under the Anthony rule, and is subject to objection, of course.

Mr. McMILLAN. I do not think it ought to be considered at this time, and for that reason I object.

Mr. CAMERON, of Wisconsin. The Senator from Tennessee proposes to allow it to go over until to-morrow morning.

Mr. HARRIS. To have it go over to be the first bill called up to-morrow morning under the Anthony rule is my suggestion, because there is no time now to have the report read.

Mr. McMILLAN. Will it be subject to objection then?

The PRESIDENT *pro tempore*. Of course.

Mr. HARRIS. Every bill is subject to objection till its conclusion, under the Anthony rule.

CHARLES ALTON HOWARD.

Mr. HARRISON. As there are only two or three minutes left of the morning hour, I should like to have the consent of the Senate to make a report from the Committee on Military Affairs and to ask

the passage of the bill, which is simply to change the name of an officer in the Army.

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

Mr. HARRISON. I am directed by the Committee on Military Affairs, to whom was referred the bill (H. R. No. 3196) to authorize and direct the Secretary of War to change the name of Charles Alton Howard, a second lieutenant in the Ninth Regiment of Cavalry of the Army of the United States, on the register, rolls, and records of the Army, to Alton Henry Budlong, to report it without amendment, and I ask for its present consideration. The bill is simply to change the name of an officer on the Army roll, which he asks to have done, and there can be no objection to it.

Mr. PLUMB. Is it proposed to change his name by law?

Mr. HARRISON. The bill simply authorizes a change of his name on the Army rolls.

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

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

DISTRICT REAL ESTATE INSURANCE.

Mr. SHERMAN. In the moment that is left of the morning hour I should like to call the attention of the Senate to the bill (H. R. No. 4299) to amend the general incorporation law of the District of Columbia. It is a bill of slight importance which I should like to have passed. I presume there will be no objection to it.

By unanimous consent the Senate, as in Committee of the Whole, proceeded to consider the bill. It amends the five hundred and fifty-third section of the Revised Statutes of the United States relating to the District of Columbia by adding after the words "life insurance" the words "or for the purpose of insuring titles to real estate."

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

Mr. SAULSBURY. I should like to have the Senator from Ohio explain the effect of the bill.

Mr. McMILLAN. I reported the bill from the Committee on the District of Columbia, and can explain it to the Senator from Delaware. Under the general incorporation act of the District of Columbia corporations for the purpose of life insurance and other business purposes may exist for twenty years. This bill permits incorporations for purposes of insuring title to real estate to be perpetual instead of twenty years, because an insurance for twenty years would amount to nothing. It authorizes a corporation now existing, formed under the general law, to be perpetual. That is the only effect upon the law.

The PRESIDENT *pro tempore*. The question is, Shall the bill pass? The bill was passed.

CRUISE OF THE TICONDEROGA.

Mr. MCPHERSON. I submit the following resolution:

Resolved, That the Secretary of the Navy be, and he is hereby, authorized and directed to transmit to the Senate the official report upon the cruise of the Ticonderoga by Commodore R. W. Shufeldt.

I understand that there has been an official report published by the Navy Department. I should like to have possession of the report in order that some action may be taken upon it.

Mr. McMILLAN. Is it proposed to print the report?

Mr. JONES, of Florida. Let us have the regular order.

Mr. McMILLAN. The resolution had better go to the Committee on Printing.

Mr. MCPHERSON. It is simply to have the Department send us a copy of the report which is already in their possession. However, I have no objection to a reference if it is desired.

Mr. McMILLAN. If it is simply a resolution of inquiry I have no objection to it.

Mr. PLATT. Let the resolution be read.

The Acting Secretary read the resolution.

The resolution was agreed to.

COURT OF APPEALS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 420) to establish a court of appeals.

The PRESIDENT *pro tempore*. The pending question is on the motion of the Senator from Alabama [Mr. MORGAN] to recommit the bill to the Committee on the Judiciary with instructions, on which the Senator from Mississippi [Mr. GEORGE] has the floor.

Mr. MORGAN. The question before the Senate, I understand, is upon the amendment of the Senator from Florida, [Mr. JONES.] I do not propose to urge the motion to recommit now.

The PRESIDING OFFICER, (Mr. HARRIS in the chair.) A motion to recommit takes precedence of a motion to amend.

Mr. MORGAN. I did not formally make the motion yesterday; I merely submitted the proposition.

The PRESIDING OFFICER. If the Senator only gave notice of his intention to move hereafter to recommit, then the pending question is on the amendment of the Senator from Florida, [Mr. JONES.]

Mr. MORGAN. I only gave the notice with a view of having the resolution of instruction printed.

The PRESIDING OFFICER. The pending question, then, is on the amendment proposed by the Senator from Florida, [Mr. JONES,] which will be read.

The ACTING SECRETARY. It is proposed to strike out section 2 of the bill, in the following words:

SEC. 2. That the several circuit courts of the United States shall have and exercise no jurisdiction in cases of appeals or writs of error from the district courts allowed, taken, or sued out after the 1st day of September, 1882, except that reviews in bankruptcy cases, in the exercise of their supervisory jurisdiction, may be had as heretofore provided.

Mr. GEORGE. Mr. President, I ask the indulgence of the Senate for a short time to submit some additional observations that I desire to make upon the pending bill. In the first place, recapitulating a little what has occurred heretofore in this debate, I call the attention of the Senate to the argument which was made by the Senator from Arkansas [Mr. GARLAND] some days ago and to the observations which I made yesterday on the same point as to the meaning of the Constitution of the United States in reference to the citizenship of corporations, and I will add to what has heretofore been said upon that subject what I regard as a conclusive argument against this pretended citizenship.

Those who heard the Senator from Arkansas upon that subject will remember that he showed that while the word "citizen" had been used in the Constitution many times, yet there was nothing in the Constitution to define exactly what was meant by that term. Prior to the adoption of the fourteenth amendment there were diverse views entertained by statesmen and jurists as to the proper signification of the word "citizen." I believe the meaning of that term was very much litigated in the celebrated Dred Scott case. At least until the adoption of the fourteenth amendment there was no well-defined, settled, certain meaning attached to it which all statesmen and all jurists accepted as correct. Much of the controversy which culminated finally in the late civil war grew out of the difference in meaning attached to this word.

We have now a constitutional definition of what the word "citizen" means. It is no longer open to dispute; no longer a subject-matter of speculation; it has been withdrawn from that field, and the people of the United States have put in their Constitution a meaning which we are obliged to accept, and which the courts of this country are obliged to accept. That amendment, in unmistakable terms, excludes from the class of citizens the artificial beings called corporations. I will read it:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside.

That is the constitutional definition of the meaning of the word "citizens." Corporations cannot be born; they are creatures merely of the legislative will. They cannot be naturalized; they can take no oath of allegiance; they can renounce no fealty to any foreign power. I proceed further to read from the amendments to fix with absolute certainty, beyond the possibility of controversy, the fact that corporations cannot be included within the class of citizens:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The whole section taken together shows that the people in inserting this article in the Constitution were referring to natural persons, persons who owed allegiance, persons entitled to the protection of the Government, and persons who are capable of serving it.

So in the fifteenth amendment, inserted in the Constitution after the adoption of the fourteenth, we have the use of the word "citizen" in a sense unmistakably excluding from it all persons except natural persons.

The right of citizens of the United States to vote—

Says Article XV—

shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Here the word "citizens" is applicable alone to persons who have the capacity to vote. Corporations cannot vote, but only persons who may be of some of the races of mankind. Corporations do not belong to any race of mankind. Persons who may be of a particular color can vote. Corporations have no color. Persons who may have been in a previous condition of servitude can vote. Corporations, at least in this country, have never been in that condition. They have generally been masters, not servants, of the people.

What are corporations that they should be by the Federal courts included within the class of citizens entitled to sue and be sued in them? They are intangible and invisible; they are purely ideal beings. It has been said that they have no souls to be saved and no bodies to be punished. They have their beings under the simple legislative will of the States, a mere act of the Legislature endowing them with certain rights and powers and faculties, and imposing upon them certain duties and obligations.

In the case of artificial persons thus created, having their source, their life, their faculties, their powers solely from State law; how is it that the States which created them are to be deprived of their just power and jurisdiction over their own creatures, whose rights and powers, duties and obligations are to be settled and litigated in a foreign tribunal?

Certainly, if there be one thing more than another which ought to be an inherent attribute of a political community exercising legis-

lative powers, passing laws regulating the interests, the rights, the privileges of those over whom they have jurisdiction, it is that, having the power to make the laws, they ought to have the power to enforce them. Yet these creatures, existing alone in law, made by the breath and the power of the law, subject to be destroyed by the same power which creates them, are by this usurped jurisdiction of the Federal courts taken from the control and power of the States which created them.

I ask Senators who are in favor of maintaining this usurped and unconstitutional authority, what good reason is there for it? I am not bound to give a reason why we should remit it to the proper authority, more than to say that the Constitution, the supreme law of the land, has so willed it; that ought to be a sufficient reason for our action upon that subject.

This usurpation of power over corporations by the Federal Government has worked very serious injury to the people of the States. Let me illustrate. There is a railroad company chartered in the State of Virginia, for instance, having one terminus of its road at Norfolk and the other at some other point in the State. It gets its right of way from the State of Virginia; it gets the power to exercise the right of eminent domain from that State; it receives from the Legislature of the State the power to ask municipal corporations, cities, towns, and counties to levy taxes to aid in its building; it receives subsidies from the treasury of the State of Virginia. It seems under these circumstances, being born of the will of the State of Virginia, deriving its powers from that authority, receiving its stock from the public treasury and from the contributions of the municipalities to which I have alluded, that the State ought to have some control over it. Yet any man who holds a bond of that road, if it be mortgaged, may go into the Federal court and may induce that court to seize property and franchises of the corporation, put them in possession of a receiver, turn out the agencies appointed by the law of the State of Virginia for the purpose of working it, and then actually operate the road under the power and direction of this court. When a receiver is appointed what is the result? He is the president of the road, he is the vice-president of the road, he is the secretary and treasurer, the directors and the stockholders. His will alone, guided and directed by the will of the Federal court from which he receives his appointment, is the law of the operation of that road.

This receiver may lose or destroy the property which is committed to the railroad company for transportation, he may destroy the lives of the passengers who travel upon his trains, and what remedy have the parties injured? They cannot sue the receiver in the State courts; they must apply to the Federal judge, and ask his permission to do what? To do that which is prescribed in every State constitution in the Union as being one of the highest rights of an American citizen—to bring an action against any person who may have injured him in person or property or reputation; and yet all these are denied in the case which I have mentioned or granted at the will and discretion of another.

It would seem that these things ought not to be unless it can be shown that the States are unwilling to exercise this judicial power fairly and impartially, and also incapable of doing it. The first branch of this proposition I discussed yesterday. Are the States incapable of doing that justice the administration of which has been usurped by the Federal tribunals? Is there any divinity in a Federal judge that makes him greater, better, purer, or more learned than the judges in the State courts? Is there anything in the agencies by which Federal judges are selected and by which State judges are selected which enables us to say that the Federal judge must be a better, a greater, and a purer man than the State judge?

Mr. JONES, of Florida. If the Senator from Mississippi will allow me, as the Senator has had a good deal of experience in judicial matters, I should like to ask him, from his knowledge of the course of judicial business, especially in the Southern States, if there has been an increase in the business of the State tribunals arising from the increase of business and of population corresponding with that of the Federal courts?

Mr. GEORGE. There has been, so far as my observation extends, a large diminution in the business of the State courts, it being all transferred, as far as possible, to the Federal courts. Is that your observation?

Mr. JONES, of Florida. That is mine. Therefore this increase of business in the Federal tribunals is not to be attributed altogether to the increase of the business or population of the country, but rather to the extent of their powers.

Mr. GEORGE. I have no doubt that is a correct view.

Mr. President, I was speaking of the character of the State judges and of the Federal judges. I want to make no invidious comparison, but I desire to call to the attention of the Senate those eminent judges in this country who have illustrated and adorned the judicial history of the States and who have conferred as much honor upon the bench as the judges of the Federal courts. If you point me to Marshall, to Taney, and to Story, as great and able men on the Federal bench, I can point you to Parker, to Parsons, and to Shaw, in Massachusetts; to Kent, to Spencer, to Walworth, and to Bronson, of New York; to Hornblower, in New Jersey; to Tilghman, to Gibson, and to Rogers, in Pennsylvania; to St. George Tucker, in Virginia; to Ruffin and Gaston, in North Carolina; to De Saussure, to Harper, O'Neal, and Wardlaw, in South Carolina; to Lumpkin, in

Georgia; to the two honored names in my own State, Sharkey and Smith; to Green and Turley, of Tennessee; to Chief-Justice Robertson, of Kentucky; to Hitchcock, of Ohio; and to a name, the only one now living that I will mention, bright in the annals of the law of this country, Judge Cooley, of Michigan. I may go further, sir. In a sister State, an adjoining State to Mississippi, there served in the olden time two men on its supreme bench who have done more to familiarize the American bar and bench with the study and the application of the principles of private international law than any two men who ever lived in the United States; I mean Martin and Porter, of Louisiana. These men are the equals of the proudest who have ever sat upon the Federal bench. I have not attempted to make an exhaustive enumeration of the names of eminent judges of State courts. There are hundreds of others who have sat on the highest benches of the States who would have been a credit and an honor to the Supreme Bench of the United States.

A short reference to the benefits which would accrue to the people of the United States from a remission of a portion of this jurisdiction to State courts will now be made. In the first place, the present system is founded upon distrust; upon a distrust that the States would not do their duty where one of the litigants is a non-resident and the other is a resident. I think I have sufficiently shown in the remarks I made on yesterday that there is no foundation for that; but would it not be well if we would change our system and call upon the States and put them upon their honor to see that foreign litigants received fair and impartial justice in their limits? I think it would tend to unite more firmly the States if the people of each State knew that the others trusted to their honor, to their sense of justice, to their fair dealing to render impartial justice between their own citizens and litigants from other States.

But, Mr. President, the litigation in the State courts is vastly cheaper than it is in the Federal courts. All who have had any experience of Federal courts know that the costs of a lawsuit in those courts exceed four or five hundred per cent., and often more, the costs in a State court. Every time that the marshal serves a summons, every time that he carries an execution with a view of levying it, whether he levies it or not, every time he serves a writ, he is entitled to charge mileage, and in most of the States this mileage is frequently calculated upon distances running from one hundred to two hundred and fifty miles.

Mr. JONES, of Florida. Will the Senator allow me to interrupt him a moment in the line of his argument?

Mr. GEORGE. Certainly.

Mr. JONES, of Florida. What is the largest sum the Senator has ever known to be allowed as costs in any State court? Has he any idea?

Mr. GEORGE. I cannot call it to mind.

Mr. JONES, of Florida. I will just say that in a case recently decided in the Supreme Court from my State the costs in a single cause amounted to \$95,000 outside of the debt.

Mr. GEORGE. In the State court?

Mr. JONES, of Florida. In the United States court.

Mr. GEORGE. As I came to the Capitol this morning I met the junior Senator from Iowa, [Mr. McDILL,] and he informed me that he was engaged in two cases in the Federal court sitting in Iowa concerning the same property—a litigation about some cattle, in which the costs amounted to \$4,000. He stated at the same time that if that litigation had been in the State courts of Iowa the cost would not have exceeded three or four hundred dollars.

The people in my section have had sad experiences in these cost bills. I know that I do not exaggerate when I say that the mere services rendered by officers and witnesses in the State courts do not cost in the average cases exceeding one-fourth of the costs in the Federal courts. This large increase of costs is a great and grievous burden. I think it is our duty to diminish it. I think it is our duty so to provide that the unfortunate suitor who may be cast in a lawsuit shall not be ruined by the expenses attending unsuccessful litigation.

If we remit this jurisdiction to the State courts we really and in fact bring to the homes and the bosoms of the people the administration of justice. Every defendant will be sued in his own county, he will have the great common-law privilege, as old as English liberty itself, of having his cause tried by a jury of the vicinage. In addition to that the people themselves will become more largely than they are now participants in the administration of justice.

He who will make the slightest reflection upon the growth, the progress, and the superiority of Anglo-Saxon institutions will find that one of the great causes of this growth and progress has been that the people themselves in the jury-box have become educated to perform high civil duties by being participants in the administration of justice.

These Federal courts are held a long way off from the homes of the people. It is true that the jurors are drawn from the State or district at large, but the trials are distant from the homes of the people; they do not witness them, and in a large majority of cases the juries are composed of those professional gentlemen who reside in and near the court-house in which the courts are held.

Another good result will come from the remission of this jurisdiction to the State courts. The tendency now is everywhere in busi-

ness, in money, to centralization in the large cities. This tendency will be destroyed, or at least greatly diminished. The small towns and the villages are being dwarfed by the concentration of the money and of the business in the larger centers. Professional business follows the same course. Before this enlarged jurisdiction of the Federal courts, the State courts administered to a large extent the justice that was dispensed to the people. They had trials in every county; they had lawyers residing in every county to participate in the benefits of the litigation. Now, sir, under this system the Federal courts are held in only one or two places in a State, and the tendency is that the professional business is concentrated at these points to the great injury of the local and country bar. You hear no call from the local bar of this country for the enactment of this bill. The Senator from Illinois caused to be read at the Secretary's desk yesterday the resolutions approving this bill of the Bar Association of New York City, but he brought no approving voice from the bar of the interior of New York, and I undertake to say that if the voice, if the vote, if the preference of the bar of the United States was sought on this bill, nine-tenths of them would be in opposition to its enactment.

Mr. SAULSBURY. Will the Senator allow me to state that I understand that the National Bar Association, which met at Saratoga last August, disapproved of the provisions of the present bill?

Mr. GEORGE. I know it to be the fact that the concentration of this business in the Federal courts operates very disastrously on the business of the local bar in the States, operates disastrously upon the civil officers of the States, who lose their legitimate fees by their being all concentrated in the hands of the officers of the Federal tribunals.

It was said yesterday by the Senator from Massachusetts [Mr. HOAR] that a reason why the Federal jurisdiction should be retained is that it is important not only that justice shall be fairly administered, but that the people shall be satisfied that it is fairly administered.

Now I undertake to say that the administration of this usurped jurisdiction by the Federal courts has given more dissatisfaction to the people of this country than ever arose from a suspicion that justice cannot be given to a non-resident in a State court. I have no doubt it causes satisfaction to parties who have twenty or thirty suits apiece to bring in a State to be able to bring all those suits in one court, to give them all to one lawyer, and not be compelled to attend various district and circuit courts throughout the State. While you satisfy one man of that sort, you dissatisfy many others who are sued and who are taken away from their homes and made to attend courts at a great distance from their residence, and at great expense and inconvenience.

There is another reason why we ought to remit this jurisdiction to the States. It would reform civil service to that extent. We take all the marshals and judges created by this bill from the great pool for which the Presidential contests are fought; we give the administration of justice to judges elected by the people themselves. I am one of those who believe that judges thus selected administer the law with as much impartiality and with as much ability as those selected here.

Then, again, Mr. President, the scheme of this bill is to accommodate the rich at the expense of the poor. Certainly I do not desire to say or to do anything which would excite antagonism between the classes of rich and the classes of poor in this country; but the poor people are in the majority. Are they not entitled, when so important a law as this is passed, to have their rights and to have their convenience consulted? No poor man asks for the passage of this bill. No poor man will be benefited by it. He must have \$10,000 to go to the Supreme Court; he must have \$500 to go to the appellate court. Is that right? Is it right for us, representing all classes, representing all conditions in life, to legislate for one to the exclusion of the others?

It is said that we ought to draw the line as is done in this bill because the large suits are the more important. More important in what? Every lawyer knows that an important principle, one as hard to determine, may arise in a case in which only \$50 is involved as in a case in which a million is in litigation. But it is said the more important the amount the greater the necessity of an appeal. Important to whom? Important to the country, or important to the suitor? It more frequently happens that a small amount in litigation, a sum less than \$500, affects more seriously the fortune of the litigant than a larger sum. Men who have their thousands and their millions can afford to lose a lawsuit of \$5,000 or \$10,000; but how is it with a man who has his all at stake, everything he has in the world, dependent upon the result of a lawsuit? If he loses he is ruined. I do not think we ought to make provision for the administration of justice based upon a distinction in wealth.

I asked the question of the Senator from Illinois yesterday if it was not more important to a poor man who had his all involved in a suit to have it correctly decided than to a rich man who had a large amount involved, but only a portion of his estate. He failed to answer. He answered only by saying, "That is the poor man's argument." I do not know exactly what is meant by that; but if he meant that an argument against a measure before the United States Senate was improper to be urged or improper to be considered

because it affected injuriously or unequally the rights of the poor, I must beg leave to differ with him.

I have said that a majority of the people of the United States were poor; they will ever be so, and it is our duty, while protecting the rich in all their property, exciting no jealousies or antipathies against them, to so use the great powers with which we are intrusted that the poor men of this country and the poor women of this country shall have a fair and equal chance to advance in prosperity and to better their fortunes. These are my principles; they are the principles of the party to which I belong, and when they cease to be such I shall cease to be a member of it. I know of no higher duty that can devolve upon the American Congress within its constitutional limits than to devise measures to advance the prosperity, to promote the welfare, and to subserve the happiness of the great mass of the American people who are now, and, as I have just said, probably always will be numbered in the category of the poor.

I have detained the Senate longer than I wished on this subject. I am opposed to this bill for the reasons which I have stated. I believe that it is but another step in the direction of centralization—centralization of power in the Federal Government, centralization of the money power, centralization of business and professional power. I believe that if we add these eighteen judges to the courts of the United States, these nine new courts, we will act in opposition to a feeling which I know does pervade members on both sides of this Chamber, that the jurisdiction of the Federal courts ought to be limited and restricted instead of enlarged; it will make it more difficult for that feeling to be realized. I think we ought to meet that question now. I think we ought to resist this bill because it will stand in the way of reform, and because of itself it is opposed to reform.

I have heard it stated, I believe, on this floor that every judge of the Supreme Court of the United States except one is in favor of this bill. I have heard also that every Federal judge in the United States outside of the Supreme Court was in favor of its passage. I know with their power and influence, with their friends and their connections, it will be almost impossible to resist its passage. I have done what I regard to be my duty to resist it. I shall continue to resist it. I shall vote for every amendment which is offered to make it less oppressive to the people, less injurious to their interest. I am bound to say that I do not think any amendment can be offered to it which will make it either palatable to me or proper for the people whom I represent.

Mr. JONES, of Florida. Mr. President, I desire to modify somewhat the amendment which I originally introduced to the bill, and which is now under consideration by the Senate. My original amendment was to strike out section 2 and to substitute another distinct section in place of it. I now propose to amend section 2 by the addition of a proviso. I make this alteration because if I were to strike out the entire section it would take away all right of appeal from the district and circuit courts in all cases, an object which I had not in view, my purpose being to retain the existing jurisdiction by appeal and writ of error from the district to the circuit court. I offer this as an amendment to the section:

Provided, That from all final decrees of a district court in causes of admiralty or of equity, except prize cases, when the matter in dispute exclusive of costs exceeds the sum or value of \$50 and is under \$500, an appeal shall be allowed to the circuit court from the district court in accordance with existing laws.

Final judgments of the district court when the matter in dispute exceeds \$50, exclusive of costs, and is under \$500, may be re-examined, reversed, or affirmed in a circuit court upon writ of error.

THE PRESIDING OFFICER. This is a modification of the amendment heretofore offered by the Senator from Florida.

Mr. JONES, of Florida. Yes, sir. My purpose is to make this bill as acceptable as possible to the people whom I in part represent if it should become a law; and I will say now, in response to some words that dropped from the distinguished Senator who has the bill in charge, that I am not criticising this bill merely for the sake of criticism.

This, sir, is no local measure. This is a measure which affects, as I said in the outset of my argument the other day, the interests of every constituency represented on this floor. I am not seeking for any renown in the way of sensation by the discussion of this measure. There has never been a bill in the Senate since I have been a member of it more important to the people than this, or that will be watched with greater interest, and I believe that myself and the other Senators who have manifested interest in this discussion have not been animated by any desire except to serve the people whose trust we have in charge and who will hold us to rigid accountability if anything should pass this body that might be detrimental to their interests.

Sir, it has happened in the legislation of the past that much which was objectionable, much that was entitled to condemnation has gone through this body without debate; and if there is any purpose higher and greater than another that ought to be observed and carried out here, it is in exposing by open, candid debate every measure which affects the great body of the people of the United States. I remember a year or two ago the condemnation that was brought upon this Senate because of the circumstances under which silver was once demonetized, because a bill went through the Senate without debate or notice by the body which affected the entire people, and years afterward clamor came about and excitement came about because there was no debate.

It is not, therefore, capricious criticism that I am engaged in. I believe that in all cases in which the interests of the people are involved there ought to be discussion; there ought to be agitation if necessary; and I think it was the great Earl of Chatham who gave expression to a thought, which he said ought to be inscribed on the walls of every parliamentary body, that when the interests of the people are involved there ought to be agitation; there ought to be clamor; there ought to be discussion, "for it is better," he said, "that our slumbers should be broken by the fire-bell than that we should perish amid the flames in our beds."

Now, sir, I have great respect for the committee from which this bill came, and I do not think there is anybody in the Senate who has a higher respect for the honorable Senator who has it in charge than I have, and I am sorry that I cannot conscientiously concur with him in the wisdom of this measure, because I feel and I know that in all that he says he is animated by the highest purpose and motive to serve the people of the country; but out of those honest differences of opinion at times good comes and the people's interests are subserved. It is not to be expected that absolute unanimity should exist with respect to a great measure of this kind, even though it came from the Judiciary Committee. The people of the several States represented here will not excuse their representatives if this bill should prove to be unwise, because it came from that committee.

Now, sir, while I am opposed to "the scheme" of this measure as announced by the honorable Senator from Illinois, I am free to say that the amendment which I propose is not intended to load down the bill for the purpose of securing its defeat. There are usually two kinds of amendments offered to measures in parliamentary bodies. One class are intended to kill the bill, and the other intended to perfect it as far as the mover is capable of doing so. I have not offered a single amendment to this bill which had for its object the loading down of the bill, or in other words, to make it so objectionable that even its friends would not vote for it. I know there is a determination to carry it through without amendment, and I know that it is the wish of the distinguished Senator who has it in charge that it shall pass this body without amendment, for he appealed to his supporters yesterday evening to vote down all amendments and take the bill as it has been recommended by the committee.

Mr. DAVIS, of Illinois. I voted for the amendment of the Senator from Missouri, [Mr. VEST,] and it was adopted.

Mr. JONES, of Florida. That must have been a very strong amendment when it obtained the vote of the Senator from Illinois, and I am glad that it was adopted, because it was a highly meritorious one. But, sir, I supposed that this bill was brought forth for the purpose of relieving the Supreme Court, and I did not imagine that one of its purposes was to interfere with the existing jurisdiction of the courts of original authority in the Union. The Senator from Illinois yesterday evening, in speaking against my amendment went on to say that during his judicial life he was never called upon in his high capacity as a supreme judge to pass upon any of the cases of inferior jurisdiction, the cases which are affected by the amendment I now propose. I can understand that. He presided over a circuit in the interior of the country, far away from the seaboard, where it was not likely that matters of admiralty or maritime jurisdiction should be found, and it is possible that he had with him on the bench a district judge, indeed I know he had, of such wide reputation, such elevated talents and acquirements, that appeals in small cases were never thought of from him.

But what was there in the argument of the honorable Senator against the wisdom of adopting my amendment? If it was true, as he stated, that it was not customary for cases such as are provided for in this amendment to arise in great numbers, what objection can there be to incorporating this amendment into the bill? What objection can there be to retaining the present appellate authority existing under the law, from the district to the circuit court of the United States, in all cases over \$50 and under \$500? If those cases are not numerous or embarrassing; if they will not affect very materially the business or the time of the court, why should they be stricken from the law? Why should appellate jurisdiction be denied to this class of suitors, poor men who are not able ever to see the Supreme Court of the United States, who may regard it as a privilege to be able to appeal from some of our district judges down South, as well as at the North, to the circuit judge, or even to a supreme judge who may occasionally, like the visit of an angel, come among us to shed a little eminent judicial light? It is possible, I say, that some man whose fortune is not large and whose property does not extend to millions under railroad charters, may desire to appeal from the district to the circuit court, and to have an humble case even brought under the notice of one of the judges of the Supreme Court of the United States, even though the sum involved may not exceed \$500.

Why should that be denied him? I say if there is no pressing urgency; if, according to the argument of the Senator from Illinois, this class of cases is not large, why should we take away this jurisdiction unless the bill is intended to be leveled against the class of people whom alone it affects? But if the number of these causes is not large, I say allow this authority to prevail as we now find it, because I assure the Senator that these provisions did not find their way into the Revised Statutes by mere accident; they were put there by design, and they have subserved, according to my own ob-

servation, a very useful purpose in days gone by. This jurisdiction is very important to the class of people it is intended to benefit, and it will appear strange to them that while a person who is able to embark in a lawsuit which involves \$10,000 can appeal to two high courts, the right of the man who can only engage in a \$500 controversy is taken away in the bill which gives two appeals to the other.

Now, sir, what is the whole scheme of this measure? To create nine appellate courts to be made up of district judges and circuit judges. Sir, I am of the opinion, notwithstanding the opinion of other lawyers to the contrary, that when this grand frame of Government was devised by the fathers of the Constitution, it never was intended by them that any appellate power should be exercised outside of the Supreme Court of the United States. I know that there are opinions and arguments to the contrary. I know very well that our grand organic law has been refined away by construction from time to time until very little of its original spirit is left; but I speak in the spirit of the men who framed it, of the intentions of the great law-givers who met at Philadelphia in 1787, when I say that they never contemplated but one Supreme Court of appeal under our judicial system, and that every cause of consequence and of importance arising out of our judicial system was intended to be passed upon by that high court alone. This was in keeping with the genius and the wants of the country, and such a thing as a diversity of appellate tribunals exercising co-ordinate and coequal powers among the several circuits of this country never entered into the brain of any of the men who framed our organic law.

And how is this thing going to work? It is a novelty in its way. It may be said that the Constitution is imperfect. If that be true, we cannot amend it by act of Congress. What was it that gave rise to our Constitution? It was the discordance and conflicts in our laws, want of uniformity, the irregularity which distinguished the rules and regulations of the respective States in regard to subjects that ought to be controlled by uniform authority. It was the want of some steady, undeviating rule with respect to the regulation of commerce that gave rise to our present Constitution; and when it was brought into life it was expected that everything that had the force of law, whether emanating from the Legislature or from the highest court in the land, would have such uniformity of authority and operation that it would have the same effect in one State as it did in another; that it would be the same throughout the entire Union.

How is it going to be with this new judicial system? Here are nine courts of appeal to be established by this bill, and one Supreme Court sitting in Washington. In all cases under \$10,000 the judgments of these nine courts are to be absolutely conclusive. They are not courts of original jurisdiction, mark you, like the circuit or district court as at present organized, whose judgments in an ordinary controversy between man and man amount to nothing beyond the particular case or controversy that happens to be before it at the particular time. The judgment of a circuit court of the United States or of a district court of the United States at present amounts to nothing outside of the particular cause which it has before it. It is not the law of the district; it is not the law of the land; it amounts to no settled rule of property; it establishes nothing but the right of the particular party in the particular litigation. It is otherwise with respect to a judgment of our highest court; it establishes principles that are uniform and coextensive with the Union; its opinions are accepted as the law of the land, and they are respected by every court within the Federal jurisdiction as such.

But how will it be with these appellate tribunals proposed to be created in the nine circuits for the first time? They are not courts of original jurisdiction; they are not courts that will act as the circuit and district courts act now. They are to settle principles, to fix rules of property, to prescribe rules of decision that will affect the interests of the masses living within each one of these judicial circuits in all cases where the sum in controversy is under \$10,000.

I said that if the framers of the Constitution had one thing in view beyond another it was uniformity in the force of the laws that were to be enacted by the Congress of the United States, and by the highest judicial tribunal of the Union. Is it to be supposed that the judgments and decisions of these nine courts will be uniform throughout the Union? Is it possible that any two of them will ever agree upon any particular question that may come up before them? And here you have nine appellate courts sitting under the same authority, under the same Government, administering the same laws to persons entitled to the same privileges, establishing different rights, announcing different principles, bringing the whole system of the judiciary into confusion. The revenue laws, the bank laws, the bankrupt law if we shall have one, every Federal statute that gives a right or creates a liability is to be construed and expounded by these nine appellate courts, and each for itself within each of the circuits.

That you are going to have. You will have the citizens living in the fifth circuit under the decisions of the court there with one rule of property acknowledged by one court of appeal, and the citizens in another circuit, also living within the Union, with a different rule. Is that calculated to produce harmony? If the man in Florida has not the same rights, respected in the same way, in the courts of the Union there, that the citizen of Illinois has, it will naturally produce dissatisfaction.

The decisions of these appellate courts will constitute rules of property which will enter into the purchase and sales of all kinds of

estates. They will have to be consulted just as the decisions of the higher courts in the State are when transfers of property are made. Their operation and effect will be like that of a Federal statute, except that there will be no uniformity about them, and the law of one circuit will not be the law of another, although the authority from which they emanate is the same.

Mr. President, I know very well that the docket of the Supreme Court has been loaded down for some years, and, as I said in the opening remarks which I addressed to the Senate when I commenced this debate, something ought to be done, if possible, to relieve that court from the pressure resting upon it; but I do not think the step has been taken in the right way to accomplish that end. We have been going on for years increasing by degrees the jurisdiction of the Federal courts without necessity. All that a citizen of a State need do now, in order to get Federal jurisdiction even against another citizen of the same State, is to make affidavit that he cannot get justice, on certain grounds, in the State courts, and he can remove his controversy into the Federal tribunals.

Sir, it is a remarkable fact that, while much has been said here regarding the great increase in the business of the Federal courts of late years, and as it has been alleged in consequence of the increase of population and of business, no such increase has been perceived in the business of the State tribunals. Why has the number of cases increased so greatly in the Federal courts, while in the State courts, that are within the jurisdiction of the same country, no such increase is perceptible? It is not owing to any increase in the population or in the business of the country, but it is because this Government has been departing day by day from the traditions of the fathers; it is because the courts of the United States have been by degrees usurping powers that the framers of the Constitution never intended they should exercise, and they have gradually almost absorbed the entire jurisdiction in judicial matters throughout the Union.

And now instead of attempting to cut down that jurisdiction, instead of beginning at the right end and bringing back this authority to the confines that originally bounded it, we are asked to pervert the entire scheme of the fathers of the Constitution and undertake to establish nine appellate courts instead of one. Sir, I want to stand by the Constitution as near as possible as it came from the hands of the fathers; and if it is possible to find a remedy for existing difficulties by conforming to the original scheme of the framers of the Constitution, I want to adopt that remedy, and I think it can be done. I do not want any nine appellate courts created throughout the Union that will turn out annually numbers of discordant opinions to unsettle everything throughout the land. I want "one supreme court," whose judgments upon all matters of an appellate character shall be uniform throughout the Union in everything that is worthy to be appealed; and I do not want a supreme court or a court of appeals in my circuit made up of the odds and ends of the bench below, circuit and district judges massed together, as is proposed by this bill.

I do not care who recommends this system, whether it be the Bar Association of New York or any other persons; I think it will prove to be unwise, and instead of affording a remedy for the evil complained of it will increase it. I do not think that the business of the Supreme Court will be diminished by this bill in this way.

Now, sir, there are two parties usually to a cause in every court. What do they represent? The one represents the debtor and the other the creditor class. There is always somebody in a court after money, for that is the great object of litigation after all, and there is always somebody before a court out of whom money is to be made to be affected by its judgment.

It has been stated in this debate that the country has outgrown our judicial system; and we have had it stated here that only an insignificant number of cases were before the Supreme Court at the time of its early organization, and that they did not perceptibly increase for years, but that latterly they have become overwhelming and numerous. All this is true. This applies to the original jurisdiction of the circuit court. The original judiciary act was adopted in 1789. The framers of the Constitution were a wise body of men, and some of them participated in the framing of the judiciary act of 1789. Mr. Ellsworth, of Connecticut, I think, was its author. A better lawyer never lived in this country. They made all final judgments and decrees of the circuit court in which the sum involved was \$2,000 appealable to the Supreme Court of the United States, and they put the limit of \$500 upon controversies between citizens of the respective States allowed to be brought in the circuit court, which has continued to the present day.

No citizen can sue another in a court of the United States unless the sum in controversy exceeds \$500. That is the precise sum fixed by the judiciary act of 1789 in behalf of the creditor against the debtor, for generally when a suit is brought in the courts of the United States, or in any other courts, it is by a creditor against a debtor. No creditor can institute a suit at common law in any court of the United States against his debtor unless the sum involved, exclusive of costs, exceeds \$500. The law which fixed that limit gave to the debtor the right of appeal to the Supreme Court of the United States in cases where the sum in controversy, exclusive of costs, exceeded \$2,000. This was supposed to be a reasonable arrangement according to the condition of the country at that time. While Congress has gone on

and added to the amount necessary to get jurisdiction by appeal in the Supreme Court, which as a general thing has been in favor of the creditor and against the debtor, it has never once thought of modifying or changing in the least the conditions upon which jurisdiction shall be taken in the circuit court in the first instance.

If the condition of the country has so changed as to require \$10,000 to be the proper limit in cases of controversy of which the Supreme Court shall take cognizance, is it not proper to look at the other end of the line and see if some change that would improve our system might not be made there? Suppose Congress should require that before any suit was instituted in the Federal courts by the citizen of one State against the citizen of another, the sum in controversy should be \$3,000; would there be any great hardship in that? And while you are changing the jurisdiction all around on one side of the line, you never think of making any change on the other. Would it not be reasonable to put a limit in accordance with the changed condition of the country different from what we find in the act of 1789 upon the jurisdiction of the circuit court in civil cases?

Why should we adhere implicitly to the \$500 prescribed by the judiciary act of 1789? If the condition of the country is changed so greatly as to make change in this system necessary in order to enable the appellate court to discharge intelligently its high duties, why not begin at the other end and not leave it all to be done at one end? You deprive a debtor, or a party who may be called upon to pay, of the right of going to the Supreme Court unless he has a sum involved amounting to \$10,000, while you permit any man who has a claim against another to sue in the circuit court of the United States in any of the States of this Union if his demand amounts to \$500.

I have said that the business of the State courts has not increased in proportion to the business in the Federal courts, and it is because the Constitution has been abandoned; it is because the Federal judicial system has been gradually absorbing to itself the rights, powers, and duties of the local courts, a thing that never was thought of in the early history of the Government. Now, sir, the foreign suitor has all the remedies open to him in the State courts that the citizen of the State has, and I never thought there was so much hardship after all in these cases as some people have tried to impress upon us, because every citizen of the United States can go into the State tribunals to-day and obtain justice there just as a citizen of the State can, and those courts have concurrent jurisdiction in every controversy that is possible to be brought into a Federal court; and still one would be led to believe from the arguments we have heard here that there was only one forum open to these litigants, and that if they did not have the way made clear and plain for them into the Federal courts, they could have no justice at all!

Sir, if a suitor with his eyes open goes into a tribunal where he knows delay must follow, whom has he to blame? If a suitor wants to wait three years or five years before his controversy is ended, when he has a choice of a tribunal that will decide it in one year, where does the fault lie? I believe, as a general thing, that the judges of the respective State courts are equal in every respect to the judges of the Federal courts, and, inasmuch as they have to draw their juries from the same source, they can have administered to them in those courts justice as impartially and as fairly and far more speedily than in the other tribunals. But, sir, of recent years a false sentiment has been built up against the local tribunals of the State; a prejudice has been created in the minds of people living beyond the confines of a particular State that justice cannot be obtained in its tribunals against citizens of that State.

I have not had as extensive a practice as many gentlemen here, but I am free to say that the result of my observation has been that justice has been as fairly, as impartially, and far more speedily administered in the courts of the States than it has been in the courts of the Union. Why not then restrict jurisdiction in the circuit courts to some extent? The State courts are open to all the citizens of the Union. Is not the Supreme court of Massachusetts, of New York, of any of the States, North and South, to-day just as competent and impartial in the administration of justice as the courts of the United States?

The Senator from Mississippi awhile ago referred to the question of costs. I asked him if he could tell me what was the largest sum in the way of costs and allowances that he ever knew to be allowed in the State of Mississippi. He said he could not tell. I had a case in the Supreme Court the other day that came up from the district court in my State on a cost bill, an allowance bill from the Federal court, that shows how expensive litigation is. The court allowed a litigant, outside of the property involved, \$95,000 for costs and charges—a Federal court allowed \$95,000 for costs and charges, allowed the plaintiff in the suit a salary for years and clerk hire to watch the property upon which he had a lien!

Why, sir, if such a thing had been allowed in a State tribunal the public opinion standing behind would not have tolerated it; but we know that there is little or no responsibility behind these Federal courts. If there is one thing which gives to a citizen more security for his rights than another in matters of this kind, it is the publicity and notoriety attending the deliberations and judgments of the Supreme Court of the United States. I would rather wait three years there in an important case for its judgment than to go down on the circuit and wait to get a judgment in one year. I do not care

whom you put on the circuit bench, and I say that the whole tendency of this bill and of the legislation of late years has been to remove the higher branches of the judiciary away from the people, and it was well said the other day that this is a Government of the people; and, while some limit must be fixed in order to regulate the question of jurisdiction, it ought not to be so high as to preclude the possibility of the ordinary citizen ever reaching the highest court of his country. Ten thousand dollars would be nothing to a certain class of men in the United States at the present time, but it is high enough to exclude from the Supreme Court of the United States the great body of the American people. The majority of the people of this country to-day cannot command \$10,000 in a lawsuit, and the effect of this sum as a limit upon the jurisdiction will be to prevent every ordinary citizen throughout the land from being able to enter that tribunal whose judges are paid by his sweat and blood.

Somebody said something the other day about sentiment; I think it was the Senator from Kansas not now in his seat; but the world is governed by sentiment; and if in a popular government like this you erect any establishment so high as to be beyond the touch of the people the popular inclination will be to tear it down. I am not using this argument in the sense of a demagogue, but I am speaking as becomes one who has no feigned attachment for the institutions of the country under which he lives. Look at the progress of opinion in Great Britain and look how different the House of Lords is regarded to-day from what it was one hundred years ago. Every year it becomes more and more unpopular with the masses, and the tendency of opinion there is to abolish it and to concentrate all governmental authority in the great body which represents the bone and sinew of the state. So I say in endeavoring to fix jurisdictions under a popular system they ought to be brought down as near as possible to the level of the wants of the entire community, for there will be found men to point out the distinctions and to comment upon them before those who will not be so able to discriminate as some of us who are here.

I would reform the Supreme Court, I would add to its members if I could not add to its efficiency, and I would put it in a condition that would leave it open to all men alike. I would not have one jurisdiction for one class of men and another for another. The moment you create these intermediate tribunals you will have pointed out to you the distinction which their organization suggests. They will be pointed to as tribunals into which one class of men may go while another may go beyond them, whereas if they did not exist at all and the right was uniform and common there would be no complaint. But when you say that one class of people with controversies amounting to \$10,000 shall have their rights settled in one set of tribunals and another class of men whose property is worth more than \$10,000 shall have access to a higher and a greater tribunal, you suggest an inequality that will be made a foundation of jealousy and complaint.

Mr. President, the Senator from Illinois said I criticised the bill from beginning to end. If I have done so it has been in a generous spirit, for if I believed that it would result in good to the country I would go as far as he in advocating its passage; and in bringing forth the amendments that I have, I have sought to make it as perfect as in my humble judgment it ought to be.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from Florida.

Mr. MORGAN. Mr. President, before the Senate votes on this amendment of the Senator from Florida, I desire to state very briefly what I conceive to be the question at issue. I have heretofore adverted to the same general topics but not in reference to the amendment now proposed. I have stated that the act of 1789, known as the judiciary act, following the Constitution, provided:

That final decrees and judgments in civil actions in a district court, where the matter in dispute exceeds the sum or value of \$50, exclusive of costs, may be re-examined, and reversed or affirmed, in a circuit court holden in the same district upon a writ of error whereto shall be annexed and returned therewith at the day and place therein mentioned an authenticated transcript of the record, an assignment of errors, and prayer for reversal, with a citation to the adverse party signed by the judge of such district court or a justice of the Supreme Court, the adverse party having at least twenty days' notice.

That right has stood upon the statute-book without any upward limitation, the downward limitation being \$50, since 1789, and has always been considered until recently, I believe, a valuable right secured to the people. This bill proposes to cut off the right to a writ of error in all civil causes at common law unless the amount in controversy exceeds \$500. The Senator from Florida proposes to retain in favor of the people the right to a writ of error in causes at common law, as they are termed, from the district to the circuit court in sums not less than \$50 nor exceeding \$500. The bill that is proposed to the Senate leaves that entire area between \$500 and \$50 entirely unprovided for except that it repeals all existing rights to writs of error or appeals in sums lying between those figures. I have inquired for a reason, and in vain, as we all inquire in vain for any reason in reference to the proposed measure before the Senate, why this right should be taken from the people? Why this right which was contemporaneous with the foundation of the Government should be taken from the people? What can be the basis of this repeal unless its practice has been found to be entirely unnecessary? Who can affirm, who has affirmed upon his personal experience or upon his knowledge of the history of the jurisprudence of this country,

that this has not been always a valuable right? Here is a field of jurisdiction for the trial of causes in small amounts in the Federal courts which is entirely obliterated by this bill, and intentionally so. There can be no question of the intention, there can be no question as to the effect of this second section.

What is included in that? Suits for conspiracies under the civil-rights law. There may be twenty men sued for the same conspiracy, and if there is a judgment of \$500 against each of them in the district courts of the United States, none of them can, under this bill, have any appeal to any other court whatever. What else is included? All accounts and demands in favor of non-residents and non-resident corporations between the sums of \$50 and \$500 are included in this second section, which takes away the right of writ of error and the right of appeal. What else is included? All sums that national banks may be sued for, and all sums that may be sued for by national banks in the States between the sums of \$50 and \$500.

No right of appeal or writ of error is to be allowed if this bill passes in any of the cases that I have mentioned to any court whatsoever. The district judge must pronounce his decision, and the man must submit to it without appeal. The court in the first instance tries it finally, in opposition to the entire spirit of the whole jurisprudence of the United States. The people must submit to it because the Congress of the United States desires to break down a right that has existed since 1789.

That the honorable Senator from Illinois calls a part of the scheme of this bill. Well, sir, if it is a part of the scheme it is part of a very bad scheme and a very unnecessary part of a bad scheme. The Senator from Florida proposes to amend this scheme by retaining in favor of the people a right which they have so long enjoyed. The Senator from Illinois thinks that if that proviso was put to the second section it might mar the harmony of the scheme. And the Senator, in reply to a remark made on the floor by one of the Senators who was discussing the subject—I forget now precisely who it was—said, "Ah, that is the poor man's argument." Yes, sir, that is "the poor man's argument" and the poor man's plea, and it must be remembered that the Government of the United States in its judicial establishment touches poor men as well as rich. If it touches the people alike it is bound to touch a much larger number of poor men than of rich, for in the midst of all our vaunted and boasted prosperity there are still millions more of the poor than of the rich in this country. A man is to be twitted or censured in the Senate for venturing to avow that he is in favor of supporting existing rights in favor of men who are called poor men. We are to be denounced as demagogues for doing it. Sir, I should welcome the title of demagogue in the advocacy of such a cause far sooner than I would that of being the slave of a plutocracy. I much prefer that rather than to break down these rights merely because the money interests of the country demand that they should be broken down.

The honorable Senator from Illinois said that he was not the author of this bill, and that relieves me from great embarrassment in the argument, for I confess that I have been under embarrassment, and I have no doubt every Senator on this floor has felt the same embarrassment in any attempt to criticise or vote against any measure of a judicial nature which the honorable Senator may bring forward; but I have observed that this bill has been criticised by votes of the colleagues of the Senator on the Judiciary Committee. The honorable Senator from Arkansas [Mr. GARLAND] has voted time and again for amendments that he thought would improve this bill and would not mar "the scheme," being a friend of the bill in the enlarged sense, in the sense of its being "a scheme." The Senator from Arkansas has been willing to vote for amendments to this bill, and who will deny that he is a distinguished member of the Judiciary Committee? The honorable Senator from Delaware, [Mr. BAYARD,] when he left his seat in the Senate a few days ago, gave me in charge, an amendment which he requested me to ask the Senate to make to this bill, which would seriously mar "the scheme," and yet it would very greatly improve the measure.

What is to be said, then, of the unity of the Judiciary Committee upon this bill? The honorable Senator from Vermont, [Mr. EDMUNDS,] the chairman of that committee, told me in his seat that he was opposed to the bill out and out.

There are, then, three members of that committee who are willing to see some part of this "scheme" altered with a view to its improvement. Three of them are absent, the honorable Senator from Mississippi, [Mr. LAMAR,] the Senator from Illinois, [Mr. LOGAN,] and the ex-Senator from Colorado, (Mr. Teller.) They are not here to express their opinion. So that only a bare majority, a bare quorum of that committee, as far as we have heard, are content to take this bill and swallow it whole without amendment and without any criticism upon it. Sir, this bill does not come from the Judiciary Committee of the Senate with that unanimity and that support through all of its features which seems to have been claimed by the Senator from Illinois [Mr. DAVIS] when he insists that the Senate should yield its opinion to the Judiciary Committee upon this question.

The honorable Senator, with a view of getting some support for his bill, had read yesterday a telegram from the Bar Association of New York in which they recommended to Congress the passage of this bill. I am not surprised at that, but I am a little surprised that no bar association in the West or the South has ever been solicited to give an opinion on this measure.

I am not surprised at this when I look into "the scheme" of this bill, for it is a bill in the interest of the creditor class and against the debtor; it is a bill in favor of the concentrated power of commercial supremacy in the Eastern States, instead of the people in the South and the West who live in the agricultural districts; it is a bill in the interest of capitalists against the common poor people; it is a bill which robs the people of the rights which have existed since 1789 under the law of this country to an appeal from the court of first instance to the circuit court in all sums between fifty and five hundred dollars, and at the same time it excludes them from the Supreme Court of the United States unless the controversies exceed the sum of \$10,000. You deprive them of all power of appeal to the Supreme Court by fixing the amount which shall give that court jurisdiction, and then as the honorable Senator from Florida says, at the other end of "the scheme," you cut them off from all right of appeal to any court whatever if the sum is below the amount of \$500.

The national banks in the State of Alabama can do what we know they do continually—exact usury from the people almost at pleasure. They can have their notes made when they choose, in sums under \$500; they can sue in the Federal courts citizens of the very State in which they exist; and we are left at the mercy of the judge to say whether or not we shall have an appeal from his decisions in favor of these Federal pets. No; we are not even left at his mercy, because the bill of the honorable Senator from Illinois, or the bill of the New York Bar Association, or of Judge Drummond, or whoever it was that invented this "scheme," cuts us off from all right of appeal unless the sum amounts to \$500.

And because a Senator attempts to amend this bill by preserving the rights of the people he is charged with making an obstruction to the bill and trying to destroy the entire "scheme," and the question is asked him, "Why do you not come out and vote against the whole bill, instead of attempting to amend this 'scheme,' which, if you amend it at all, you destroy its beauty and its harmony?" It is a bill which is conducted more in hostility to the men who oppose it on this floor than any bill that I have ever seen urged in the Senate. No Senator here will deny that this is one of the most important measures that ever came before the Senate of the United States; and yet when we attempt to amend it, when we challenge it upon grounds of constitutionality, we are charged with proposing amendments merely for the purpose of defacing or defeating a splendid "scheme." It has not been our fault that we have been compelled to meet this bill inch by inch in trying to expose before the world its infirmities and its imperfections; but, sir, it will be our fault if we yield the floor until these are fully known.

It is bruited about on this floor by men in high authority that the President of the United States has committed himself, that if this bill is passed, quite a number of Democrats will be found to comprise the membership of these new courts. Sir, I spurn overtures like that. I do not vote for such a measure to get Democrats in power. My vote is given here with a conscientious reference to my duty to my country, to my people, and only with reference to them. It matters little to the people of Alabama, who comprise 1,250,000 population, whether a man put on the bench is a Democrat or a Republican; it matters but little to those people who is put there; but it matters much if rights which have existed in their favor under the law are taken away from them and they are to be exposed to the will and pleasure of the district courts of the United States without the remedy of appeal from their decision. I therefore stand by the people, poor, if you please to call them such; it makes no difference to me—demagogue if you choose to call me for that; it makes no difference to me; and I shall walk out of the Senate after this bill is passed with a conscientiousness that I am not bound to a plutocracy of this country, neither have I been seduced by appeals to my party fealty with the idea that I could get some Democrat on the bench if I would vote for this bill. I spurn overtures like that. Let the bill stand on its merits.

Mr. DAWES. I should like to have a clear understanding with the Senator from Alabama, and I think it is for the interest of pure legislation that we should understand the fact. The Senator says, in substance, that it is openly avowed here upon this floor that the President of the United States has pledged himself to appoint a number of Democrats on this court if this bill shall pass.

Mr. MORGAN. I did not say "openly avowed;" I said "bruited about on the floor." Perhaps I should better have said "whispered."

Mr. DAWES. That does not make it any better.

Mr. INGALLS. I would suggest that all allusions to the Executive in connection with pending legislation, under parliamentary practice, are wholly out of order and in violation of precedent and of decency.

Mr. MORGAN. The Senator from Kansas is so perfect a judge of decency in this Senate, and is such a model of honor himself, and of purity and dignity and character, that I take a reprimand from him with due submission.

Mr. DAWES. The Senator will allow me a moment.

Mr. MORGAN. I know what my rights are in speaking about the President or any one else, as a member of the Senate. I did not say the President of the United States had made any such statement. What I said was this, that it had been bruited upon this floor that such promises had been made.

Mr. DAWES. Will the Senator allow me?

Mr. MORGAN. I do not intend to be pushed into a corner about this business, but if the Senator from Massachusetts wishes to know upon what authority I speak, if he will come to my desk I will tell him.

Mr. DAWES. I did not criticise the Senator's violation of any rule—

Mr. MORGAN. I know of what I speak.

Mr. DAWES. But it is due to the Senator, and it is due to the Senator's associates upon this floor who are called upon to vote one way or the other upon this bill, that the Senator should make clear and undoubted any statement of so serious a character as that.

Mr. BUTLER. Why, Mr. President, the Senator from Iowa said yesterday, in his remarks in open Senate, that he did not believe all these judges would be appointed from one political party.

Mr. DAWES. That is quite a different thing from what has been said by the Senator from Alabama. If what the Senator from Alabama has stated is true, those who have been the organs of any negotiation of that kind, and those who have been parties to it, deserve to be impeached by this tribunal, and the Senator from Alabama, if he has any reliable information of that character, is bound to make it public and to call to account those who have undertaken any such thing.

Mr. MORGAN. I have made public my statement, which the stenographer has taken down, which was that it was bruited about on this floor that, in the event of the passage of this bill, a number of Democrats would be appointed upon the bench.

Mr. DAWES. I understood the Senator to say that it was bruited about upon this floor that the President had given assurances that such would be done.

Mr. MORGAN. I did not say "assurances."

Mr. DAWES. "By high authority upon this floor."

Mr. MORGAN. Well, it is high authority.

Mr. DAWES. Does the Senator say that he has any authority for the statement that the President has given any assurances that in the event this bill shall pass certain men of any character whatever will be appointed upon the bench?

Mr. MORGAN. I have not stated that the President had given any assurances. I said it was bruited about on this floor that he had stated or had given assurances that Democrats would be appointed.

Mr. DAWES. So I understood the Senator. I do not see that the Senator changes his original statement. I think it grows in gravity every time the Senator repeats it. I do not think the Senator can fail to see that he brings a grave charge against the purity of the Executive and the purity of legislation in this Chamber.

Mr. MORGAN. I think the Senator from Massachusetts is more than half willing that I shall make such a charge, but I decline the honor. I think he would like to provoke me into bringing such an accusation against the President of the United States, and I have no doubt he would to some extent enjoy it; still I will not do it.

Mr. DAWES. I do not quite hear the Senator.

Mr. MORGAN. I prefer to proceed with my remarks without further interruption from the honorable Senator who desires to put me under cross-examination as to a matter that I have not put myself on the stand as a witness about.

Mr. DAWES. Will the Senator indulge me a moment? I have no desire—

The PRESIDING OFFICER. Does the Senator from Alabama yield further?

Mr. MORGAN. It depends entirely upon the inquiry which the Senator from Massachusetts wishes to indulge in. I want to know what that is before I indulge him.

Mr. DAWES. It is simply in good faith to ask the Senator from Alabama if he does not think it due to his own character and to the character of Senators and the Executive that he should not have indulged in such an insinuation as he has made unless he had such ground for it that he was willing to make public.

Mr. MORGAN. I have not indulged in any insinuation about this matter. I believed I had such ground for it as justified me in making use of the expression of which I have made use, and I think I am quite as competent a guardian of my own character as the Senator from Massachusetts is of his or of mine either. What I have said is upon the record and will remain there, and that without alteration. I have nothing to retract of what I have said about this subject, and I reaffirm it, that an influence here pervades this body directed to the proposition that if this bill shall pass a fair number of Democrats will be appointed to this bench, and I say that so far as I am concerned I am not under the control of such an influence as that; that is no argument to me for the passage of this bill.

I should be gratified to see Democrats upon the bench; at the same time I would never vote to make eighteen judges of the circuit court of the United States because I expected some of them to be Democrats, unless I found that the necessities of the country required such a number as that. It is too serious a matter for us to undertake to create eighteen judges for life with a salary of \$6,000 per annum each, which cannot be reduced during the term they are in office, merely upon the consideration that some of them may be Democrats. There must be better reasons than that shown if I am expected to support the bill. I desire to keep the people of Alabama, whom I have the honor in part to represent on this floor, out of the reach of

judges that I have demonstrated here ought not to have the power to pass upon sums between \$50 and \$500 without appeal from their decisions. That is the precise point I make upon the amendment of the Senator from Florida.

I did not want the Senate to misunderstand the amendment, I did not want them to misunderstand the law, when they were voting upon it, nor did I want the country to fail to understand that if the amendment of the Senator from Florida is defeated a right is taken away which has existed since 1789, which is a valuable right; if not to a rich man, it is to a poor man. It will not mar this bill, it will not destroy the "scheme," it will not inflict any injury upon any person to preserve in this bill by the proviso which the honorable Senator from Florida proposes to preserve all the rights that now exist in behalf of people as to appeals and writs of error to the circuit courts of the United States. Why, then, strike it out when sums between \$50 and \$500 are involved?

I have remarked before that the Bar Association of New York had been consulted about this measure, but no bar association in the South or the West has ever been consulted, so far as I know. The opinion of the debtor classes of this country is not to be taken on this question. It seems that some suspicion rests not only upon them, but upon all the States that they occupy.

How does it happen that we are debtor classes? It happens from the very nature of the commerce of the country. New York does more trade in one year than all the other cities of the United States put together, and that, too, with all the rural populations of the United States extending through to the Pacific coast. There is not a hamlet in the United States which has not more or less direct trade communication with New York. Of all the places on this continent New York is most continuously and most largely the creditor community. They have the choice of tribunals. They can go into the State courts, or they can go into the Federal courts. If they go into the State courts with a demand within the jurisdiction of those courts, they have the right of appeal to the State supreme court if they choose; and if they choose to go into the Federal courts under this bill, and the sum is less than \$500 and over \$50, the defendants have no right of appeal at all.

I claim that when you are taking away jurisdiction from the State courts, as this bill evidently is intended to do, and when you are conferring it upon the Federal courts, it is your duty to preserve such rights of appeal, at least, as you can preserve without marring the beauty of this "scheme." The bill will bear at least that much burden. This bill would have been voted for by many men on this side of the Chamber who cannot now get their consent to vote for it, if the Judiciary Committee, by its representatives on this floor, had shown the slightest degree of indulgence to opposing opinions on these matters. True it is we may not have the right to set up our opinions against gentlemen of such great learning as the members of that committee; but still, in our humble way, we think we have the right of judgment upon every measure brought here. No argument we can make, no suggestion we can bring forward, is met with anything else than silent contempt on the other side of the Chamber, and I infer that the reason for it is that you are going to get the eighteen judges.

In the further progress of this question, I shall feel it to be my duty, if some other Senator does not feel it to be his duty, to bring in a motion to recommit the bill. It is not a perfect bill, it is not a consistent bill. It has some features in it which are contradictory in themselves, and some which are entirely superfluous.

If the plan of the bill should be adopted that we are to have nine courts of appeal in the United States, it will be found that the time for holding these courts necessarily will take from the circuit and district bench of the United States those men who are required in *nisi prius* causes, and that for a long period of time, so that we really weaken the power of the judges to try causes at *nisi prius* by giving them this extended power of appeal reaching up to \$10,000. It will be found on examination, I think, that the committee have paid no attention to this matter. It will be found that while this bill proposes to carry justice home to the doors of the people, they have omitted to take it to the capitals of the respective States in the different circuits.

There are other clauses in this bill which will yet be pointed out. I hope the Senate will take it into serious consideration whether the welfare of the country in this important matter does not require that the Judiciary Committee shall take this bill with the other projects that are submitted to the Senate and which are before it now and, with the further aid of the observations made in debate here, mature a bill and bring it in. We have plenty of time for that. We had no difficulty in reforming and passing a Chinese bill through both Houses after the President had vetoed one such measure. It was the work of a very few days before we had a bill back here to meet the necessities of that occasion. The reason for that was that there was the spur and stimulus of a political question beneath that bill.

The Judiciary Committee can take this bill with the suggestions which have been made, and remedy the difficulties which have invited already votes on the part of members of that committee against various of its provisions. I do not know whether these Senators will vote against the bill finally or not, but they have attempted by their votes here to purge it of difficulties which are patent upon the

face of the bill; and I must be excused if I co-operate with them and concur with them also in opinion about the impropriety of some of the provisions of this proposed law.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Florida, [Mr. JONES.]

Mr. MORGAN. I ask 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 generally with the Senator from Vermont, [Mr. EDMUNDS,] who is absent from the city. I do not know how he would vote if he were here, but I withhold my vote. I should vote "nay" if he were here.

Mr. INGALLS, (when his name was called.) I am paired with the Senator from Oregon, [Mr. SLATER.]

Mr. PLATT, (when his name was called.) I am paired with the Senator from West Virginia, [Mr. CAMDEN.]

Mr. RANSOM, (when his name was called.) On this question I am paired with the Senator from Illinois, [Mr. LOGAN.]

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

Mr. WILLIAMS, (when his name was called.) I am paired with the Senator from Nebraska, [Mr. SAUNDERS.]

The roll-call was concluded.

Mr. BUTLER, (after having voted in the affirmative.) I observe that other Senators are announcing their pairs. I am paired with the Senator from Pennsylvania [Mr. CAMERON] upon the bill, but perhaps I had better not vote upon this question. I therefore withdraw my vote.

The result was announced—yeas 22, nays 29; as follows:

| YEAS—22. | | | |
|--------------------|-------------------|-------------------|-----------|
| Beck, | Gorman, | Jonas, | Vance, |
| Call, | Grover, | Jones of Florida, | Vest, |
| Coke, | Hampton, | Maxey, | Voorhees, |
| Davis of W. Va., | Harris, | Morgan, | Walker. |
| Farley, | Jackson, | Pendleton, | |
| George, | Johnston, | Pugh, | |
| NAYS—29. | | | |
| Aldrich, | Dawes, | Lapham, | Plumb, |
| Allison, | Frye, | McDill, | Rollins, |
| Anthony, | Harrison, | McMillan, | Sawyer, |
| Blair, | Hawley, | Mahone, | Sherman, |
| Cameron of Wis., | Hill of Colorado, | Miller of Cal., | Windom. |
| Chilcott, | Hoar, | Miller of N. Y., | |
| Conger, | Jones of Nevada, | Mitchell, | |
| Davis of Illinois, | Kellogg, | Morrill, | |
| ABSENT—25. | | | |
| Bayard, | Fair, | Lamar, | Sewell, |
| Brown, | Ferry, | Logan, | Slater, |
| Butler, | Garland, | McPherson, | Van Wyck, |
| Camden, | Groome, | Platt, | Williams. |
| Cameron of Pa., | Hale, | Ransom, | |
| Cockrell, | Hill of Georgia, | Saulsbury, | |
| Edmunds, | Ingalls, | Saunders, | |

So the amendment was rejected.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. MCPHERSON, its Clerk, announced that the House had passed a bill (H. R. No. 5664) making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1883, and for other purposes; in which it requested the concurrence of the Senate.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the bill (H. R. No. 4185) making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1883, and for other purposes.

INDIAN APPROPRIATION BILL.

Mr. DAWES. I submit the report of a committee of conference, and ask that it may be considered at this time.

The report was read, as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. No. 4185) making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1883, and for other purposes, having met, after full and free conference have agreed to recommend, and do recommend, to their respective Houses as follows:

That the Senate recede from its amendments numbered 11, 15, 17, 19, 41, 53, 54, 80, 81, 82, and 95.

That the House recede from its disagreement to the amendments of the Senate numbered 2, 12, 20, 34, 40, 43, 44, 45, 51, 52, 55, 56, 58, 59, 60, 61, 67, 78, 79, 96, and 103; and agree to the same.

Amendment numbered 4:

That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment, as follows: Strike out from said amendment the words "teacher and" and add at the end of the amended paragraph the following: "And no other money appropriated by this act shall be expended for clerical labor at this agency;" and the Senate agree to the same.

Amendment numbered 9:

That the House recede from its disagreement to the amendment of the Senate numbered 9, and agree to the same with an amendment, as follows: Add at the end of the amended paragraph the following: "And not more than \$1,000 of any moneys appropriated by this act shall be expended for clerical labor at this agency;" and the Senate agree to the same.

Amendment numbered 13:

That the House recede from its disagreement to the amendment of the Senate numbered 13, and agree to the same with an amendment, as follows: Add after

the word "dollars," where it first occurs in line 6, page 4 of the bill, the following: "And no other money appropriated by this act shall be expended for pay of teachers or for clerical labor at this agency;" and the Senate agree to the same.

Amendment numbered 14:

That the House recede from its disagreement to the amendment of the Senate numbered 14, and agree to the same with an amendment, as follows: In lieu of the sum proposed insert "\$89,900;" and the Senate agree to the same.

Amendment numbered 16:

That the House recede from its disagreement to the amendment of the Senate numbered 16, and agree to the same with an amendment, as follows: Strike out the words proposed to be inserted by the Senate amendment, and strike out all after the word "dollars" in line 9, page 4 of the bill, down to and including the word "dollars" in line 10, same page; and the Senate agree to the same.

Amendment numbered 18:

That the House recede from its disagreement to the amendment of the Senate numbered 18, and agree to the same with an amendment, as follows: Strike out all of said amendment and insert in lieu thereof the following: "The President is authorized to appoint a person to inspect all Indian schools, who is hereby required to report a plan for carrying into effect in the most economical and efficient manner all existing treaty stipulations for the education of Indians, with careful estimates of the cost thereof; also a plan and estimates for educating all Indian youths for whom no such provision now exists, and estimates of what sums can be saved from existing expenditures for Indian support by the adoption of such plan, whose compensation shall not exceed \$3,000, which sum is hereby appropriated for that purpose, and also a further sum of \$1,500 for his necessary traveling expenses;" and the Senate agree to the same.

Amendment numbered 21:

That the House recede from its disagreement to the amendment of the Senate numbered 21, and agree to the same with an amendment, as follows: In lieu of "five" insert "four;" and the Senate agree to the same.

Amendment numbered 22:

That the House recede from its disagreement to the amendment of the Senate numbered 22, and agree to the same with an amendment, as follows: In lieu of the sum proposed insert "\$38,500;" and the Senate agree to the same.

Amendment numbered 27:

That the House recede from its disagreement to the amendment of the Senate numbered 27, and agree to the same with an amendment, as follows: In lieu of the words proposed to be inserted by said Senate amendment insert the following: "And hereafter the commission shall only have power to visit and inspect agencies and other branches of the Indian service, and to inspect goods purchased for said service, and the Commissioner of Indian Affairs shall consult with the commission in the purchase of supplies. The commission shall report their doings to the Secretary of the Interior;" and the Senate agree to the same.

Amendment numbered 32:

That the House recede from its disagreement to the amendment of the Senate numbered 32, and agree to the same with an amendment, as follows: Strike out all of said amendment after the word "further" in line 11, and insert in lieu of the portion stricken out the following: "That either of said tribes may, before such expenditure, adopt and provide for the freedmen in said tribe in accordance with said third article, and in such case the money herein provided for such education in said tribe shall be paid over to said tribe, to be taken from the unpaid balance of the \$300,000 due said tribe;" and the Senate agree to the same.

Amendment numbered 33:

That the House recede from its disagreement to the amendment of the Senate numbered 33, and agree to the same with an amendment, as follows: Strike out after the word "Mexico," in line 1, page 13 of the bill, the following words: "And such as may be removed hereafter," and insert in lieu thereof the following: "Including the purchase of stock;" and the Senate agree to the same.

Amendment numbered 35:

That the House recede from its disagreement to the amendment of the Senate numbered 35, and agree to the same with an amendment, as follows: Strike out all of said amendment after the word "available," in line 11 thereof; and the Senate agree to the same.

Amendment numbered 42:

That the House recede from its disagreement to the amendment of the Senate numbered 42, and agree to the same with an amendment, as follows: In lieu of the sum proposed insert "\$40,500;" and the Senate agree to the same.

Amendment numbered 46:

That the House recede from its disagreement to the amendment of the Senate numbered 46, and agree to the same with an amendment, as follows: Strike out the words "one hundred" and insert in lieu thereof "seventy-five;" and the Senate agree to the same.

Amendment numbered 47:

That the House recede from its disagreement to the amendment of the Senate numbered 47, and agree to the same with an amendment, as follows: Strike out the words "and pay of employes;" and the Senate agree to the same.

Amendment numbered 48:

That the House recede from its disagreement to the amendment of the Senate numbered 48, and agree to the same with an amendment, as follows: Strike out the words "and fifty;" and the Senate agree to the same.

Amendment numbered 49:

That the House recede from its disagreement to the amendment of the Senate numbered 49, and agree to the same with an amendment, as follows: In lieu of the sum proposed insert "\$1,732,300;" and the Senate agree to the same.

Amendment numbered 66:

That the House recede from its disagreement to the amendment of the Senate numbered 66, and agree to the same with an amendment, as follows: In lieu of the words proposed to be inserted by said Senate amendment, insert the following: "For support, civilization, and instruction of the Tonkawa Indians at Fort Griffin, Texas, \$3,000;" and the Senate agree to the same.

Amendment numbered 91:

That the House recede from its disagreement to the amendment of the Senate numbered 91, and agree to the same with an amendment, as follows: After the word "reservations," in line 4 of said amendment, insert the following: "And upon a section of land suitable in quality and location for the industrial purposes of said school, which section of land is hereby reserved for said purpose;" and the Senate agree to the same.

Amendment numbered 92:

That the House recede from its disagreement to the amendment of the Senate numbered 92, and agree to the same with an amendment, as follows: After the word "Territory," in line 3 of said amendment, insert the following: "And upon a section of land suitable in quality and location for the industrial purposes of said school, which section of land is hereby reserved for said purpose;" and the Senate agree to the same.

Amendment numbered 93:

That the House recede from its disagreement to the amendment of the Senate numbered 93, and agree to the same with an amendment, as follows: Strike out in line 3 of said amendment the words "at any established" and insert in lieu thereof the following: "Not belonging to the five civilized tribes in the Indian Territory at any established industrial, agricultural, or mechanical;" and the Senate agree to the same.

Amendment numbered 94:

That the House recede from its disagreement to the amendment of the Senate

numbered 94, and agree to the same with an amendment, as follows: Strike out all of said amendment and insert in lieu thereof the following: "And for the purpose of further instructing and civilizing Indian children dwelling west of the Mississippi River, and in the States of Minnesota, Wisconsin, and Michigan, and not belonging to the five civilized tribes in the Indian Territory, or so many thereof as may be practicable, in industrial schools other than those at Carlisle, Hampton, and Forest Grove, supported in whole or in part from treaty and other funds appropriated by Congress, or such as may be established and supported wholly from treaty or other funds so appropriated, and for purchasing stock for herding purposes for such industrial schools, and also for the placing of such children, with the consent of their parents, under the care and control of such suitable white families as may in all respects be qualified to give such children moral, industrial, and educational training, for a term of not less than three years, under arrangements in which their proper care, support, and education shall be in exchange for their labor, the sum of \$150,000 is hereby appropriated, to be expended under such rules and regulations as the Secretary of the Interior may prescribe;" and the Senate agree to the same.

Amendment numbered 104:
That the House recede from its disagreement to the amendment of the Senate numbered 104, and agree to the same with amendments, as follows: Strike out the words "Maria Demmon" and insert in lieu thereof "Marie Demmie;" strike out the words "Frank Vocank" and insert in lieu thereof "Frank Vocasek;" and at the end of said Senate amendment the following: "To be immediately available;" and the Senate agree to the same.

Amendment numbered 105:
That the House recede from its disagreement to the amendment of the Senate numbered 105, and agree to the same with an amendment, as follows: Add at the end of said amendment the following: "And section 2056 of the Revised Statutes is hereby amended so as to read as follows: 'Section 2056. Each Indian agent shall hold his office for the term of four years, and until his successor is duly appointed and qualified;'" and the Senate agree to the same.

H. L. DAWES,
P. B. PLUMB,
M. W. RANSOM,
Managers on the part of the Senate.
THOS. RYAN,
L. B. CASWELL,
BENJAMIN LE FEVRE,
Managers on the part of the House.

Mr. DAVIS, of West Virginia. I should like to have the ear of the Senator in charge of the bill for a moment. I notice several amounts, some of them large, have been stricken out and others substituted. I ask the Senator whether the appropriations have been increased or decreased as a whole since the bill left the Senate?

Mr. DAWES. The appropriations have been considerably diminished from what they were when the bill left the Senate; they have been diminished by the sum of \$255,200. I submit the following list of reductions in Senate amendments made in conference:

| | |
|--|----------------|
| Salary of agent at White Earth agency..... | \$200 |
| Pay of interpreters..... | 5,000 |
| Traveling and other expenses of inspector of Indian schools..... | 500 |
| One special agent and traveling expenses..... | 3,500 |
| Poncas, subsistence, &c..... | 5,000 |
| Sioux of different tribes, subsistence, annuity, goods, &c..... | 75,000 |
| Arapahoes, Cheyennes, &c., subsistence..... | 50,000 |
| Tonkawas at Fort Griffin, Texas, support..... | 1,000 |
| Special police to prevent sale of liquor..... | 5,000 |
| Seminole Indians, Florida, schools, seeds, &c..... | 5,000 |
| Education of Indian children west of the Mississippi..... | 100,000 |
| School building at Cœur d'Alène Indian reservation..... | 5,000 |
| Total reduction in conference..... | 255,200 |
| Total of Senate amendments..... | 543,800 |
| Total reductions made in conference..... | 255,200 |
| Amount agreed to in conference..... | 288,600 |

Total of bill as agreed to, \$5,217,803.91, which exceeds appropriations for 1882, including deficiencies already provided for, \$49,937.11.

Mr. DAVIS, of West Virginia. It appears to me also that some offices have been created, or that money has been appropriated to pay certain officers. Have there been any new offices created by the conference committee?

Mr. DAWES. None at all. There have been no additions by the conference committee; they have all been reductions of what the Senate put in, to the amount I have stated.

Mr. DAVIS, of West Virginia. I notice that certain offices are to be filled, and so much money is appropriated to pay them.

Mr. DAWES. The conference committee have created no new offices.

Mr. DAVIS, of West Virginia. They are such as were agreed to by the Senate.

Mr. DAWES. Yes, they were agreed to by the Senate. The conference committee have created no new office and appropriated no money for payment to any new officer.

The report was concurred in.

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* 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 submit herewith for the consideration of Congress a letter from the Secretary of the Interior, inclosing a copy of a letter from the governor of Arizona, in which he requests that an appropriation of \$2,000 be made for the contingent expenses of the Territory for the next fiscal year.

EXECUTIVE MANSION, May 11, 1882.

CHESTER A. ARTHUR.

HOUSE BILL REFERRED.

The bill (H. R. No. 5664) making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal

year ending June 30, 1883, and for other purposes, was read twice by its title, and referred to the Committee on Appropriations.

COURT OF APPEALS.

The Senate resumed, as in Committee of the Whole, the consideration of the bill (S. No. 420) to establish a court of appeals.

Mr. GEORGE. I move to add the following as an additional section to the bill:

SEC. — That any defendant in a suit at law or equity in any court of the United States may plead or except to the jurisdiction of the court at the same time that he pleads or answers to the merits; and if said plea or exception be overruled or decided against him, he shall, nevertheless, be entitled to defend on the merits as if said plea had not been filed nor said exception taken.

The amendment was rejected.

Mr. GEORGE. I move to add the following as an additional section to the bill:

SEC. — That no court of the United States shall have any jurisdiction of a suit in equity or action at law when such jurisdiction depends alone upon the fact that a controversy exists therein between citizens of different States, or citizens of the same State claiming grants from different States, or between a State and citizens of another State, if one of the parties to such controversy, either as plaintiff or defendant, be a corporation created by the laws of one or more of the States; nor shall such corporation sue or be liable to be sued in any of such courts, in virtue of the citizenship of any of its members.

The PRESIDING OFFICER, (Mr. HARRIS in the chair.) The question is on agreeing to the amendment of the Senator from Mississippi.

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

The yeas and nays were ordered.

Mr. WILLIAMS. Mr. President, I have taken no part in the discussion of this bill, and I desire only now in a dozen words to state the reasons for my vote.

I have listened with great pleasure and profit for two weeks to the able and learned arguments of the lawyers of the Senate upon this question, and my mind has been forced to the conclusion that we had better proceed no further in this business of making Federal courts for the United States. I have favored all the amendments, because I thought in some degree they would modify the bill itself, but with or without any or all of the amendments proposed I should be against the bill upon principle. I am against it because it multiplies offices and salaries, it increases the judges, the clerks, the marshals, and the tipstaves of the courts of the country.

I am satisfied, however, that the bill is going to pass, from the test votes we have had in the voting down of every amendment. Indeed, it seems to have been considered by the gentlemen upon the opposite side to be an impertinence on this side to offer an amendment to the bill. My only hope for defeating this measure is in the patriotism and good sense of the popular branch of Congress.

I regard this bill as fraught with more mischief to the country than any measure which has been before Congress during the time that I have had the honor of a seat in the Senate.

If the Federal courts are overwhelmed with business, if their dockets are piled up with causes which it is impossible for them to decide in the course of years, what is the reason of it? It is because their jurisdiction has been increased by the Legislature of the nation and the usurpations of the courts themselves. Take away from them the jurisdiction improperly given by acts of Congress and usurped by the judges themselves, and bring the courts back to the jurisdiction they had in *ante bellum* times, and the circuit courts, the district courts, and the Supreme Court of the United States will have ample opportunity to decide all the causes that come before them.

I remember in my own State before the war when old Tom Monroe used to call his court at Frankfort and hardly anybody knew that it was in session. It met about twice a year and entered two or three orders on the minutes, and the fact is the people of the State did not know of it. Nobody except the lawyers themselves knew that we had a Federal court there.

I should like to see the happy, good old days brought back again to the country when the United States courts had a jurisdiction confined exclusively to the cases contemplated by the Constitution. If that does not do, amend the Constitution itself, and take away from the Federal courts the original jurisdiction in cases between citizens of different States and between the different States themselves. When the Constitution was adopted there was reason for that provision. Then the colonies were to a great extent distinct nations from each other. They had no railroads, they had no facilities of intercommunication. One half the country was slave and the other half was free. Now it is all homogeneous.

Take away that jurisdiction and the courts would soon clear up all their dockets, and there would be no trouble in the world about it. I cannot see a reason why a citizen of Kentucky may not sue a citizen of Ohio in a State court in Cincinnati as well as in the Federal court, and *vice versa*. Take away all this jurisdiction, and your Federal judges will have time to sleep upon the wool-sack more than half the terms of their courts. I should vote against the measure if every single amendment had been adopted, but naked as it is I regard it as fraught with more mischief than any measure which has been before Congress since I have been a member of it.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Mississippi, [Mr. GEORGE,] on which the yeas and nays have been ordered.

The Principal Legislative Clerk proceeded to call the roll.

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

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

Mr. INGALLS, (when his name was called.) I am paired with the Senator from Oregon, [Mr. SLATER.]

Mr. PLATT, (when his name was called.) I am paired with the Senator from West Virginia, [Mr. CAMDEN.]

Mr. RANSOM, (when his name was called.) On this question I am paired with the Senator from Illinois, [Mr. LOGAN.]

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

The roll-call was concluded.

Mr. GEORGE, (after having voted in the affirmative.) I inadvertently voted on the amendment. I am paired with the Senator from Pennsylvania, [Mr. MITCHELL.] I withdraw my vote.

Mr. MILLER, of New York, (after having voted in the negative.) I am paired with the Senator from Maryland, [Mr. GROOME.] When I voted I was not aware that he was out of the Chamber. I withdraw my vote.

The result was announced—yeas 20, nays 27; as follows:

YEAS—20.

| | | | |
|--------------------|-----------|-------------------|-----------|
| Beck, | Grover, | Jonas, | Fugh, |
| Call, | Hampton, | Jones of Florida, | Vance, |
| Coke, | Harris, | Maxey, | Vest, |
| Davis of West Va., | Jackson, | Morgan, | Voorhees, |
| Gorman, | Johnston, | Pendleton, | Walker. |

NAYS—27.

| | | | |
|------------------|--------------------|------------------|----------|
| Aldrich, | Davis of Illinois, | Jones of Nevada, | Morrill, |
| Allison, | Dawes, | Kellogg, | Plumb, |
| Anthony, | Frye, | Lapham, | Rollins, |
| Blair, | Harrison, | McDill, | Sawyer, |
| Cameron of Wis., | Hawley, | McMillan, | Sherman, |
| Chilcott, | Hill of Colorado, | Mahone, | Windom. |
| Conger, | Hoar, | Miller of Cal., | |

ABSENT—29.

| | | | |
|-----------------|------------------|------------------|-----------|
| Bayard, | Farley, | Lamar, | Saunders, |
| Brown, | Ferry, | Logan, | Sewell, |
| Butler, | Garland, | McPherson, | Slater, |
| Camden, | George, | Miller of N. Y., | Van Wyck, |
| Cameron of Pa., | Groome, | Mitchell, | Williams, |
| Cockrell, | Hale, | Platt, | |
| Edmunds, | Hill of Georgia, | Ransom, | |
| Fair, | Ingalls, | Saulsbury, | |

So the amendment was rejected.

Mr. GEORGE. I move to add as an additional section to the bill the following:

SEC. —. That whenever the jurisdiction of any circuit or district court of the United States, either as to cases originally instituted therein or removed into the circuit courts from a State court, depends by law upon the citizenship of any party or person, a party thereto or having a controversy in a suit therein, the said court shall have no jurisdiction unless the amount in controversy shall exceed the sum of \$5,000 exclusive of interest and costs.

That the right to remove a suit, or any part of it, from a State court to a court of the United States, when such right depends on the citizenship of any of the parties or persons having a controversy therein, shall exist hereafter only in the cases provided for in this section, and only on the terms herein allowed.

That whenever a suit at law or in equity, in which the amount in controversy, exclusive of cost and interests, exceeds the sum of \$500, shall be brought, or shall have heretofore been brought, in a State court, by a citizen of the State in which such court is held, against a citizen of any other State or against an alien, the defendant therein, or if there be more than one defendant, then any one or more of them, being non-residents of the State in which said court is held, and having a controversy in said suit which can be wholly determined as between him or them and the plaintiff without the presence of the other defendant or defendants, shall have the right, at any time before the final trial or hearing thereof, to remove said suit, or so much of it as can be determined as aforesaid without the presence of the other defendant or defendants, to the circuit court of the district in which said State court is held, upon the following terms and to the following extent: the defendant or defendants desiring such removal shall petition said circuit court, or a judge thereof in vacation, setting forth that, owing to prejudice against him or them, or the undue influence of the adverse party, he or they cannot have a fair and impartial trial in said State court. Reasonable notice of such petition shall be given to the adverse party of the time and place of the hearing of the same; and said court or judge, on the day fixed for the hearing, shall hear the evidence offered by the parties as to such prejudice or influence, and if satisfied that by reason thereof a fair and impartial trial cannot be had in said State court, shall order a removal of said cause, or so much of it as embraces a controversy between the petitioner and the plaintiff as can be heard without the presence of the other defendants, to the said circuit court, upon the petitioners giving bond and security in the sum of \$500, payable to the plaintiff, and conditioned to file in said circuit court, at the first term thereof held after the expiration of twenty days from the date of said order, a complete transcript of the record and proceedings of said State court in said suit, and of all papers filed in said State court as evidence in said cause. In case of a removal of said cause as to part only of the defendants, it may be proceeded with in the State court as to the other defendants as if no such order of removal had been made.

That the provisions of this section shall apply to suits in those district courts of the United States which by law have circuit court jurisdiction.

That no circuit or district court shall have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee, or subsequent holder or bearer thereof, unless a suit might have been prosecuted in such court to recover the said contents if no assignment or transfer had been made, except in cases of foreign bills of exchange.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Mississippi, [Mr. GEORGE.]

The amendment was rejected.

Mr. MORGAN. In section 10, after the words "Supreme Court,"

in line 16, I move to strike out all down to and including the words "Supreme Court" in line 21, in the following words:

But in the two last-mentioned cases the court of appeals shall state the specific question arising upon the construction of the Constitution, or the construction or the validity of such treaty or law, or the specific legal question that the adjudication involves, and such questions only shall be certified to and finally decided by the Supreme Court.

That is the question to which I made reference, to which my attention was called by a member of the Committee on the Judiciary. It seems to me, and it seemed also to the member to whom I refer, that it is giving to the circuit courts, to the court of appeals, or to any other court, in fact, too much power to state the specific question arising upon the construction of the Constitution, or the construction or the validity of the treaty or law, or the specific legal question that the adjudication involves, and that such question only shall be certified to and finally decided by the Supreme Court.

The Supreme Court ought to be allowed to determine what the constitutional question is upon the law as well as the question arising upon the fact. The court below can make the decision and then assume the right to state the question in a form that it understands it or merely in the form it desires to have it passed upon. In this way litigants may be put to very serious trouble. It deprives the Supreme Court of the power of deciding whether the real question was in the case or was not in the case. If the court below can make the exact question, whether of law or of fact, upon which the Supreme Court is to decide, then I submit that we take from the Supreme Court a very important part of its appellate jurisdiction.

The bill, it seems to me, would be just as well with that provision out of it. The court could state the facts upon which the question arose, or it could state the facts which affect the decision upon the Constitution, the law, or the treaty, and allow the Supreme Court to determine whether that question was really raised upon those facts, or what question was raised upon the facts. It must very often occur in practice that upon a given state of facts the party in the cause would desire that the Supreme Court should determine a certain question which he insists is raised upon the facts. The court below decides against him; it decides that that question is not raised upon the facts, but that some other or different question is raised upon the facts, and you thereby deprive a man virtually of his right of appeal by permitting the court below to decide the very question upon which his appeal shall turn in the court above.

It seems to me that that is an important matter, and if the bill would be as well without it as with it that part of the section ought to be stricken out. I regret that the Senator to whom I refer has not returned to the Chamber so that he can present his own views on this matter. These are the views which I entertain.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Alabama.

Mr. MORGAN called for the yeas and nays, and they were ordered. The Principal Legislative Clerk proceeded to call the roll.

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

Mr. GEORGE, (when his name was called.) I am paired on this amendment with the Senator from Pennsylvania, [Mr. MITCHELL.] If he were here, I should vote "yea."

Mr. INGALLS, (when his name was called.) I am paired with the Senator from Oregon, [Mr. SLATER.]

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

Mr. MILLER, of New York, (when his name was called.) I am paired with the Senator from Maryland, [Mr. GROOME.]

Mr. PLATT, (when his name was called.) I am paired with the Senator from West Virginia, [Mr. CAMDEN.]

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

The roll-call having been concluded, the result was announced—yeas 19, nays 25; as follows:

YEAS—19.

| | | | |
|--------------------|-----------|------------|-----------|
| Beck, | Gorman, | Jonas, | Vance, |
| Call, | Grover, | Maxey, | Vest, |
| Coke, | Hampton, | Morgan, | Voorhees, |
| Davis of West Va., | Harris, | Pendleton, | Walker. |
| Farley, | Johnston, | Pugh, | |

NAYS—25.

| | | | |
|------------------|--------------------|-----------------|----------|
| Aldrich, | Davis of Illinois, | Kellogg, | Plumb, |
| Allison, | Dawes, | Lapham, | Rollins, |
| Anthony, | Frye, | McDill, | Sawyer, |
| Blair, | Harrison, | McMillan, | Sherman, |
| Cameron of Wis., | Hawley, | Mahone, | |
| Chilcott, | Hill of Colorado, | Miller of Cal., | |
| Conger, | Jones of Nevada, | Morrill, | |

ABSENT—32.

| | | | |
|-----------------|------------------|-------------------|------------|
| Bayard, | Ferry, | Jackson, | Ransom, |
| Brown, | Garland, | Jones of Florida, | Saulsbury, |
| Butler, | George, | Lamar, | Saunders, |
| Camden, | Groome, | Logan, | Sewell, |
| Cameron of Pa., | Hale, | McPherson, | Slater, |
| Cockrell, | Hill of Georgia, | Miller of N. Y., | Van Wyck, |
| Edmunds, | Hoar, | Mitchell, | Williams, |
| Fair, | Ingalls, | Platt, | Windom. |

So the amendment was rejected.

Mr. MORGAN. I submit the following motion:

Resolved, That Senate bill No. 420, now under consideration, be committed again to the Committee on the Judiciary with instructions to said committee to prepare and report, with all convenient speed, a bill to establish a court of appeals, inferior to the Supreme Court, which shall be composed of not exceeding nine circuit judges in addition to the nine circuit judges who are now in office; and which shall define the appellate and supervisory jurisdiction of said court; and shall also confer the power upon the judges of such appellate court to hold circuit courts in any circuit or district of the United States to which they shall respectively be assigned by the Chief Justice of the Supreme Court; and also to make any changes in existing laws, or any new provisions of law that may be necessary in consequence of the creation of such court of appeals, or that will contribute to the relief of the Supreme Court and any of the circuit courts from the embarrassment resulting from an undue accumulation of cases upon their dockets; and will give to persons convicted of crimes against the United States the right to a writ of error to the Supreme Court, or to such court of appeals as said committee may be of opinion will best secure the rights of such persons and of the Government in the administration of justice, and will curtail and regulate the jurisdiction of the circuit courts of the United States in respect of suits by and against corporations and the removal of causes, and in such other respects as said committee shall recommend.

The PRESIDING OFFICER. The question is on the motion of the Senator from Alabama to commit with the instructions read.

Mr. MORGAN. On that I ask for the yeas and nays.

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

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

Mr. DAVIS, of West Virginia, (when his name was called.) I am paired with the Senator from Minnesota, [Mr. WINDOM,] and I wish to state that my colleague [Mr. CAMDEN] is paired with the Senator from Connecticut, [Mr. PLATT.] I make this statement for the day.

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

Mr. INGALLS, (when his name was called.) I am paired with the Senator from Oregon, [Mr. SLATER.]

Mr. MILLER, of New York, (when his name was called.) I am paired with the Senator from Maryland, [Mr. GROOME.]

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

The roll-call was concluded.

Mr. JONES, of Florida, (after having voted in the affirmative.) I voted inadvertently. I wish to withdraw my vote. I am paired with the Senator from Massachusetts, [Mr. HOAR.] If he were here, I should vote "yea."

Mr. GEORGE. I am paired with the Senator from Pennsylvania, [Mr. MITCHELL,] but I desire it to be put on record that, if not paired, I would vote in the affirmative.

Mr. HAMPTON. I should like to ask if the Senator from Nebraska [Mr. VAN WYCK] is not paired?

Mr. DAVIS, of Illinois. He is paired with the Senator from Virginia.

Mr. HAMPTON. He was in favor of the recommitment of this bill.

Mr. DAVIS, of Illinois. Yesterday that pair was arranged I think.

Mr. RANSOM. On this question I am paired with the Senator from Illinois, [Mr. LOGAN.] If he were here, I should vote "yea."

Mr. JONAS. The Senator from New Jersey [Mr. MCPHERSON] requested me to say that he is paired on this bill and all its amendments with his colleague, [Mr. SEWELL.] The Senator from New Jersey [Mr. MCPHERSON] would vote "yea" on this motion if he were present.

The result was announced—yeas 17, nays 24; as follows:

YEAS—17.

| | | | |
|---------|-----------|------------|-----------|
| Beck, | Grover, | Morgan, | Voorhees, |
| Call, | Hampton, | Pendleton, | Walker, |
| Coke, | Johnston, | Pugh, | |
| Farley, | Jonas, | Vance, | |
| Gorman, | Maxey, | Vest, | |

NAYS—24.

| | | | |
|------------------|--------------------|-------------------|-----------------|
| Aldrich, | Conger, | Hill of Colorado, | Mahone, |
| Allison, | Davis of Illinois, | Jackson, | Miller of Cal., |
| Anthony, | Frye, | Kellogg, | Morrill, |
| Blair, | Harris, | Lapham, | Rollins, |
| Cameron of Wis., | Harrison, | McDill, | Sawyer, |
| Chilcote, | Hawley, | McMillan, | Sherman, |

ABSENT—35.

| | | | |
|------------------|------------------|-------------------|------------|
| Bayard, | Fair, | Jones of Florida, | Ransom, |
| Brown, | Ferry, | Jones of Nevada, | Saulsbury, |
| Butler, | Garland, | Lamar, | Saunders, |
| Camden, | George, | Logan, | Sewell, |
| Cameron of Pa., | Groome, | MCPHERSON, | Slater, |
| Cockrell, | Hale, | Miller of N. Y., | Van Wyck, |
| Davis of W. Va., | Hill of Georgia, | Mitchell, | Williams, |
| Dawes, | Hoar, | Platt, | Windom, |
| Edmunds, | Ingalls, | Plumb, | |

So the motion was not agreed to.

Mr. MORGAN. For the purpose of getting before the Senate and the committee the proposition of the committee of the American Bar Association, if the Senate should desire to recommit the bill, I now move to recommit it without instructions in order that the opinions of such gentlemen as Mr. Merrick, Mr. Courtlandt Parker, and Mr. Evarts may be considered by the Committee on the Judiciary in framing some measure which will meet with more general accept-

ance than the one now before the Senate. I do not concur in the proposition those gentlemen have presented; I do not think the Supreme Court can be divided into sections and that each section can decide without the concurrence of the other section. At the same time they have advanced views in support of their opinion which are worthy of the consideration of the Senate. They are men of most eminent legal attainments, and I will send to the Secretary's desk and ask to have read extracts from the report they have made.

Mr. DAVIS, of Illinois. I hope the Senator will let us take a vote. Everybody has read what those gentlemen have said.

Mr. MORGAN. I am afraid not.

Mr. DAVIS, of Illinois. I have, for one, and I think every Senator has. It is a consumption of time to have their report read.

Mr. VOORHEES. I ask the Senator from Alabama how long the reading of the extracts will take?

Mr. MORGAN. A very few minutes.

Mr. VOORHEES. If it is to take long I shall move an adjournment.

Mr. ANTHONY. I object to the reading of that paper.

The PRESIDING OFFICER. The Chair holds that the Senator from Alabama has a perfect right to have a paper read as a part of his remarks if he sees proper to do so.

Mr. ANTHONY. He has a right to read it himself, but not a right to have it read at the desk.

Mr. DAVIS, of Illinois. Let it be read if he calls for it.

The PRESIDING OFFICER. Does the Senator from Rhode Island raise a question of order?

Mr. ANTHONY. I will not dispute with the Chair.

The PRESIDING OFFICER. The Secretary will proceed to read the paper sent up by the Senator from Alabama.

Mr. MORGAN. I ask to have it read for the information of the Senate.

Mr. McMILLAN. Do I understand the Senator from Alabama to read now from the pamphlet as his own views the sentiments expressed there?

Mr. MORGAN. As far as I propose to read them I think I can say they are.

Mr. MORGAN proceeded to read, but was interrupted by

Mr. INGALLS. I hope the Senator from Alabama will not be compelled to read that. I trust the Secretary may be allowed to read it for him. It is customary that the Secretary should be allowed to read at the desk.

Mr. MORGAN. Objection is made.

The PRESIDING OFFICER. The Chair had instructed the Secretary to read the paper, but the Senator from Alabama proceeded to read it himself.

Mr. INGALLS. I should be unwilling to withhold any courtesy from the Senator from Alabama in the matter.

Mr. RANSOM. Certainly it has always been usual in the Senate, I think, to allow a Senator to have a paper read.

Mr. MORGAN. I have sat here all night hearing one Senator read for another.

Mr. ANTHONY. I withdraw the point of order, but I will vindicate my right to make the point:

When the reading of a paper is called for, and the same is objected to by any Senator, it shall be determined by a vote of the Senate, and without debate.

I withdraw the point.

The PRESIDING OFFICER. What does the Senator read from?

Mr. ANTHONY. From the fifteenth rule of the Senate.

The PRESIDING OFFICER. The Chair, on reading the rule, holds that the Senator from Rhode Island is quite right in the point of order he suggested.

Mr. ALLISON. The point is withdrawn, and the Senator from Alabama can have read at the desk what he wishes.

Mr. MORGAN. Certainly such men as Mr. Evarts and Mr. Parker and Mr. Bradley and Mr. Phelps have a right to be heard when their opinions are expressed upon a grave question of this kind, and while Senators may have all read this paper the country has not read it, and I do not think that any injustice will be done to the country or the Senate by putting this on record as part of my remarks.

Mr. VEST. Will the Senator yield to me for a motion to adjourn?

Mr. MORGAN. I shall yield to the Senator from Missouri for a motion to adjourn if he has any personal reason for desiring that the Senate shall now adjourn, but I rather prefer that we should finish this business.

Mr. VEST. I think we shall not conclude this bill this evening. The Senator from Alabama and other Senators wish to address the Senate. I move that the Senate do now adjourn.

The PRESIDING OFFICER. Does the Senator from Alabama yield the floor for the purpose of a motion to adjourn?

Mr. MORGAN. Not unless the Senator from Missouri will say that he has some personal desire in having the Senate adjourn. I prefer to see the bill concluded.

Mr. DAVIS, of Illinois. So do I.

Mr. BUTLER. So far as I am concerned, I prefer to adjourn.

Mr. DAVIS, of Illinois. I sincerely hope the bill may be concluded this evening. I think the interests of the business of the Senate require it.

Mr. MORGAN. I am entirely willing that it shall appear upon the record that I have read the extracts which are marked in this pamphlet, if that will be any relief to the Senate. I do not wish to occupy their time in reading, but I want this paper to go into the RECORD as part of my remarks, so far as I have marked passages in it.

The PRESIDING OFFICER. Is there objection to the marked parts of the paper the Senator suggests appearing in the RECORD? The Chair hears no objection, and it is so ordered.

The extracts are as follows:

It is proposed by those gentlemen who advocate the plan of local courts of appeal to constitute one in each circuit, from the circuit and district judges, which shall sit in one of its larger cities. We have felt great respect for the opinion of our able and distinguished associates who favor this proposal, and have not failed to appreciate the arguments by which it is supported. Their views will be presented in a separate report. It is undoubtedly true that such a method of hearing appeals would bring the hearing nearer to the residence of the litigants, and considerably facilitate the convenience of the profession in the more distant circuits, and perhaps to some extent diminish the expense of appeals, by saving a journey from remote points to Washington. Though on this point it is to be remembered that as the court could sit but in one place for each circuit, and many of these are very large, a considerable proportion of the appeals must after all be heard at a distance from the residence of the parties, and from the court in which the trial appealed from took place. So that the difference to counsel between the journey thus requisite and the journey to Washington is not so material.

But it appears to us that the grave objections which the plan of local courts encounters far outweigh any advantages it may offer of convenience to counsel or of diminution of expense to parties. In the first place, in order that this method should effect any relief to the Supreme Court, it will be necessary to provide that appeals to that tribunal should not be allowed in cases of ordinary jurisdiction unless the amount in controversy is at least \$10,000. Probably a much higher limit than that would be necessary, because when the limit of the appellate jurisdiction of the Supreme Court was enlarged in 1872 from two thousand to five thousand dollars, hardly any perceptible diminution in the docket resulted. And notwithstanding that limit the number of causes on the docket of the court has increased from 676 in 1872 to 1,202 in 1880, although during that period, as has been already pointed out, the number of causes annually disposed of by the court considerably exceeded the number disposed of in any previous year. While on this point it is impossible to obtain exact data without an amount of labor in the examination of the records of the court which it is not in our power to command, we believe on the best information we have that to enable the court to keep up with the business by reducing the amount of it by a money limit would require that limit to be fixed at the present time at least as high as \$15,000, and perhaps as high as \$20,000, and would necessitate in the future a probable further advance in the same direction.

The number of people of the United States who are possessed of property to that amount is comparatively small; the number of those whose controversies in the courts of justice attain such a magnitude is still smaller. To the great mass of litigants controversies involving between five and fifteen thousand dollars are very serious and important, not infrequently putting in jeopardy all they possess. The extension of the limit of the right of appeal to the Supreme Court from two thousand to five thousand dollars has already been felt oppressive. Nothing but a supposed necessity has induced submission to it. And a further increase of that limit to a sum that excludes from the court so large a class of citizens in controversies to them so important, and which involve questions as serious and as difficult as causes of a still larger amount would be a measure in the justice or propriety or policy of which we cannot concur, and which we believe would justly be regarded as a denial of the highest public justice to many citizens equally entitled to it.

The Supreme Court would thus be set aside, so far as its ordinary jurisdiction is concerned, for the benefit of wealthy men and great corporations. But the court was never intended for the use of the rich alone. It belongs to the people, in common with our other institutions, and should be made available to the people, to every possible extent. That some pecuniary limit must be fixed, to save the court from being harassed with small controversies, and to exclude from it causes not large enough to pay the expense of going there, is admitted. The sum of \$2,000, the original limit, has always been regarded as quite sufficient for that purpose; and while we do not recommend a present return to that figure, we cannot concur in any proposition to increase it.

Nor can we regard without apprehension the probable effect upon the position of the court itself, of thus withdrawing from it so large a share of its general jurisdiction. As the final arbiter upon all questions of constitutional law, it is one of the main stays of our Government. No such function was ever before confided to a judicial tribunal. It can only be maintained in the discharge of so critical a duty by being fast anchored in the public confidence and esteem. Such has been its good fortune hitherto, because it has been the Supreme Court in reality as well as in name. It has been the one national tribunal of last appeal, in which confidence has been strong, and to which resort has been secure; where the general law of the land has been habitually laid down. But that will be really the Supreme Court in the estimation of the people in which the duties belonging to such a body are accustomed to be performed.

If the one Supreme Court of the Constitution should be closed to ordinary access, and devoted by a high-money limit principally to the service of the wealthy and the powerful; if the great body of those who transact the business of the country should be excluded from its doors, and compelled to accept for their part such humbler justice as the local tribunals may afford, it will not be safe to expect that the court will be able to preserve by its dignity the hold it has gained by its usefulness, or to escape by mere pecuniary elevation from the consequences of popular estrangement. There would be grave danger that it might gradually become an object of public jealousy and aversion. If thereafter it should happen to be brought, in the determination of constitutional questions, into antagonism with popular feeling or party policy, its position would invite an attack, against which its means of defense would be small. De Tocqueville has well said of its power, "it is clothed in the authority of public opinion. They are the all-powerful guardians of a people which respects law; but they would be impotent against popular neglect or popular contempt."

Another very serious objection, in our judgment, to the institution of local courts of appeal is to be found in its probable result upon the character and quality of the law they may be expected to establish. The body of the common law, as administered by the Federal tribunals, is one of our most precious possessions. The purity and uniformity of it should be guarded with the greatest assiduity. It is the law, not of one State, but of all the States; not of a section, but of the entire people; not of local interests, but of the general welfare. It is the only homogeneous law we have. We have already courts of the last resort sitting in thirty-eight different States, no one necessarily controlled by the decisions of any other. That the expositions of the law in these numerous tribunals should be fluctuating, far from uniform, and more or less of it far from sound, is unavoidable. That it should be pervaded by the influence of local institutions and traditions, of varying political sentiments and diverse financial, productive, and commercial interests, is naturally to be expected. But as the law thus established is supreme only in the State in which it is propounded, no grave results are to be apprehended to the

citizens of other States, so long as they can have recourse, in the event of controversy with the citizens of such State, to the Federal courts.

That the decisions of the proposed local Federal courts of appeal will be largely affected in the same way, seems to us inevitable. They would sit in districts very remote from each other. They would be necessarily composed of judges drawn from the circuits in which they exist. That views upon financial questions, political or quasi-political questions, social questions, and the general policy of the law, should vary and change under the pressure of local opinions, traditions and laws, is inevitable. Law is at best but a reflex of the society and the civilization in which it grows up. To expect that distant tribunals, existing under widely different conditions of society and of public opinion, should be harmonious in the multiform administration which justice requires is to expect the impossible. Such has never been the case and never will be. The course of decisions in New England and the Southwest, in the commercial cities and the Northwestern States, on the Atlantic and the Pacific coasts, can never be one and the same if it depends upon their local tribunals. The whole theory and value of the Federal administration of justice requires a uniformity and consistency of application before which the citizens of all the States shall be equal. But in place of that we should have under these local appellate courts a mass of heterogeneous decisions, on many points irreconcilable, and a law that would vary like the climate with the latitude and the longitude.

Nine tribunals of last resort in the great majority of cases would be kept in constant operation, and emitting an incessant series of reports, with no central power or ultimate court of appeal to regulate their conclusions. It would be but occasionally that a case involving questions of difference between them would arise large enough to be carried, and that would happen to be carried, to the Supreme Court of the United States. It is the every-day law, which is constantly applied to human business and human rights, that is of the greatest practical importance, rather than those cases of rare occurrence, to which political events or public feeling may give a more conspicuous prominence.

EDWARD J. PHELPS, *Chairman*.
CORTLANDT PARKER.
WILLIAM M. EVARTS.
RICHARD T. MERRICK.

Mr. MORGAN. Now, I have a single remark to make in regard to the opinion of these four very distinguished lawyers, Messrs. Phelps, Parker, Evarts, and Merrick. They have bestowed as much attention on this subject as perhaps any gentlemen in the United States. Their experience no man can deny; their opinion no man can afford to pass by without due attention. I desire that their opinions in connection with this bill, which is now about to pass, shall go before the country, in the hope that before this measure can be matured and enacted into law public opinion will intervene and prevent the consummation of the wrongs that I conceive are wrapped up in this bill.

The PRESIDING OFFICER. The Senator from Alabama moves to recommit the bill without instructions.

The motion was not agreed to.

Mr. PUGH. Mr. President—

Mr. DAVIS, of Illinois. Before the Senator goes on if he will indulge me one moment I desire to move an amendment.

This bill, Mr. President, as I stated, does not abridge or enlarge the jurisdiction of the circuit court or of any other court whatever, and the Judiciary Committee in putting in the sixth section did not mean to have it so considered, nor could it be so construed by any court in christendom; but some of my friends, for whose opinion I have great regard, say that it would be better if certain words were added, and I have consulted with my friends on the committee and there can be no objection to the amendment. The section now reads:

The said courts—

That is, the court of appeals—

shall have power to issue writs of error, *mandamus*, *scire facias*, *habeas corpus*, and all other writs which may be necessary or proper to the exercise of its jurisdiction and agreeable to the principles and usages of law.

I move to add there—

And which the circuit courts of the United States now have.

Mr. RANSOM. I am very much obliged to the Senator from Illinois for suggesting that amendment. I had thought myself that the clause which is referred to was conclusive upon that subject, but I desire, in common with a great many Senators, to have the question put beyond the possibility of controversy.

Mr. DAVIS, of Illinois. I move the amendment.

Mr. RANSOM. I am much obliged to the Senator for the amendment.

The PRESIDING OFFICER. The amendment will be read.

The ACTING SECRETARY. It is proposed, in section 6, line 45, after the word "law," to add "and which the circuit courts of the United States now have;" so as to read:

The said court shall have power to issue writs of error, *mandamus*, *scire facias*, *habeas corpus*, and all other writs which may be necessary or proper to the exercise of its jurisdiction and agreeable to the principles and usages of law, and which the circuit courts of the United States now have.

The amendment was agreed to.

Mr. PUGH. Mr. President—

Mr. VEST. Will the Senator from Alabama yield for a motion to adjourn?

Mr. PUGH. I am willing to submit to the pleasure of the Senate. I am ready to proceed now, if it is the pleasure of the Senate.

Mr. VEST. I move that the Senate adjourn.

Mr. DAVIS, of Illinois. I certainly do not want to keep the Senate here, but I want this bill to be acted on.

Mr. VEST. Discussion is not in order.

Mr. DAVIS, of Illinois. If there is an agreement to take a vote on the bill, say at three o'clock to-morrow— ["Yes!" "Yes!"]

Mr. ALLISON rose.

The PRESIDING OFFICER. Is the motion to adjourn withdrawn for the present?

Mr. VEST. No, sir.

Mr. DAVIS, of Illinois. One moment.

The PRESIDING OFFICER. Debate is out of order pending the motion to adjourn.

Mr. VEST. If there can be an agreement, I will yield.

The PRESIDING OFFICER. The motion is withdrawn. The Senator from Illinois [Mr. DAVIS] is recognized.

Mr. SHERMAN. I hope the proposition will be stated from the Chair, so that we shall all understand it.

The PRESIDING OFFICER. Is there objection to the understanding that a vote shall be taken on this bill—

Mr. DAVIS, of Illinois. At four o'clock to-morrow is now proposed.

The PRESIDING OFFICER. By four o'clock to-morrow? [A pause.] The Chair hears no objection, and it will be understood as the agreement of the Senate by unanimous consent.

Mr. DAVIS, of Illinois. After four o'clock there shall not be any debate.

The PRESIDING OFFICER. The agreement is to vote at four.

Mr. DAVIS, of Illinois. On the bill and amendments.

Mr. VEST. I renew my motion.

The PRESIDING OFFICER. The Senator from Missouri moves that the Senate adjourn.

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

HOUSE OF REPRESENTATIVES.

THURSDAY, May 11, 1882.

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

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

CORRECTION.

Mr. PHISTER. I rise to make a small correction of the RECORD. Yesterday, after the vote on the bill to enlarge the powers and duties of the Department of Agriculture, I was, at the request of the gentleman from Minnesota, [Mr. STRAIT,] paired with the gentleman from Wisconsin, [Mr. WASHBURN,] and the pair was announced by the Clerk, but I see it is not noticed in the RECORD. I would be glad to have the correction made.

COMMON SCHOOLS.

Mr. SHERWIN, by unanimous consent, reported from the Committee on Education and Labor, as a substitute for various bills on the same subject, a bill (H. R. No. 6158) to aid in the support of common schools; which was read a first and second time, and, with the accompanying report, ordered to be printed and recommitted.

HOMESTEADS.

Mr. RICE, of Missouri, by unanimous consent, from the Committee on the Public Lands, reported back adversely the bill (H. R. No. 344) to shorten the period required in homesteading the public lands to two years; which was laid on the table, and the accompanying report ordered to be printed.

AUGUSTUS D. BLANCHET.

Mr. HILL, by unanimous consent, introduced a bill (H. R. No. 6159) granting arrears of pension to Augustus D. Blanchet; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

EUGENE B. ALLEN.

Mr. ARMFIELD. Mr. Speaker, I ask by unanimous consent that the bill (S. No. 1120) for the relief of Eugene B. Allen be taken from the Speaker's table and put on its passage at this time.

Mr. RANDALL. Let the bill be read for information, reserving the right to object.

The bill was read.

Mr. RANDALL. Let us have the report read.

Mr. HOOKER rose.

Mr. BRIGGS. I demand the regular order of business.

The SPEAKER. The regular order of business being demanded, the bill is not before the House.

FRANCIS M. COX.

Mr. DAWES, by unanimous consent, from the Committee on Invalid Pensions, reported back the bill (H. R. No. 2567) granting a pension to Francis M. Cox; which was referred to the Committee of the Whole House on the Private Calendar, and the accompanying report ordered to be printed.

THOMAS MURRY.

Mr. DAWES, also, by unanimous consent, from the same committee, reported back the bill (H. R. No. 626) granting a pension to Thomas Murry; which was referred to the Committee of the Whole House on the Private Calendar, and the accompanying report ordered to be printed.

JAMES KING.

Mr. DAWES also, by unanimous consent, from the same committee, reported back the bill (H. R. No. 2812) granting a pension to James King; which was referred to the Committee of the Whole House on the Private Calendar, and the accompanying report ordered to be printed.

ADVERSE REPORTS.

Mr. DAWES also, by unanimous consent, from the same committee, reported back adversely the following cases; which were laid on the table, and the accompanying reports ordered to be printed:

A bill (H. R. No. 633) for the relief of Daniel W. Blake;

A bill (H. R. No. 643) granting a pension to Caroline Twombly;

A bill (H. R. No. 3746) granting an increase of pension to Samuel Jones;

A petition for a pension to George C. Tracy;

A bill (H. R. No. 4296) granting a pension to Joanna L. Shaw; and

A bill (H. R. No. 5434) for the relief of the heirs of Lois L. Weeks.

EUGENE B. ALLEN.

Mr. ARMFIELD. Objection is withdrawn to taking up Senate bill No. 1120, for the relief of Eugene B. Allen.

Mr. RANDALL. I reserve the right to object until the report of the committee accompanying the bill has been read for the information of the House.

Mr. BURROWS, of Michigan. I renew the objection, and shall not withdraw it during the day.

Mr. McLANE. I wish to submit some reports.

The SPEAKER. The regular order is called for.

Mr. VAN VOORHIS. Who demands the regular order of business?

The SPEAKER. The gentleman from Michigan, [Mr. BURROWS.]

Mr. VAN VOORHIS. I hope he will let me hand up some committee reports.

The SPEAKER. The regular order is called for, and nothing else is in order.

Mr. RANDALL. I move to dispense with the morning hour for the call of committees for reports.

Mr. VAN VOORHIS. I demand a division.

The House divided; and there were—ayes 49, noes 15.

The SPEAKER. Two-thirds have voted in favor of dispensing with the morning hour.

Mr. VAN VOORHIS. A quorum has not voted.

The SPEAKER. The point having been made that no quorum is present, the Chair will appoint tellers.

Mr. VAN VOORHIS. I will waive the point of order if I can have a chance to submit some reports.

Mr. REED. The gentleman has a promise, so far as I am concerned, to put in his reports.

Mr. RANDALL. I object. I do not agree to a gentleman forcing the House in such a way.

The SPEAKER. The Chair would be willing to recognize the gentleman from New York, but the regular order being called for it has no discretion in the matter.

Mr. VAN VOORHIS. I insist on the point that a quorum is not present unless I am permitted to submit my reports.

The SPEAKER appointed Mr. RANDALL and Mr. VAN VOORHIS as tellers.

Mr. VAN VOORHIS. At the suggestion of gentlemen I withdraw the point that a quorum is not present.

So the morning hour was dispensed with, two-thirds voting in favor thereof.

EXPLANATION.

Mr. KING. Mr. Speaker, I was unavoidably absent yesterday when the vote was taken on the passage of the agricultural department bill. I was attending to committee matters at the time. If I had been present, I would have voted in favor of the passage of that bill.

GENEVA AWARD.

The SPEAKER. The regular order of business having been demanded, the House now resumes as the unfinished business of yesterday the consideration of the bill (H. R. No. 4197) re-establishing the court of commissioners of Alabama claims, and for the distribution of the unappropriated moneys of the Geneva award, on which the gentleman from Vermont [Mr. GROUT] is entitled to the floor.

Mr. GROUT. Mr. Speaker, the Geneva award was for \$15,500,000. Of this sum \$9,553,800, including accrued interest, are still in the Treasury. The occasion of this award was the claim by our Government that Great Britain had failed to perform her duty as a neutral during the war of the rebellion in this, that she did not exercise due diligence in preventing the Alabama and the several other insurgent vessels which were built, fitted, and manned in her ports and by her citizens from sailing on their insurgent mission, though repeatedly notified by our Government of the warlike character and purpose of these vessels; and that as the direct result of this neglect of her duty, our citizens sustained heavy losses in the destruction upon the high seas of their ships and merchandise.

It was the duty of Great Britain as a neutral power to prevent her citizens from aiding and assisting the rebellion; and if the British

authorities paid no attention, as in fact they did not, to the repeated notices from our Government as to the character of these vessels, but allowed them to sail, this in itself, under the law of nations, was an act of war on her part.

It left her no longer a neutral but made her an ally of the enemy. This conduct on the part of Great Britain, resulting as it did in heavy losses to our citizens, was not, however, an offense against those citizens for which they could obtain redress of Great Britain, for the reason that it was an act of war. And no system of law, international or municipal, has provided a remedy by an individual for an act of war. The offense was not against the suffering citizens, though the mischief happened to be visited upon them, but was against the Government of the United States, for which under the law of nations she had a remedy if she was able to enforce it, and that was to appeal to arms and administer such punishment as should satisfy her offended dignity and make such reprisals as should indemnify for the losses of her citizens and all other losses incurred in consequence of such misconduct, including even the expenses of the war for satisfaction. In short, under the law of nations we could have proceeded until we were entirely satisfied. But the United States adopted another course. They sought first a friendly adjustment by agreement; but failing in that, they then negotiated for and finally obtained a settlement of the difficulty by arbitration, which resulted in an award of the gross sum above stated, not to individuals but to the United States, in satisfaction for all losses or damage to her or any of her citizens which the wrongful act of Great Britain had occasioned.

And here another fact should be noted. It is this: that those citizens of the United States whose merchandise was captured and ships destroyed by these confederate privateers had no remedy under existing law against the Government of the United States, for the simple reason that the loss was by an act of war. And though the Government owes its citizens protection, and for that reason they might have a moral claim upon the Government, yet it lies wholly within the breast of the Government whether or not it will compensate for such losses, and, as a rule, relief is only granted in cases of peculiar hardship. The citizen's only remedy is to appeal to the generosity of the Government. And now, keeping in mind the fact that the citizen suffering loss or damage by an act of war has no legal remedy whatever against either his own Government or the government committing the act, or against the individual or individuals committing the act, if it be an act of war, let us ask to whom shall the balance of this Geneva award be paid? There are three classes of claimants.

First. The marine insurance companies, which claim payment for the money paid by them as insurance upon destroyed ships and captured cargoes. Their claims would absorb the whole sum.

Second. The uninsured owners of vessels destroyed by the Nashville, Tallahassee, Shenandoah, before she reached Melbourne, and eight other cruisers, on account of which the Geneva tribunal did not hold Great Britain responsible, and which are known in this discussion as the "exculpated cruisers." These owners suffered actual loss and ask to be made whole. Their claim is for about twelve hundred thousand dollars.

Third. The ship-owners who paid war risks to the insurance companies, but whose ships were not destroyed, claim as actual losses by these cruisers to the extent of "war premiums" so paid. Their claims amount close to nine million dollars.

The losses of all the ship-owners from the acts of the Alabama, Florida, and Shenandoah, after Melbourne, called the "inculpated cruisers," have already been paid out of the award as provided under the act of 1874. In other words, they have been made whole. If they were uninsured the whole loss has been paid them; if insured, then so much of their loss as their insurance did not cover.

The insurance companies were also under the same act made whole. They were paid out of this fund their total losses. It is at least to be presumed that they were, for by that act every one of them had an opportunity to go before the distributing court and claim upon the whole of their war-risk business, including losses by the "exculpated cruisers," that they had sustained an actual loss, and to the extent of that loss receive full indemnity from this fund. But only to that extent, for the act itself contained this provision:

No claim shall be allowed in behalf of an insurer (individual or corporate) unless his losses on war risks exceeded the sum of his premiums on war risks during the rebellion. Act of 1874.

Under this act only three insurance companies appeared and claimed that upon the whole they had suffered losses in taking the war risks, and they were able to show the loss of only a small sum which has been paid them. The fact that other companies did not appear to claim a loss shows conclusively enough that they were not losers; but how much they made is not in every case apparent.

It is a fact, however, that the net profits of the eight New York companies which did a large share of the business were \$2,295,332.96 larger for the five years from 1861 to 1865, during the time of this business, after paying all losses, war and otherwise, than for the five years from 1866 to 1870. Thus do we see that the small loss suffered by three of these companies has been paid to them, and that the others, or some of them at least, made a large profit out of their war-risk business. And yet they are before Congress to-day asking the bulk if not the whole of this fund, not upon the ground that

they have been losers and that in equity it belongs to them, but upon the technical legal doctrine that it was received by the United States from Great Britain as money due to them, and that the United States holds it as a mere trustee and can only pay it over to them in discharge of the trust. That in the disposition of the money the Government has no discretion whatever, and nothing to do but to stand and deliver. The argument in support of this position is a very plausible and captivating one. Its advocates call attention to that familiar principle of law by which an underwriter who has paid for property destroyed is entitled to be substituted to all the rights and remedies which the owner may have, to reimburse himself for the loss. If the risk be a simple marine risk and the ship is wrecked, whatever may be saved from the wreck belongs to the insurer; or if through the fault of another vessel she was disabled and lost in mid-ocean, the underwriter would succeed to whatever remedy the owner might have against the vessel by whose wrongful act his own was lost. In short, under this doctrine of subrogation the insurer, by payment of insurance, succeeds to all the rights of the insured. He owns whatever may be left of the property. He may pursue any remedy which the owner could have pursued. The insurance companies say they insured against capture; that the vessels were captured and that the United States recovered at Geneva for those captured vessels, and in doing this the United States acted as agent of the claimants, and having received the money they hold it in trust precisely as an agent or attorney does money which he has collected for a client. This, in brief, is the claim of the insurance companies. It rests, as will be seen, upon the cold technicalities of law; upon a set of legal sequences which they claim would, before a legal tribunal, inevitably give them this money.

It is a purely legal question, and as such invites legal scrutiny. The trouble with it is, it starts out upon a false assumption. The very first step in the line of reasoning is a false one. It assumes that the owners of the destroyed vessels and cargoes had a legal claim against Great Britain for their loss, to which the insurance companies, under the law, would be subrogated. But we have already seen that this could not be so, for the reason that the destruction of this property by these insurgent cruisers was an act of war, committed under the confederate flag, by order of the confederate government; and the charge against Great Britain was that she so conducted herself that instead of maintaining her neutrality, as under the proclamation of the Queen she was bound to do, she became a participant in this act of war, and so answerable to the Government of the United States, but no more answerable to the individuals suffering loss than were the confederate vessels or the confederate government.

Any act committed on the high seas by authority of the confederate government was as much an act of war as if committed by Lee's army in Virginia or Pennsylvania; and who ever heard of a lawyer in either of those States bringing trespass *quare clausum* in behalf of some indignant farmer upon whose wheat-field the commanding general of either army pitched his camp or his battle? Or, who ever heard of the unlucky soldier on either side bringing suit for assault and battery for a malignant bayonet-thrust from the other. The old Latin maxim obtains—*Inter arma silent leges*. If an act be an act of war, the law takes no knowledge of it. There is no legal redress for it. This is why the owners of these destroyed vessels had no legal claim against either Great Britain or the United States, or the individuals destroying them. If this be so—and no principle in law is better settled—then the insured had no legal rights to which the insurers could be subrogated; and wanting this, the whole argument fails. Its foundation is gone.

The only possible right which the owners of these destroyed vessels had to which the insurance companies could be subrogated was the privilege of appealing to the generosity of the Government of the United States; not to the courts, for as they had no legal claim they could have no standing-place in a legal forum; but to the generosity and justice of the Government as embodied in the highest court known to our system, the Congress of the United States. But from this tribunal, possessing as it does a law and equity jurisdiction limited only by the Constitution and the conscience of its members, these insurance companies are seeking to escape.

They want their claim to this fund referred to the courts, and the minority of the committee recommend that it be so referred, not to be considered by the courts with the same discretionary power and the same unlimited jurisdiction which Congress holds over the subject, but to be determined by the courts upon the strict rules and the analogies of law.

But we have already seen that if the question were in the courts the decision upon legal grounds ought to be against the insurance companies; and if against them, the courts would still have no power to award the fund, in the exercise of an equitable discretion, to the other claimants. They could only say that no one had any legal claim to it, whereby the whole subject would again revert to Congress, and the delay in the distribution of this money, already in the estimation of some discredit to that body, be still further prolonged. If, however, inasmuch as the insurance companies are already made whole, the courts upon legal grounds would give them this fund, then that in itself is sufficient reason why it should be withheld from them and disposed of by Congress according to its sense of justice and equity. What the chairman of the Committee on the Judiciary [Mr. REED] says upon this point in reporting the

bill is so well said that I cannot do better than adopt it. It is as follows:

To the proposition to refer the matter to a court, your committee are strenuously opposed. No court established to try the ordinary affairs between man and man is competent to deal with this subject. Courts of this kind are governed by general rules, which do justice in the great majority of cases, but injustice in many. If any of their rules could be stretched by analogy or construction, so as to cover this case—which we do not believe—they might do injustice, for the general rules must prevail regardless of the result. There is no court in the land which has not decided cases with expressions of regret at injustice done in the particular, to save justice to be done in the general. For these acts of injustice we have a consolation in the ordinary affairs of life, that the average would be right, and that the largest amount of justice attainable in courts could be done only under general rules. This consolation we could not have in the matter now before us. There can be no average where there is only one.

To take a case from a tribunal which can do justice and give it to a tribunal which may not, would be both wrong and delusive. It has the further disadvantage of not meeting the question in an open way. The duty belongs to Congress to determine the principles which will do justice in this particular case. If there were a series of such cases likely to occur a general law might be made which on the whole would do average justice.

If this case were one of a series which had happened, and was likely to happen in large numbers in the ordinary affairs of men, it might be well to relegate it to a court which had the stored wisdom of ages adapted to every-day affairs. But when a question involving large interests unlike anything ever before considered by men comes up for decision before a tribunal which has all the power necessary to do right, it will not be doing its duty if it delegates the question to another and an unsuitable tribunal of limited powers simply because the question proves to be complex and difficult.

We are well aware that the proposition has been gilded by the words, "justice and equity and the laws of nations," but those words in this case are beguiling. When these things are talked of before Congress, "justice and equity" mean a comprehensive "justice and equity," which Congress alone can administer. But, after such a bill had passed, "justice and equity" would be the justice and equity of law, which is a widely different thing.

Whatever other points may be in doubt, it must be accepted as clear that it is the duty of Congress to speedily dispose of this subject, and as equally clear that it possesses full jurisdiction in every aspect of the case, legal as well as equitable. Then why refer it to the courts; why not promptly dispose of it ourselves?

But the insurance companies, still suggesting legal grounds for their claim, say, though they had no legal claim against Great Britain, still the United States presented it, such as it was, and have received the money upon it, thereby creating the relation of trustee, by which there is so much money in the hands of the United States belonging to them. If this relation of trustee, in a legal sense, exists; if the United States collected a claim against Great Britain as a claim due these insurance companies, and it was so understood by Great Britain, the United States ought to be estopped, and would be estopped in a court of justice, from now denying that it belonged to them; and Congress could not honorably withhold the money from them for a moment, notwithstanding the fact that their losses have already been made good, and that this whole fund would be so much clean profit added to their already large gains out of their war-risk business, as in fact it would be.

The trouble with this proposition, however, is that the United States did not present any claim at Geneva as the claim of an individual. The affair at Geneva was not one between individuals and Great Britain, but between the United States and Great Britain. It should be kept in mind that the wrongful act committed by Great Britain was not against individuals, but against the majesty, the dignity, and the peace of the United States; and that wrongful act, so far as Great Britain was concerned, was complete the moment the insurgent cruisers left her ports on their warlike mission; and what they afterward did could be referred to, and was referred to, in the arbitration only for the purpose of showing the damage that resulted from that wrongful act.

The following instructions to our agent at Geneva, from Secretary Fish, show whether the United States Government understood it was acting in a way to create a technical trusteeship, containing all the legal and moral obligations of that relation. They are as follows:

The President desires to have the subject discussed as one between two governments. In the discussion of this question and in the treatment of the entire case you will be careful not to commit the Government as to the disposition of what may be awarded. The Government wishes to hold itself free to decide upon the rights and claims of insurers upon the termination of the case. If the value of the property captured or destroyed be recovered in the name of the Government, the distribution of the amount recovered will be made by this Government without committal as to the mode of distribution.

Could anything be more explicit as to the purpose of our Government? The understanding of Great Britain was equally clear. Mr. Gladstone, at that time prime minister, said when interrogated in Parliament:

The Alabama claim was a public claim arising between the two governments.

Also that—

No claims of individuals have been submitted to arbitration in relation to the Alabama. What was submitted to arbitration was entirely a matter between two governments.—*Foreign Relations, United States, pages 74, 377.*

From the foregoing it is apparent that what the United States did at Geneva they did upon their own account as a nation and not as a claim-agent for individuals, although individual claims were the meritorious cause of the allowance, precisely as the minor child is the meritorious cause of the claim due to his father, not to himself, for his earnings.

The minor child, unless emancipated, has no claim for his earnings. He cannot bring suit against the man for whom he has labored any more than these individuals could have brought suit against Great Britain for these claims. The father alone can enforce a claim for the earnings of his minor child, and whoever heard of the father by reason of collecting such a claim being made a trustee of his child? No more could the nation be made a trustee for the claim of a citizen which the nation alone could collect. An instinctive parental justice in the one case would deal liberally, at least justly, with the child on account of the fund, and in the other case a lively sense of national justice stands ready to deal fairly with every American citizen whose claims were the meritorious cause of this allowance against Great Britain. Nevertheless the insurance companies desire the consideration of this question of trusteeship by a more technical tribunal than Congress; one in which the common law, which we are told is only another name for common sense, is administered.

Let us, then, invoke the common law as administered by the courts of England in which it had its birth. This question has never yet been decided by the courts of the United States for the reason that it has never yet come before them; but it has been repeatedly decided in England, and always that no trusteeship was created in favor of the citizen against the government for money received, as the Geneva award was received, by our Government. A single case, however, must suffice, the case of *Rustomjee vs. The Queen*, 122 Queen's Bench, 477.

The Emperor of China paid the Queen of Great Britain under a treaty \$3,000,000 on account of debts due British subjects from Chinese merchants who had become insolvent.

Rustomjee was one of these creditors, and brought his "petition of right" against the Queen for his debt, claiming that the government held it in trust for him, precisely as the insurance companies claim in this case. The Court of Queen's Bench, Sir Alexander Cockburn, one of the arbitrators at Geneva, delivering the opinion, said:

In such a case a petition of right will not lie. The notion that the Queen of this country, in receiving a sum of money in order to do justice to some of her subjects, to whom otherwise injustice would be done, becomes the agent of those subjects, seems to me really too wild a notion to require a single word of observation beyond that of emphatically condemning it. In like manner, to say that the sovereign becomes the "trustee for subjects on whose behalf money has been received by the Crown," appears to be equally untenable. It comes simply to this, that her majesty, in order to enable her to see that injustice is not done to her subjects, stipulates for the payment in her hands of a sum of money. The distribution of that must be left to her majesty's discretion.

This case was taken to the court of appeals, and the judgment of the Court of Queen's Bench affirmed, Lord Coleridge, chief justice, saying:

We assent, upon full consideration, to the reasoning of the judges in the court below. The making of peace and the making of war, as they are the undoubted, so they are perhaps the highest acts of the prerogative of the Crown. The terms on which peace is made are in the absolute discretion of the sovereign.

The Queen might or not, as she thought fit, have made peace at all; she might or not, as she thought fit, have insisted on this money being paid her. * * * We do not say that under no circumstances can the Crown be a trustee; we do not even say that under no circumstances can the Crown be an agent; but it seems clear to us that in all that relates to the making and performance of a treaty with another sovereign the Crown is not, and cannot be, either a trustee or an agent for any subject whatever.

We do not, indeed, doubt that on the payment of the money by the Emperor of China there was a duty on the part of the English sovereign to administer the money so received according to the stipulations of the treaty, but it was a duty to do justice to her subjects according to the advice of her responsible minister; not the duty of an agent to a principal, or of a trustee to a *cestui que trust*.

What do the insurance companies say to this decision? In a pamphlet just out, reviewing the majority report, counsel for the Great Western Insurance Company make this answer—

Mr. HOOKER. Will it interrupt the gentleman from Vermont to ask a single question in this connection?

Mr. GROUT. Not at all, only I do not consent that it shall come out of my time.

Mr. HOOKER. I desire to know of the gentleman from Vermont if these insurance companies who are claiming a part of this fund have incurred risks and losses, why they should not be entitled to their proper proportion of the fund as well as anybody else?

Mr. GROUT. If the gentleman from Mississippi had heard the first portion of my remarks just submitted to the House, he could not fail to see that their actual losses had all been met. When he talks about the matter of "risks" he enters an uncertain realm.

Mr. HOOKER. Do I understand the gentleman to say that their actual losses have been paid out of this fund?

Mr. GROUT. Out of this very fund, certainly; every dollar of them. They were entitled to go before the court under the act of 1874 and receive the amount of their losses. Only three of the companies went before the court, as has been already shown, and they have been paid their losses. Presumably those who did not appear suffered no loss. It is moreover quite clear that they made large profits out of their war-risk business.

The following is the answer, Mr. Speaker, of the insurance companies to the decision in *Rustomjee vs. The Queen*, as made in the pamphlet already referred to:

The language relied upon in this decision does not justify the inference that a republican form of government should follow the example because a sovereign by divine right may refuse to recognize his agency to a subject which would hardly become a republican government, elected by the people as their agents and trustee.

To this it is only necessary to reply in the language of the Supreme Court in *Savings Bank vs. United States*, 19 Wall., 237, in which Mr. Justice Strong, giving the *per curiam* opinion, says:

It may be considered as settled that so much of the royal prerogatives as belong to the King in his capacity of *parens patrie* enters as much into our political state as it does into the principles of the British constitution.

The sovereign power of the state, the power to execute the laws, to declare war, and make peace, is the same thing wherever or however exercised. In Great Britain it exists in the Crown. In the United States it rests primarily with the people; but as a political entity, through which the state expresses itself, it is found in the President and Congress; and if under the common law the British Crown is held free to dispose of money received from another power for the benefit of its subjects, in like manner the sovereign power of the United States must be left free to dispose of money received from another power for the benefit of her citizens.

Other decisions might be cited, but the case of Rustomjee against the Queen must be accepted as disposing of all claim by the insurance companies to this fund on the ground of agency or trusteeship, and as leaving it rightfully under the control of the sovereign power of the nation to be disposed of according to its sense of justice.

Now, to whom should Congress order this fund paid? We have seen that it is free from all legal claim on the part of any one; especially free from legal claim on the part of the insurance companies. In the face of this fact and the further fact that they have already been made whole, will any one say that they have an equal moral claim with those who suffered similarly but have not yet been made whole? No! Every instinct of justice goes out toward those who are still unpaid. Who are they? The second and third classes of claimants in the list already given, namely, those who suffered losses from the "exculpated cruisers" and those who paid "war premiums" to the insurance companies. The bill reported by the majority of the committee provides for the payment of these claims. Ought there to be objection to this? Manifestly not; and yet there is. Who objects? The insurance companies. Their objection, so far as their own claim to it is concerned, has been disposed of. But they raise a further objection, not upon moral or equitable considerations, but upon the technical legal ground (their objections are all of a technical character) that as this second and third class of claims were not allowed at Geneva, they should not be allowed or paid by the United States; at least, not out of this fund; thereby leaving it in the Treasury, unless they can have it, in the hope, of course, that it may somehow yet be reached by them.

It is true these claims were not allowed at Geneva; but let us see why not allowed. They were presented by the United States for allowance.

The following is the statement as presented by our counsel before the tribunal. (American case, volume 1, page 185.) The second class of claimants now before Congress, namely, for losses by the "exculpated cruisers," was included in item 1. The third class, namely, for "war premiums," is identical with item 4:

1. The claims for direct losses growing out of the destruction of vessels and their cargoes by the insurgent cruisers.
2. The national expenditures in the pursuit of those cruisers.
3. The loss in the transfer of the American commercial marine to the British flag.
4. The enhanced payments of insurance.
5. The prolongation of the war, and the addition of a large sum to the cost of the war and the suppression of the rebellion.

The second, third, fourth, and fifth items were wholly disallowed, and so much of item 1 as was for damages by the eleven "exculpated cruisers," holding Great Britain, as already stated, only for the acts of the Alabama, Florida, and the Shenandoah, after Melbourne. It has been thought by many that the allowance against Great Britain was a pitifully small one, as indeed it was when the magnitude of the wrong she did us and the spirit in which she did it are recalled. Under the law of nations, to entitle an insurrection to belligerent rights it must have an army, and, if it has a seaboard, a navy, and must have made such progress in the way of successful revolution as to justify the belief that it will succeed. Now, under this rule see what Great Britain did. So soon as she heard of the firing upon Fort Sumter, by royal proclamation she granted the rebellious States belligerent rights, before they had won a battle or had a single vessel of war afloat.

And then, as if to supply this glaring deficiency among the accepted requisites of nationality, she straightway applied herself to the work of furnishing the confederacy with ships of war, which, only for her proclamation, would have been pirates instead of privateers.*

It was a favorite view of Senators Sumner and Chandler, and many other leading American statesmen, that Great Britain should be called to account for the premature recognition of the revolted States as belligerents in violation of the international code; which, coupled with her conduct in furnishing them with ships of war, made her

* They would have been, in the estimation of English laws, as well as the law of nations, piratical vessels. They never, therefore, would have been on the ocean, and the vessels and cargoes belonging to American citizens destroyed by them would have been in safety. Upon this ground, then, independent of the question of proper diligence, the obligation of Great Britain to meet the losses seems to me to be most apparent.—*Reverdy Johnson to Secretary Seward, correspondence concerning claims vs. Great Britain*, volume 2, page 764.

liable for all the damages done by those ships, both direct and consequential. And it seems that our Government held the same view at one time. This is apparent from the following abstract of the formal note from Secretary Seward to Great Britain, May 20, 1865:

That the act of recognition was precipitate and unprecedented.
That it had the effect of creating these parties belligerents after the recognition, instead of merely acknowledging an existing fact.

During the whole course of the struggle in America, of nearly four years in duration, there has been no appearance of the insurgents as a belligerent on the ocean, excepting in the shape of British vessels, constructed, equipped, supplied, manned, and armed in British ports.

That the injuries thus received * * * are of so grave a nature as in reason and justice to constitute a valid claim for reparation and indemnification.

That the nation that recognized a power as a belligerent before it had built a vessel, and become itself the sole source of all the belligerent character it has ever possessed on the ocean, must be regarded as responsible for all the damage that has ensued from that cause to the commerce of a power with which it was under the most sacred of obligations to preserve amity and peace.

Secretary Seward further wrote officially, June 13, 1868, as follows:

I have been singularly unfortunate in my correspondence if I have not given it clearly to be understood that a violation of neutrality by the Queen's proclamation and kindred proceedings of the British Government is regarded as a national wrong and injury to the United States, and that the *lowest* form of satisfaction for that national injury that the United States could accept would be found in an indemnity, without reservation or compromise, by the British Government to those citizens of the United States who had suffered individual injury and damage by the vessels of war built, equipped, manned, fitted out, or entertained and protected in the British ports and harbors.

There is not one member of this Government, and, so far as I know, not one citizen of the United States, who expects that this country will waive, in any case, the demands that we have heretofore made upon the British Government.—*Correspondence concerning Claims vs. Great Britain*, volume 3, page 688.

Now, had the United States insisted upon a settlement with Great Britain in accordance with the above claim, upon the ground of a premature recognition, it is plain that every one of the five items as presented by our counsel at Geneva would have been allowed—including, of course, losses by the "exculpated cruisers" and the "war premiums." Why did not the United States Government insist upon a settlement with Great Britain in accordance with the formal note of May 20, 1865, and the letter of June 13, 1868, and thus have possessed itself of the losses sustained by those two classes of claimants? For the reason that our Government thought it could better serve its interests not to press the claim upon that ground, as will hereafter more fully appear.

The treaty of Washington was ratified June 27, 1871, two ineffectual attempts having previously been made by our minister at Great Britain to reach a basis of settlement. The first did not receive even the approval of the President, and was never submitted to the Senate; the second was rejected by the Senate principally upon the ground that it provided for only individual losses, and not at all for the great national wrong under which the American people were smarting. It did not so much as contain or provide for an apology by Great Britain. But in article 1 of the treaty of Washington is found not only an ample apology but a distinct recognition of the fact that the two governments were arbitrating matters between themselves upon their own account and not upon the account of individuals. It is as follows:

ARTICLE 1. Whereas differences have arisen between the Government of the United States and the government of her Britannic majesty, and still exist, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the "Alabama claims;" and whereas her Britannic majesty has authorized her high commissioners and plenipotentiaries to express in a friendly spirit the regret felt by her majesty's government for the escape, under whatever circumstances, of the Alabama and other vessel from British ports, and for the depredations committed by those vessels; now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims which are not admitted by her Britannic majesty's government, the high contracting parties agree, &c.

The treaty further provided that "the tribunal should decide all questions that shall be laid before them on the part of the two governments," and spoke of the two governments as the "two parties" to the case, and nowhere said anything about individuals in connection with the Alabama claims.

The treaty also laid down three rules of international law, as follows:

First. To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or carry on war against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction to war-like use.

Second. Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the renewal or augmentation of military supplies or arms, or the recruitment of men.

Third. To exercise due diligence in its own ports and waters, and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

These rules Great Britain would not admit were then the law, but she agreed they should govern in the arbitration, and that she would be governed by them in the future and do what she could to secure their adoption by other nations.

The tribunal met on the 15th of December, 1871. The United States presented their case under the five general items already given. Counsel for Great Britain at once objected to the third, fourth, and fifth items as outside the jurisdiction of the tribunal to hear and determine under the treaty.

On the following day the tribunal adjourned to June 13, 1872. Meantime the British press and people entered a violent protest against the consideration by the tribunal of the "indirect losses," included in the three last items, and even went so far as to demand a withdrawal from the arbitration if they were insisted upon when the tribunal should again meet. The tribunal met according to adjournment.

Counsel for the United States submitted their arguments, but Great Britain declined to proceed and asked for a further delay in order to obtain a modification of the treaty excluding the "indirect losses." At this juncture the tribunal announced the following decision:

After the most careful perusal of all that has been urged on the part of the Government of the United States in respect of these claims, they have arrived, individually and collectively, at the conclusion that these claims do not constitute upon the principles of international law applicable to such cases good foundation for an award of compensation or computation of damages between nations, and should, upon such principles, be wholly excluded from the consideration of the tribunal in making its award, even if there were no disagreement between the two governments as to the competency of the tribunal to decide thereon.—*Papers relating to treaty of Washington*, vol. 4, p. 20.

This decision was accepted by our Government not only as final but as entirely satisfactory. See Secretary Fish's letter to our agent at Geneva, Mr. Davis, as follows:

In accordance with such judgment and opinion, from henceforth he [the President] regards the claims set forth in the case presented on the part of the United States for loss in the transfer of the American marine to the British flag, the enhanced payment of insurance, and the prolongation of the war and the suppression of the rebellion as adjudicated and disposed of, and that consequently they will not be further insisted upon before the tribunal by the United States, but are henceforth excluded from its consideration by the tribunal in making up its award.—*Correspondence*, 152.

Thereupon the trial proceeded, and the tribunal disallowed item two as not being distinguishable from the current expenditures of the war. The whole allowance was under the first item, and the whole of that item allowed except losses by the "exculpated cruisers."

Thus do we see, in the first place the United States Government forebore from pressing their claim for satisfaction upon the ground of the premature recognition of belligerent rights, and accepted therefor, in the treaty of Washington, the three rules of international law; and in the second place, the Government complacently accepted the disallowance by the tribunal, under the three rules, of the "indirect claims." The Government really did more than this. In order to save the arbitration, which was really in peril when Great Britain was refusing to proceed, and asking for a supplemental article to the treaty, (Foreign Relations, volume 2, page 526,) our Government offered to accept such an article.

You may say that this Government regards the new rule contained in the proposed article as the consideration, and will accept it as a final settlement of the three classes of the indirect claims put forth in our case.—*Fish to Schenck*, same, page 557.

But the matter was finally disposed of by the decision already quoted, which was far more satisfactory to the United States than a supplemental article, for that would have committed only Great Britain to its provisions, whereas the decision of the tribunal committed every one of the five great constitutional powers represented on the tribunal to such a limitation of the duties of a neutral as was thought to be of peculiar advantage to the United States in the future, for the reason that under our traditional policy of non-intervention enjoined by Washington in his Farewell Address and from our comparatively isolated position we shall be likely to be a neutral more of the time in the future than a belligerent, and as a neutral with our great extent of seaboard it might be difficult to always perform our neutral duties. Our Government saw this and thought it might perhaps be well to look a little to the future and not wholly to the past. While we desired a large allowance against Great Britain for her misconduct, we could not afford to have the liabilities of a neutral too much enlarged; could not afford—

To teach a lesson
Which being taught, might return
To plague the inventor.

Accordingly, during the adjournment of the tribunal, the United States directed its diplomacy to securing from the tribunal when it should reassemble a decision adverse to the "indirect claims." They did not wish to withdraw those claims, but were willing the tribunal should reject them, thus establishing by that high authority that a neutral power for the mere non-performance of neutral duties should not be liable for that class of claims. That the United States did so direct its diplomacy is apparent from the following letter from Sir Edward Thornton, the English minister then resident in this city, to Lord Granville, the British minister of foreign affairs, written just before the reassembling of the tribunal:

Mr. Fish said that the United States were quite as much interested as Great Britain in obtaining from the tribunal a decision adverse to those claims. * * * Mr. Fish told me that Mr. Adams left New York for England on the 24th instant, and that on his arrival there he would convince your lordship, though unofficially, that he [Mr. Adams] was entirely opposed to the principle of claims for consequential damages.—*Papers*, &c., volume 2, page 482.

Mr. Adams was the arbitrator on the part of the United States, and it seems, after unofficially convincing his lordship, and thus preserving the arbitration, he officially decided against these claims.

If further proof be necessary that the United States consented to the disallowance of these claims, it may be found in a letter from Minister Schenck to Lord Granville, written also just before the tribunal assembled. (Schenck to Earl Granville, volume 2, page 478:)

The United States insist that they are entitled to a decision as to each class of claims, * * * but the United States have not desired or expected any award of compensation from Great Britain for the indirect damages. They have ever been free to admit in advance that it would have been better for the future advantage and interest of nations generally that the judgment of the arbitrators should be adverse to that class of claims. * * * It is important * * * that every question in regard to such claims should be solemnly considered and passed upon. Thus you should clearly see the reason why the President may be able to agree not to press for a money award on claims, * * * while he refuses to withdraw them.

And again:

In the correspondence I have gone as far as prudence would allow in intimating that we neither desired nor expected any pecuniary award, and that we should be content with an award that a State is not liable in pecuniary damages for the indirect results of a failure to observe its neutral obligations. It is not the interest of a country situate as are the United States * * * to have it established that a nation is liable in damages for the indirect, remote, or consequential results of a failure to observe its neutral duties.—*Papers*, &c., volume 2, page 476.

Now, Mr. Speaker, from the foregoing it must be clear that in order to establish the desired rule of international law and save the arbitration—when Great Britain, alarmed at the magnitude of these claims, threatened to break away from it—our Government, making a virtue of necessity, yielded this point and acquiesced in their disallowance, though it might have insisted and referred the difference to the arbitration of arms. But instead of plunging the country into war and dooming the American people again so soon—

To go in company with pain,
And fear, and bloodshed, miserable train,
It turned this necessity to glorious gain.

A gain not for individual claimants, but for the whole American people; not for the past, but for the future. It is clear that to obtain a right construction of the three rules and at the same time save the country from war these "indirect claims" were sacrificed; were deliberately thrown overboard in order to get into port with any kind of an award under the treaty.

Nor was this to the discredit of our Government, for the reason that the United States was at Geneva upon her own business, and not upon the business of individual claimants? The Government did at Geneva what it thought was for the best interests of our American nationality; not alone for those who had suffered from the insurgent cruisers, nor for them any more than for every other class of American citizens, but for all alike. And not only for this generation, but for the generations to come.

Now, in view of the foregoing facts, who will say that the United States is under any less obligation to those citizens whose claims were presented at Geneva and disallowed, than to those citizens whose claims were allowed? She used all these claims to serve her own purposes, as she had a perfect right to do, abandoning some and insisting upon others, as her interests prompted, and out of the whole, in the expressive language of Sir Alexander Cockburn in *Rustomjee vs. The Queen*, "received a sum of money in order to do justice to certain of her citizens to whom injustice would otherwise be done," for the reason that as individuals they were wholly remediless.

Out of this fund the Government has already done "justice" to the insurance companies and to those suffering direct losses from the "inculpated cruisers." She has made those two classes of claimants whole; and there is still left enough of this fund to do "justice" to those who suffered from the "exculpated cruisers" and those who paid "war premiums"—just about enough to make them whole. Shall this be done and history furnished the fact that every one of our citizens who suffered losses from these Anglo-rebel corsairs were made whole out of the Geneva award? Or shall we refuse these two last classes because, in order to make other important points under the treaty, our Government abandoned these claims at Geneva, and pay the money to the insurance companies, as some advise, or, as others advise, leave it in the Treasury?

The claim of the insurance companies has been fully considered and disposed of; and, sir, he who thinks this money can be kept in the Treasury and these losers turned away empty-handed misunderstands alike his own judgment and the conscience of the American people. Shall we pay this money to these losers? Of course they have no legal claim against the Government any more than those had who have already been paid. Their claim rests wholly upon moral grounds. They can only appeal to the justice of the Government; and it is a principle of public law that where the Government is able and the case one of special hardship the Government will grant relief even out of her Treasury for losses sustained by an act of war. Here the money is not to be taken from the Treasury, but from a fund obtained in the adjustment of these very losses.

Very briefly, what are the merits of these claims? Of those suffering from the "exculpated cruisers," the case of the *Delphine*, built and owned at Bangor, Maine, may be taken as a representative one. She was burned by the *Shenandoah* December 29, 1864, before that vessel reached Melbourne. During the capture the *Shenandoah* carried the English flag, but displayed the confederate flag while the vessel was

burning. The claim for the Delphine was disallowed at Geneva on the ground that it was not sufficiently shown that the English Government had notice of the warlike character of the Shenandoah before she sailed from London on the 8th of October previous. But while at Melbourne the British Government had such notice that after she left that port Great Britain was held for the damage she did.

The Delphine was worth, say, \$1,000,000, and was uninsured. Now, every one will say there ought to be some way to indemnify her owner who by her loss was made a poor man, and no one will say that the moral obligation of the United States to do so is any less because Great Britain escaped the payment of this claim. This case seems to be one of peculiar hardship, and appeals powerfully to the generosity of the Government, but probably not more so than every other claim of this class which makes up the total of \$1,200,000. Hardly less meritorious is the claim of those ship-owners who paid "war premiums" to the insurance companies.

The moment it was known in commercial circles that these insurgent cruisers were afloat, no vessel carrying the American flag could obtain a pound of freight unless it was insured against capture, which of course came out of the owner of the vessel, as did also the war risk upon the vessel itself. These "war premiums" were at one time as high as 10 per cent. upon a voyage of three months, thus aggregating 40 per cent. per annum. The total amount of these premiums is almost \$9,000,000. Ship-owners were compelled to pay these premiums, or let their ships rot by the wharves, or dispose of them to foreign flags at the price of the purchasers.

Some of these owners, with a pride natural and at the same time honorable to the American citizen, clung to their vessels and paid these premiums till insolvency overtook them. Others were driven into the guano and rice and other low-cost traffic, and, after maintaining for a time the unequal contest, accepted the situation and sold for what they could get.

As the result 715 vessels, with a tonnage of 480,682 tons, were transferred from the American to the British flag alone during the four years of the war, and probably an equal or greater number were transferred to other flags, so that at the close of the war our carrying trade, once respectable, was practically destroyed. In 1860 more than two-thirds of the foreign commerce of New York was carried by American ships. In 1863, as the result of three years of war, less than one-fourth was carried under our own flag, and over three-fourths under foreign flags. And yet the gentleman from New York, [Mr. Cox,] who represents in part the locality furnishing these facts and to whom they ought to be known, a day or two since denied that the decline in American shipping was traceable to the war, and laid it to the tariff. He also denied that there had been any revival of our shipping interests since the war, which also needs correction. Though not as great as could be desired, there has been actual improvement.

In 1870 but 1,452,226 tons of freight in our foreign export and import trade were carried by American ships, while in 1880, 3,123,374 tons were moved upon American bottoms—a small but a certain improvement.

Now, Mr. Speaker, I venture the statement that no nation was ever yet great in maritime triumphs that did not protect her shipping when once created, as well as help it into existence. An efficient merchant marine is undoubtedly of great importance to any nation. It is a certain source of wealth and power, and yet it is the most helpless species of property known to the law, and for this reason it is the object of special protection with every nation that has ever yet risen to greatness on the deep.

Just now every one is deploring the insignificance of our ocean-carrying trade, compared with the magnitude of that trade itself and our own great share in the commerce of the world.

Gentlemen may talk here about the tariff, but before the American people will put their money into ships and send them down to encounter all the perils of the deep, you will not find them talking about the tariff, but they do want to know what the policy of the Government is to be toward that class of property when once those ships are afloat. They want to know whether in case of war the Government will be not only able but willing to protect her shipping interests, and whether if those interests be destroyed the Government is to turn a deaf ear to the losers, or whether they will deal liberally, at least justly, with this class of investors; at least, that is what these men whose ships were taken from them by these insurgent cruisers want to know before they will be likely to reinvest in this class of property.

Now, assuming that it has been clearly shown that Congress has rightful authority over the balance of the Geneva award, that it is free from all legal or further moral claim by the insurance companies, and that all other classes of claimants have been justly dealt with, who will say that what remains of that award ought not to be distributed among those claimants still before us whose property was destroyed or taken from them by the public enemy?

It must be admitted that the questions growing out of the distribution of this fund, new as they were to our people, have been perplexing ones. In fact, differing views have been held and are still held by the ablest men in both branches of Congress, as may be seen by the various majority and minority reports upon the subject and by the several votes of the two Houses. But for one, sir, my mind is clear. I am in favor, upon what I conceive to be plain principles

of justice no less than a sound public policy, of making every one of our citizens who suffered loss from these insurgent cruisers whole so far as this fund will do it.

If this is to be done it should be done without further delay. Almost ten years have elapsed since the award was made, and the public mind has tired of the subject; some journals, of no mean influence either, even advocating the return of the money to Great Britain as the honorable way out of the dilemma in which Congress has thus far felt itself involved. And if Congress would not establish the impression that it is unequal to the disposition of this question, it should act at once.

The Geneva arbitration and award mark an epoch in history. It furnished the spectacle of two great powers appearing in court and settling by peaceful means a serious national dispute, far more serious than has been the cause of many a vindictive and bloody war. And most fittingly has the capital of that little European republic, which was honored as the seat of this international tribunal, placed a memorial tablet commemorative of the event in the chamber of the Hotel D'Ville where its sessions were held.

It only remains for the American Congress to make such a just and wise distribution of the money there awarded as shall becomingly complete this important passage in our history.

Mr. WILLITS. Mr. Speaker, I oppose the bill presented by the majority of the committee. If I believed that the contest at Geneva was between nations simply, involving simply national questions, I should vote to keep this money in the Treasury, every dollar of it, and stand up and be counted in favor of that proposition every time. If I believed that this money had been obtained by this Government without any obligation to pay it to somebody, I should vote to keep it in the Treasury. The Government is rightfully in possession of this money. All parties concede that. If it was sued for as a nation, for national purposes only; if it was paid by Great Britain to the nation for national purposes only, it is held by the nation today for national purposes, and let us keep every dollar of it in the Treasury for national purposes.

It is said by one side that the insurance companies ought not to receive any of this money for the reason that they got their pay in war premiums before the vessels were destroyed. On the other hand it is shown conclusively that the owners of the vessels have got their full pay; first, the part insured from the insurance companies, and the balance in full from the fund under the act of 1874.

Now, on the other hand, the insurance companies insist that the men who paid the war premiums got their consideration as the time went along whether their vessels floated safely or not; got their consideration in the fact that their property was insured; got their consideration as much as I got the consideration in paying the premium on my policy of life insurance last year, though I did not die during the year; and for the reason that I had an assurance that if I died within the year there would be a sum left for my family.

So there seems to be nobody, according to the varied statements which are made in reference to this award, who has not been paid in full except the United States Government. The poor Government, as you might say; the Government is a loser all around. It has been a great sufferer and yet not a dollar of money derived from this award has gone into the Treasury of the United States Government for the Government. Now, I repeat that if I believed that this fund is held by the Government for no person, let us keep it in the Treasury because the Government has been the principal loser. If it is true as the majority claim that there is no obligation on the part of the Government to pay this fund in any direction, then I say again the best thing we can do is to keep it for ourselves.

But, Mr. Speaker, the discussion of this question from 1873 down to the present time has been based upon the assumption that this money does belong to somebody besides the United States Government; and if that be true it is no question of grace, it is no question of favor, to pay it over to the persons to whom it does properly belong. It is the duty of the Government, it is the obligation of the Government, to do it, and not a mere favor, not a mere act of grace, as claimed by the gentlemen who have preceded me. If you mean by favor, if you mean by grace, that we have no legal right to sue the Government, that we have no way of enforcing our claim against the Government, I grant you in that sense of the word it is a favor; but it is a right every man ought to have to get his just dues from the Government in some way or other. That much he is entitled to from all governments. It is no favor. Again, Mr. Speaker, it is not quite true, as was stated yesterday—it is not true as I understand it was stated—that in the treaty of Washington of 1871 private claims cease to have any existence. It is not true.

Mr. HUMPHREY. Will the gentleman permit me to interrupt him?
Mr. WILLITS. Not now. It is not true that in that treaty nothing but national claims were considered. It is not true that these claims were held, were used simply and purely to get the national damages claimed.

Now I will hear the gentleman from Wisconsin.
Mr. HUMPHREY. My statement was in substance that in the treaty of Washington, under article 12 of that treaty, claims on account of private citizens were to be allowed, or otherwise disposed of. But under the first article of the treaty the claims generically known as the "Alabama claims" were the foundation upon which the Geneva arbitration was based in disposing of the question of damages done to the nation for the great national wrong done her.

Mr. WILLITS. The distinction between the two classes of claims is perfectly marked. Those under article 12 were claims such as had been a subject of settlement for years under international law as it previously existed. Here was a new class of claims, private claims nevertheless, just as much private as the others were, but having a new element of facts in them that rendered it necessary there should be some basis on which they could be adjusted.

Now, I say, Mr. Speaker, it is not true, as I understand it, that these claims were used simply for the purpose of settling a national question. They were not used simply as a yardstick to measure damages due to the nation as such. Why, Mr. Speaker, from the very first these claims had been filed in the office of the Secretary of State, and for years and years were the animating principle that inspired the Government in making this very treaty. It is true that under the Johnson-Stanley treaty nothing but private claims was involved. It is true also that under the Johnson-Clarendon treaty nothing but private claims was involved. Yet they were involved nationally just as much under those two as under this of 1871, in this respect: that the Government presented them because no private citizen of the United States could make a claim for any such thing against the Government of Great Britain; he had to do it by and through his own national government; and therefore they were national, they were just as much a national claim in the Johnson-Stanley and the Johnson-Clarendon treaties as they were in the Washington treaty.

Mr. HUMPHREY. Was not that the reason the Senate rejected the Johnson-Clarendon treaty?

Mr. WILLITS. I am coming to that. The Senate did not reject it because it was a treaty for private claims. They rejected it—and Mr. Sumner expressly urged that it should be rejected—because the treaty was simply for private claims, and he insisted it should be for national claims besides. That is it exactly.

Mr. Sumner spoke against that treaty in his celebrated speech of April 13, 1869. He opposed it on the following grounds:

First. Because it contained no apology for England's insults and injury to the United States.

That was national. That was not in the Johnson-Clarendon treaty. That had nothing to do with the question of damages; did not in any way interfere with or include the question of private rights at all.

Second. That it made no provision for the adjustment of the national claim for damages.

Not because the claim for private damages "as a whole as a national loss" was not included in the treaty by any means, as stated yesterday by the gentleman from Maine, [Mr. REED.] And that is the distinction the gentleman from Maine [Mr. REED] has not properly made. It was because the treaty did not provide for the claim for our own national damages and not because the private claims were not made national. Mr. Sumner did not object at all to the treaty because the private claims had not been made national—not at all; but because the treaty did not include any claim for the damages to the United States itself. Further:

Third. That it recognized no rule of international duty applicable to such cases, or, to state it in his own words, "England simply proposes to submit the question of liability for individual losses to an anomalous tribunal where chance plays its part. This is all. Nothing is admitted even on this question; no rule for the future is established; while nothing is said of the indignity to the nation, nor of damages to the nation."

Nothing of the indignity to the nation nor of damages to the nation. Mr. Sumner added:

On an earlier occasion it was otherwise.

Now, what did we do? It was very manifest that the Johnson-Clarendon treaty was not broad enough. It did not include the national question. No objection was made because it did include the individual losses. What did we do? We made provision first for a treaty which had in it an expression of regret and apology. That was one point that Mr. Sumner wanted. Next we provided for an arbitration of national as well as private claims. There were national claims for damages as well as private claims for damages. Then the treaty established the three rules.

As I said before, the treaty as made provided for and saved the individual claims just as fully as the Johnson-Clarendon treaty did; so that it was simply a question of national claims not being included rather than of private claims not being included in the right manner.

The treaty was made, and our Government gave some construction to it; and perhaps it is as fair a way of determining what construction they gave to it as we can find to read the notices that were given by the Government to the various claimants. I will not read the whole of the notices, but simply enough to indicate what the point is, and will print the whole in my speech.

Under date of September 22, 1865, the following notice was issued:

Citizens of the United States having claims against foreign governments not founded on contract, which may have originated since the 8th February, 1853, will, without any delay which can be avoided, forward to this Department statements of the same, under oath, accompanied by the proper proof.

Starting right out with a recognition of claims against foreign governments. The reason is, because private individuals could not make any claim against foreign governments directly, but had to do it through our own Government.

Mr. HUMPHREY. I do not wish to interrupt the gentleman, but I would like to ask him this question: If a citizen of this Govern-

ment could have a claim against England in this case for want of due diligence on her part, if there was any claim whatever, was it not necessary that this Government as a sovereign Government must make it as a government, and did not the claim exist in favor of this Government, and not in favor of any private individual growing out of this want of due diligence?

Mr. WILLITS. I say that he would have a claim in the future; in the past he did not have any such right. Until the three rules were adopted, as I shall attempt to establish when I get to that point, he had no such right. But now, under the three rules as they have now become international law, he would have a claim just as much as the Government would have a claim against the foreign government. That is now international law. But before those three rules were adopted the individual had no right, because such a right had not been incorporated into international law. The point is this: whether private claims were not in this last treaty still held as a separate class.

Mr. HUMPHREY. Once more, and I will not interrupt the gentleman again. I understand that the three rules have simply determined this—and under the Geneva award it is now a matter of international law—that each nation is bound to use due diligence in a case similar to that which arose in the late war, and if it does not do so it is bound to the government which is injured by the want of such due diligence.

Mr. WILLITS. That is the law in relation to the future. But before those three rules were established individual claimants had no law upon which they could base their claims as they now have under these three rules. After the treaty was passed in September, 1871, this notice was given to claimants by the State Department:

Sir: I have to acknowledge the receipt of your letter of the — instant, and its inclosures. In reply, I inclose a copy of the treaty concluded with Great Britain on the 8th of May last, and general instructions as to the proof of claims prepared for the use of claimants in the absence of rules by the tribunal which may pass upon the claims.

Mr. BRIGGS. Did not the treaty embrace other claims besides those covered by the Geneva award, in a separate article?

Mr. WILLITS. Yes, sir.

Mr. BRIGGS. And did not the notice refer to those claimants?

Mr. WILLITS. No, sir. I will read further:

In the absence of rules, and in anticipation of the action of the tribunal, this Department cannot assume to determine what claims it may or may not be proper to prefer under the first eleven articles of the treaty, nor to direct what form or extent of proof will be necessary to establish them, nor the effect of insurance upon the question of right of compensation. * * * Persons desiring to lodge claims in the Department for that purpose are requested to do so without delay, in such form and sustained by such proofs as they may be advised or think proper to rest their claims upon.

The gentleman from New Hampshire [Mr. BRIGGS] will see that the notice was for claims under the first eleven articles, not under the twelfth, as the gentleman supposed. All through there was this question kept separate, this idea that there were private claims to be referred as such to the Geneva tribunal, not as a question of national loss but as a question of individual loss. And all through the correspondence the question of claims bristles in and on and over it all; it was a question of private claims as well as national, and private claims of a different character from those mentioned in article 12 of the treaty.

Before they got through there was nothing but individual claims left; everything else had been excluded. Everything that was national had been eliminated before they got through, and it came down to a question of private claims, just as much as it was under the Clarendon treaty.

That being so, and these claims having been presented by our Government, I say that in my judgment there is an obligation upon this Government to pay the parties for whom claims were presented. And notwithstanding what the gentleman from Wisconsin [Mr. HUMPHREY] said yesterday I believe, and it is so in the record, that the award was to be an indemnity to the sufferers and losers by the acts of the confederate cruisers. It was an indemnity given to the nation; the award was to be paid to the United States it is true, but it was an award with which the United States was to compensate the persons who had suffered losses.

Mr. HUMPHREY. Once more, if you please. The claim which we made against England was that she had committed an act of war against this Government. And when we received the \$15,500,000 we received it as an indemnity for the wrong done to us as a nation, just as much as if we had fought battles with England and had received the amount after such a war.

Mr. WILLITS. Everything the Government of the United States claimed as a nation was rejected, and nothing was allowed by the Geneva tribunal except what was given to us for individuals and as an indemnity to individuals. That being so, if it be true that the claims were allowed to be paid in the first instance to the Government of the United States, as I concede was done, then I think there is a moral obligation resting upon us which will sustain the legal right of the parties to the award that was given for them.

Mr. HUMPHREY. Only once more. Not every claim of the Government was rejected, but simply that part of the claim of the Government which was for speculative and indirect damages.

Mr. WILLITS. Everything that was national was rejected, and I will come to that before we get through.

Mr. HUMPHREY. They were all national.

Mr. WILLITS. We had \$15,500,000 given to us under that award. By the act of 1874 we paid away part of it to the owners of vessels, over and above what they had been insured, and in other ways, until the amount was reduced to about \$9,000,000. The question now is, What shall we do with that amount?

There were 129 vessels destroyed. Of those 129 vessels 89 had been insured and 40 were not insured. The owners of the 40 vessels which were uninsured have been paid in full. The owners of the 89 vessels which were insured have been paid, under the act of 1874, out of the award, the full amount and value of their vessels as proved, less the insurance money obtained from the insurance companies. Therefore the owners of the vessels have got their pay in full, partly from the insurance companies and partly out of this fund. Now, what shall we do with the balance?

Let us look briefly at the facts in the case. During the late civil war the confederacy equipped armies and with them destroyed hundreds of millions of the property of individuals on land; equipped a navy and did great injury on the high seas to the property of individuals. Primarily neither class had any remedy. It is one of the sad incidents of war that no nation can compensate such losses. But in this case of the injury on the sea, an element existed that did not on the land. This confederate navy was not equipped from its own ports. It was claimed that Great Britain, a neutral nation, had connived at its equipment in her ports, or had neglected her duties as a neutral, whereby this navy obtained power and means to injure us; that she had contributed to and was in a great measure responsible for its existence and success. We claimed that she was the cause of the great damage, and she must pay for it. Of this we gave her due notice from time to time.

After we had closed the war we took up the question of the responsibility of Great Britain for this great damage. We set our diplomacy to work, and in the mean time we proceeded to make up our little bill. It became necessary to know what had been destroyed, who had been injured, and to what extent. So notice was given to all parties to present their claims for damages. There was no guarantee that in the event of an award all should be paid. All were to be presented by our Government. There was no attempt to discriminate between them or to pass judgment on their equities or merits. Great stress is laid by some upon the fact that a list of these claims was tabulated in the State Department; and that in this list were included the claims of insurers and others, as though this fact alone was a recognition of their claim for payment out of the fund. We guaranteed nothing, neither did we recognize the validity of any one's claims. These claims individually and collectively were to be presented to Great Britain for payment, and if she paid them individually they would be satisfied, and if not they were to go without their pay. If she paid them all to the United States, there would be an implied provision that we were to pay all the claimants, at least what was fairly their due. If she paid only part, those rejected from the necessity of the case could not claim the money paid to or for the successful.

The result was that everybody considering himself injured put in his claim—owners of vessels, of freights, of cargoes, mortgages, seamen for their wages and personal effects, passengers for their baggage and for detention, underwriters, and those who had paid the enhanced insurance or war premiums; a consul put in a claim for loss of office, \$10,000; and a harpooner for personal injury, \$7,000; in fact everything that could be chargeable directly or indirectly was received and tabulated in due form, and the grand aggregate constituted the sum total of the damages claimed. Even the United States put in her claim of over \$7,000,000 for expenses in pursuit of the cruisers, with bills, vouchers, and orders, all certified to by George M. Robeson, Secretary of the Navy; this last was the national money damage directly resulting from the operations of the cruisers.

These claims were all for money, duly listed, accompanied by proofs more or less complete, and formed a grand aggregate of some \$26,000,000, exclusive of interest, which if added would bring the claim up to about \$35,000,000. In addition to the claims so listed the United States made claims to great damages, not capable of being definitely estimated, and for which no specific amount was demanded, but which were as real as those capable of being tabulated, to wit, (1) "the loss in the transfer of the American commercial marine to the British flag;" (2) "the prolongation of the war and the addition of a large sum to cost of the war and the suppression of the rebellion." For these two claims the United States asked compensation and remuneration as much as for the other three, which were (1) "the claim for direct losses growing out of the destruction of vessels and their cargoes by the insurgent cruisers;" (2) "the national expenditure in the pursuit of those cruisers;" (3) "the enhanced payments of insurance." And why not? They were as substantial; and the amount was so much larger if calculated in dollars and cents that the itemized bill dwindled into insignificance in comparison. This was the account stated in part with a bill of particulars and in part *ad damnum*, with the qualification that there was money in it.

These were the accounts made out under the treaty and claimed under it—all made possible and none excluded by it. There were some things settled by the treaty that did not go to the board of arbitration. England had early in the war recognized the confederacy as a belligerent. This she had a right to do, as an independ-

ent nation, even under the laws of neutrality. It was a matter in her own discretion and of itself was not a *casus belli*. Still our Government remonstrated against it, and for it we had a grievance. That act had given nationality to the rebellion and had sent a thrill of joy and had added assurance to the hopes of a rebellion that had assumed grave proportions. Because in part the Johnson-Clarendon treaty of 1869 had made no provision for this, as we thought, gross insult to us as a nation, it was rejected by the Senate. The balm was administered in the treaty of Washington, in an apology on the part of Great Britain for the insult. It is claimed that for this apology the United States bartered away some of the rights of its citizens.

Not so. The treaty of Washington rendered possible the five claims made under it, and without it they could not have been considered at all, and obtained the apology besides. Nothing was bartered away, except perhaps the indefinite claim for money damages for the added years of the war caused by the recognition of belligerency. For this we accepted the apology, and no private rights were curtailed by it. This injury was national, and no private claimant has just cause of complaint that it was not assessed in damages. Now, what did we gain by the treaty? A forum and a law to adjust claims for damages caused by the confederate cruisers. Bear in mind that before that treaty there was no recognized law giving damages for such an injury. Nothing short of war could enforce them. The confederacy had collapsed so that the immediate cause of the injury could not respond in damages, and England, the remote cause, utterly denied all liability for them.

The law of nations had made no provision for such a state of facts. History had chronicled no such a rebellion. Law was silent on the peculiar phases presented by it. And yet our Government said England ought to pay. England repudiated the claim. Formulated, the propositions were as follows.

On the part of the United States by Mr. Seward:

Upon these principles of law and these assumptions of fact, the United States do insist and must continue to insist that the British Government is justly responsible for the damages which the peaceful, law-abiding citizens of the United States sustain by the depredations of the Alabama.

On the part of Great Britain by Earl Russell:

Her majesty's government cannot, therefore, admit that they are under any obligation whatever to make compensation to United States citizens on account of the proceedings of that vessel.

In this condition of affairs it is plain there was slight chance for compensation. There was a dispute about the law, and a law had to be made which England would recognize. Finally about nine years' persistent diplomacy resulted in the treaty of Washington, which gave the forum and the law. Fault is found with the law, because under it some claims were allowed and some were rejected. Suffice to answer that it was made by two equal parties and had to have the assent of both. But let us examine it—that part that bears upon the point in issue.

What did we gain by the treaty? And here I come to the point suggested in the question of the gentleman from Wisconsin, [Mr. HUMPHREY,] whether before the treaty these claimants had any claim against Great Britain. I insist that they had not; that there was no law under which the claims could be made; that under the treaty we got the law by which the claimants obtained a status in an international court.

Mr. HUMPHREY. May I interrupt the gentleman a moment? We claimed as a nation that before the treaty we had a claim upon Great Britain. We claimed that under the foreign-enlistment act of England, which was enacted as much for our benefit as our foreign-enlistment act was enacted for hers, there was a tacit understanding that England was bound to use due diligence, as she had called upon us to use due diligence in similar circumstances. We had performed our duty in this respect during three wars in which she had been engaged; and she was bound as a matter of international law to pursue the same policy toward us.

Mr. WILLITS. We claimed all along that these three rules were the law, but Great Britain had denied it; that was the difficulty. The principle had to be incorporated as a part of the international law, and not until these three rules were adopted was there any basis for any such claim.

Mr. HUMPHREY. Oh, yes; Great Britain insisted that we should enforce our foreign-enlistment act for her benefit, but she refused to enforce hers for our benefit.

Mr. WILLITS. I understand that; but she denied the legal principle. I will show as I go along that this was a point England had never conceded until the treaty was made. It is only under the treaty that any of these men could get a dollar. And they never could have obtained anything under section 12 of the treaty, because that section simply recognizes claims such as had been recognized by international law prior to that time.

Mr. HUMPHREY. They never have obtained and never will obtain, as private individuals, a dollar under this treaty.

Mr. WILLITS. We are going to try to give some of this money to them.

Now, what did we gain by the treaty? We gained a forum and a law which did not exist before—a forum and a law to adjust claims for damages caused by the confederate cruisers.

The question is about the three rules—what they established and what they did not establish. Article 6 of the treaty provided—

In deciding the matters submitted to the arbitrators they shall be governed by the following three rules, which are agreed upon by the high contracting parties as rules to be taken as applicable to the case, and by such principles of international law—

Recognizing the fact that these three rules had not yet obtained as international law—

not inconsistent therewith as the arbitrators shall determine to have been applicable to the case.

Now, what are these rules?

First. To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a power with which it is at peace—

Was not that right? Was not that what we had always claimed the law ought to be? The exculpated cruiser cannot find any fault with that; the war-premium man cannot justly find any fault with it; the insurance man has no right to find any fault with it. That is good law, and it ought to be incorporated as a part of the international law—

and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted in whole or in part within such jurisdiction to warlike use.

That is good law; nobody ought to dispute that.

Secondly. Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly. To exercise due diligence in its own ports and waters, and as to all persons within its jurisdiction to prevent any violation of the foregoing obligations and duties.

Her Britannic majesty has commanded her high commissioners and plenipotentiaries to declare that her majesty's government cannot assent to the foregoing rules as a statement of principles of international law which were in force at the time when the claims mentioned in article 1 arose, but that her majesty's government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agrees that, in deciding the questions between the two countries arising out of those claims, the arbitrators should assume that her majesty's government had undertaken to act upon the principles set forth in these rules.

It was thus expressly declared that the Government of Great Britain did not concede that these rules had been in force at the time the claims arose; but she concedes them for the purposes of this case as the law; by agreement they were made the law so far as this case was concerned.

Mr. HUMPHREY. The law of this case.

Mr. WILLITS. Yes, the law of this case; and it became the law under which every man filed his claim, and under which the adjudication was made; and without the law as thus conceded he would have had no valid claim at all.

These are the three rules that were to govern in this case and were to be the law in the future between the two governments, who agreed also to endeavor to have them incorporated as a part of the law of nations. Are they not right and just to all parties? No one claimed that England had taken up arms against us, or made herself a public enemy by her course. The complaint was against her as a friendly nation, that she had not exercised due diligence in the matter of the confederate cruisers. These rules agree upon a standard of liability for the government of neutrals, and declare what kind of negligence shall subject them to liability for damages. They were more severe upon neutrals than pre-existing international law, otherwise Great Britain would not have resisted them. Admitting the fact that Great Britain had not exercised due diligence, she agreed to pay. If she had exercised it, then she was not to pay. Was not that right?

If she had had reasonable ground to believe a confederate vessel was being fitted out in her ports, she agreed that she ought to have prevented it, and on failure to do so, she should pay resulting damages. If she did not have that reasonable ground for belief, ought she to pay? We think all fair-minded men will assent to the proposition that she ought not to, even those claimants who suffered by the exculpated cruisers. It all depends upon the knowledge and culpability, upon the reasonable ground for belief and due diligence, all questions of fact which were submitted by the arbitration. If the facts showed no "reasonable ground of belief," also showed "due diligence" on the part of Great Britain, as to the exculpated cruisers, by what rule of law or justice can those injured by them complain?

On the other hand, the rules did not assume to change the rule of damages, or the measure of damages. This was all left to the principles of international law, which in this regard is much the same as at common law. The right to claim damages for a cause not hitherto recognized by international law was conceded, but the rule of damages, which is common to all law, and has obtained in international as a principle hoary with age, was to govern in this case, to wit, that remote and indirect damages are not subject to assessment. If our friends who claim for "war premiums" are dissatisfied with the rejection of their claims they should mourn over the character of those claims rather than swear at the court for invoking a principle that inheres in all sound jurisprudence.

Even our friends who lost by the exculpated cruisers could not have been benefited if these rules had not been adopted. Without these rules they had no right that they could adjudicate—no recognized

claim. If under these three rules it turns out that their claims were rejected because Great Britain had exercised due diligence, these men cannot find any fault with the treaty. Nothing had been bartered away.

Mr. HUMPHREY. May I interrupt the gentleman again?

Mr. WILLITS. I beg the gentleman to excuse me. I would like to yield; but I must hasten to a conclusion.

Again, if you will examine those three rules, as I before stated, and I wish to emphasize this point, you will see that the rule of damages has not been changed at all. The question involved in the three rules is simply the question of the culpability or the diligence of Great Britain.

But the measure of damages is not in any of the three rules. How are these damages to be measured, by what rule, by what law? Not by the three rules, because they do not mention it. By the international law, and the basis of international law is the common law in reference to the measure of damages. The sixth article says "that all the principles of international law not inconsistent with these three rules shall be applicable to the case."

Now, under the common law there is no measure for indirect, remote, consequential damages, none whatever.

Mr. HUMPHREY. There is for consequential damages.

Mr. WILLITS. Not for remote and indirect damages at any rate. When you come to look at these claims alongside of the treaty and international law every man who filed his claim knew it had to be subjected to the principles of international law in reference to the measure of damages. There are some damages which are not the subject of assessment, and the court found in this case there were some of these claims which under the measure of damages laid down by the international law had to be rejected. [Mr. HUMPHREY rose.] The gentleman must excuse me. I have not time to yield to further interruption.

Mr. HUMPHREY. They were consequential as against Great Britain, but they were direct as against the confederate government.

Mr. WILLITS. They were all indirect, those that were rejected. Only direct damages have ever been assessed and allowed.

But there is another statement to which I will refer. I find in this report of the committee, (and I will say this for the chairman of the Committee on the Judiciary, that he has made by far the ablest report on his side of the question which, as I believe, has ever been made in any Congress of the United States)—I find he has fallen, as I think, into this error, that the court of arbitration rejected the war-premium men rightly and justly—he concedes that. I think so, too—but he gives these reasons for it, and I ask the Clerk to read from the report of the committee the passage which I have marked.

The Clerk read as follows:

First. It is said that the tribunal rejected the war-premium claim as indirect; therefore Congress should do so. This objection is disposed of when the fact is once clear in the mind that the Geneva tribunal was deciding a case "between nations," while Congress has to decide a case between individuals. The tribunal was right in rejecting war premiums *eo nomine*, because they were not a national loss, not (to use their language) "damages between nations."

When the ship-owner paid a war premium to the Atlantic Mutual, the ship-owner lost and the Atlantic Mutual gained, but the country neither lost nor gained.

Hence, as between nations there was no damage. But Congress has to decide, not between nations, but between ship-owner and insurer. And when you add to the fact that the ship-owner paid and the company received the other fact that the company made hundreds of thousands more than it paid out, it would seem clear, on principles connected with the four rules of arithmetic, that of the two the ship-owner lost.

Mr. WILLITS. It is manifest that statement in the report of the majority of the Committee on the Judiciary indicates that that position is in one sense vital to their case. There must be some reason other than the ordinary reason, based upon acknowledged principles of law, assigned for the rejection of those claims, and in order to avoid the point that under the treaty those war-premium claims were not admissible because indirect.

Let us look at this. I am inclined to think this theory "will not wash." What did the tribunal say on the subject? I will read it. The tribunal, when it rendered its judgment, said as follows:

First, the loss in transfer of the American merchant-marine to the British flag.

That is one of our claims.

Second, enhanced payment of insurance.

That was another.

Third, prolongation of the war and addition of a large sum to the cost of the war for the suppression of the rebellion.

That was the third.

They have arrived individually and collectively at the conclusion that these claims do not constitute, on the principle of international law applicable to such cases, good foundation for an award of compensation or computation of damages between nations, and should on such principles be wholly excluded from the consideration of the tribunal in making an award.

There were three claims rejected by this judgment, all in the same category, and each one of them upon the same ground, and not upon the ground assigned by the gentleman, but on the ground that under the principles of international law they could not be considered.

Mr. REED. As between nations.

Mr. WILLITS. Because it was between nations, and I would like to know where you get international law except as between nations. All were in the same category.

Now, let us look at them. The gentleman says because the Atlantic Mutual Insurance Company received \$100 from the ship-owner it was

simply a question between individuals, and the country neither lost nor gained. How was it with the other two cases? The loss of transfer of the American merchant-marine to the British flag was rejected for the same reason. Was not that a loss to the country? Was it not a national loss? Did we not put it in as a claim and assert that it was a national loss? It was a loss to the nation, yet it was rejected for the same reason as the war-premium claim which was rejected, as he alleges, because it was a loss between individuals. His claim was rejected for the same reason that the nation's was—because it was indirect.

Mr. REED. Will the gentleman yield to me for an interruption? Mr. WILLITS. I would rather not. My time is nearly out, and you will have an opportunity again.

Again, the claim as to the prolongation of the war and the additional cost of the war, thereby necessitated for the suppression of the rebellion, was rejected for the same reason. Both of these claims were rejected because they were for indirect damages, indirect losses, which could not under international law be specifically assessed.

But the gentleman says that this question in reference to the enhanced insurance was rejected because it was not a national loss. Unfortunately for the gentleman's argument, the court did not say so in rejecting it. Let us see what the record says when they came to enter judgment in reference to the cases.

Count Sclopis, on entering up the judgment in reference to that question, on behalf of the arbitrators then declared:

That the several claims for indirect losses mentioned in the statement made by the agent of the United States on the 25th instant, and referred to in the statement just made by the agent of her Britannic majesty, are, and from henceforth shall be, wholly excluded from the judgment of the tribunal, and directed the secretary to embody this declaration in the protocol of this day's proceedings.

These several claims so excluded were the same three claims I have just spoken of.

Indirect damages and indirect losses were rejected because they were indirect, and for no other reason. And when the parties filed their claims they knew they were to be subjected to the principles of international law.

But, Mr. Speaker, I wish to comment on one other point here in this connection before I leave this portion of the case. It is claimed that in these three rules—it was claimed first that in the adoption of the three rules we bartered away something. They fail, however, to show what we bartered away. Next they claim that when we came to file our cases we bartered them away. It was stated by one of the attorneys in an argument before the committee for the claimants that—

The United States attempted to get law and to get money. It had claims all for money; and it bartered away some of these claims for law and on the others got the money.

Now, there is nothing in this record that indicates such a thing; but if it were true that the Government was so mean as to barter away the claims of private citizens in order to get law for itself, in the name of common sense why should not the Government pay that claim which it thus bartered away from its own Treasury rather than take it from any other parties for whom the Government secured payment? But it was not true. There was no bartering at all. The rights of claimants were left just as they were before. Under the law, the court construed the claims as indirect and not assessable under the principles of international law. Now, what did they do? They rejected these three classes of claims. That left but two more.

You will see that at the time the judgment was made they did not reject the claims of the United States, individually or nationally, for the expenses incurred in pursuit of these cruisers—over \$7,000,000. That was a direct claim. It was not rejected with the three classes to which I have referred for the reason that it was a claim that could be determined. You could estimate the amount of it. It was right before them; but it was rejected finally when the award was made, and for the assigned reason that it was a part of the general expenses of the war. Now, then, of the five classes of claims that were presented to the board of arbitration all were rejected but one, all three classes of national and one private—the "war-premiums." Four of the classes were rejected wholly, and that left it simply a question of the assessment of the amount of the other class of private claims, the direct claim for vessels, &c., actually destroyed. So it came back after all to the Johnson-Clarendon treaty. Everything was rejected that Mr. Sumner wanted except that he got his apology.

Then the arbitration board went to work to foot up the account. Let us look at the history of the claims which were presented to this board, as well as the character of the claims themselves. The first claim growing out of the acts of these confederate cruisers was made on the 31st day of January, 1863, and was made by the New York Mutual Insurance Company of the city of New York, claiming that the ship Brilliant had been destroyed and that the company had paid the insurance policy of \$9,245. The ship Manchester had also been destroyed, for which the company paid the policy of \$7,500, and here was what they claimed:

Your memorialists are of the opinion that the said steamer—

That is the Alabama—

having been built and fitted out and sailed from a port in Great Britain, and her crew being composed principally of the subjects of the Government of Great Britain, she is to all intents and purposes a British vessel.

Why, here is almost, as you may say, the gist of the whole argument on the part of the United States, made in the first instance by an insurance company early in the war and immediately after the loss that was incurred.

You will find, Mr. Speaker, that all the way through from that time on the State Department was loaded with these claims on the part of the insurance companies. The fact is it is claimed not only that the insurance company was the first party who filed a claim but it is also insisted that but for the insurance companies no claim and no award would ever have been rendered. It is through the persistency and determined effort of the insurance companies that this award was made at last.

Another remarkable fact, a very remarkable one under the circumstances, is the conspicuous absence of our "war-premium" friends. Not till the diplomatic point was practically won did they appear on the scene. The first claim for "war-premiums" was filed in January, 1871, eight years after the insurance company put in an appearance, and nearly six years after the war closed. What were our clamorous friends doing all this time. It is so strange that \$6,245,383.39 should be lying around loose for six years without a local habitation and a name, and this, too, largely in thrifty New England. An examination of the "revised list of claims" shows that this amount of over \$6,000,000 was claimed by three hundred and forty-one persons or firms, making an average of \$18,341 to each.

Think of it, a Yankee skipper ranging the mighty main from icy zone to torrid suns, dickering with every people, and seducing the heathen of their very eye-teeth, out \$18,000 and not send in his little bill somewhere to some one. And this for six years! Truly this is the most remarkable instance of absent-mindedness I ever read of. And then consider that there were three hundred and forty-one fellows in the same fix, all stricken with the same catalepsy. It is enough to destroy our confidence in human nature.

How do you account for that? Why because they knew in their own hearts that they had got consideration for every-dollar that they had paid in the risks that had been assumed; in the fact that they could go to their beds and sleep quietly; in the fact they could rest easily, because if their vessels and cargoes were destroyed they would be compensated for them; and in the next place they believed in the principle of subrogation. They had been brought up to understand thoroughly the question of insurance. They had insured all their business lives, and they now thought there was an unquestioned right of subrogation. Again, they had assigned all their rights to those vessels under the principles of subrogation to the insurance companies when the insurance companies paid them their insurance; so that they had no claim; they did not know that they had any claim.

They did not insist on it; and for six long years six millions and more of money lay around without any claim; and at last how did they find it out? Why, some attorneys got their heads together and discovered this new principle of subrogation, to wit, that subrogation is a principle of "odds and ends, of remnants." And we have got it incorporated in the report of the majority that subrogation is a principle of "odds and ends and of remnants." And, lo and behold! here is something that is not odds and ends, that is not remnants, but is the whole garment!

Therefore the principle of subrogation does not apply. And so thereupon there was a resurrection and a life; so that this catalepsy was routed, and there has not been such a resurrection since the time of the valley of dry bones that the inspired prophet speaks of. Then these war-premium claims came to the front. Every skipper got on deck and with full sail went for this award with all the energy that John Paul Jones went for the coast of England. They had not supposed they had any right to this money, but these attorneys worked it up for them. If ever there was a case before this Congress that was worked up by attorneys and claim agents this is that case. Since I have been here from the beginning of the Forty-fifth Congress there have been three attorneys for these war-premium men to one for any other claimant. The corridors have been filled with these claimants and their attorneys.

Mr. REED. I would suggest to the gentleman from Michigan he is getting more worked up than any claims men have ever been.

Mr. WILLITS. I have a list here of attorneys who represent \$4,000,000 of those claims. They worked up this case, and if ever there was a claim that was worked up energetically this one was after they had discovered this new principle of subrogation, and not before.

But, Mr. Speaker, I have given the essential points that I think ought to govern this case. I believe that the Government received this money for somebody. I believe that it can be shown, if I have not demonstrated it, that the persons entitled to it are the persons for whom the award was rendered, the persons on whose claim the award was rendered, and that in all common sense, in all the light of every principle of law, there can be no reason why persons whose claims were rejected—not rejected as being bartered away for something else, but rejected under the principles of the treaty of Washington itself, to which they subscribed and under which they filed their claims, subject to the adjudication of the board of arbitration—there can be no reason why these persons should come in here and claim money that was awarded on altogether another principle.

My proposition is this: that the tribunal at Geneva awarded dam-

ages only for property destroyed, for hulks and cargoes; that the question only was what was their value; that all other claims were rejected, except seamen's wages and other cognate claims; and that the award goes, and should go, to the owners of the vessels and cargoes, and to such other persons as had an interest therein or lien upon them, either by express agreement or by operation of law. If the insurance companies are not subrogated to the right of the owners, as is claimed by the majority report, their claims before a court would fall, and the owners would recover the money. As the owners are the same persons who paid the "war premiums," they would recover the same money as owners which they attempt to recover under the bill proposed as "war premiums;" and as their objective point is to get the money, they might well agree to go to the court, as the bill of the minority authorizes them, if they are clear that the doctrine of subrogation does not apply. Why cannot we, therefore, all agree to send the whole matter to the courts? Why do you hesitate? If the doctrine of subrogation is a doctrine of "odds and ends, of remnants," as the majority report has it; and if there are no odds and ends, no remnants, then the insurance companies take nothing by their motion. If the position of the majority is sound they risk nothing, and we settle this whole vexed question without any worry of conscience.

I have an impression, however, that our "war-premium" friends are not willing because they are not quite sure of their law. My position is that if the law gives them the money they ought to have it, and they ought to be allowed to go to court to determine their rights under the treaty and law and justice. If such a course does not give it to them, they ought not to have it; and if it gives it to the insurance companies, they ought to have it.

I firmly believe that as "war-premium" claimants they have not a shadow of right. The money was not awarded for the payment of any such persons. But as owners of the vessels and cargoes they would have primary standing in court only to be ruled out by the undoubted subrogation of the insurance companies to stand in their place. If that right of subrogation does not apply in this case, or if it is doubtful, their standing would not be impaired and their recovery would be certain. I submit the suggestion in all fairness.

I believe that the insurance companies have been subrogated to the rights of the owners of the vessels. But it is disputed on the part of our friends on the other side of this question; they say the question of subrogation does not apply.

Then I say let us submit this question to a court. This money belongs to somebody; it was given to indemnify somebody. Now, let us ascertain by the decision of a court to whom it does belong. Let us submit to that court all these claims, under the treaty, under the law, in equity; and then if the court finds that the insurance companies are entitled to it, well and good. If the court finds that, as claimed by the majority of the committee, the principle of subrogation does not obtain, then the insurance companies will lose their case. The money will then go to the owners of the vessels, and they were the men especially who paid the war premiums.

Under our bill, the bill of the minority of the committee, which provides for sending this question to a court, if the views of the majority are sustained by the court then the war-premium men will get their money. In any event I say that this question should be submitted to a court to examine the questions of law underlying the treaty of Washington and all the rights of all the parties, and to render a judgment in favor of the persons entitled to the award, with right of appeal to the Supreme Court. In this way, in my opinion, can justice best be done and the honor of the nation sustained.

[During the delivery of Mr. WILLITS's remarks the hammer fell.

THE SPEAKER *pro tempore*, (Mr. PAYSON in the chair.) The time of the gentleman from Michigan has expired.

Mr. HAMMOND, of Georgia. I move that the time of the gentleman from Michigan be extended by consent. He has been frequently interrupted in the course of his remarks, and being a member of the committee who joined in the minority report I hope there will be no objection to allowing him to proceed.

THE SPEAKER *pro tempore*. Is there objection to the gentleman proceeding by unanimous consent?

There was no objection.

Mr. WILLITS resumed and concluded his remarks.]

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, informed the House that the Senate had passed without amendments bills and a joint resolution of the House of the following titles:

A bill (H. R. No. 3196) to authorize and direct the Secretary of War to change the name of Charles Alton Howard, a second lieutenant in the Ninth Regiment of Cavalry, of the Army of the United States, on the register, rolls, and records of the Army, to Alton Henry Budlong;

A bill (H. R. No. 4299) to amend the general incorporation law of the District of Columbia; and

A joint resolution (H. R. No. 204) making an appropriation for fuel, lights, water, &c., for the fiscal year 1882, and for other purposes.

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

A bill (S. No. 73) for the relief of L. Madison Day; and

A bill (S. No. 1015) for the relief of Charles M. Blake.

MESSAGE FROM THE PRESIDENT.

A message in writing from the President of the United States was communicated to the House by Mr. PRUDEN, his Secretary, who also informed the House that the President had approved and signed bills of the following titles:

An act (H. R. No. 137) granting a pension to the heirs of Captain Christopher T. Dunham, deceased;

An act (H. R. No. 531) for the relief of John Watson;

An act (H. R. No. 620) granting a pension to Susan Jeffords;

An act (H. R. No. 638) granting a pension to David G. Hutchinson;

An act (H. R. No. 1239) granting a pension to Francis Reichert;

An act (H. R. No. 1340) granting an increase of pension to Andros Guille;

An act (H. R. No. 1390) for the relief of William H. Hill;

An act (H. R. No. 1579) granting a pension to Elizabeth Fulks;

An act (H. R. No. 2031) for the relief of Eli D. Watkins;

An act (H. R. No. 2148) granting a pension to Catherine Silvey;

An act (H. R. No. 2250) granting a pension to Mrs. Mary Shaw;

An act (H. R. No. 3390) granting a pension to Sally C. Mulligan; and

An act (H. R. No. 4344) granting a pension to Sally Hall.

GENEVA AWARD.

The House resumed the consideration of the bill for the distribution of the Geneva award.

Mr. STONE. Mr. Speaker, the subject under consideration especially concerns my constituents, and I ask the indulgence of the House while I submit some considerations touching the distribution of the money received from Great Britain in payment of the Geneva award.

There is now in the Treasury nearly ten millions of money paid to this Government by Great Britain under the Geneva award. It has been there for nearly ten years. A part of the money received was distributed to parties whose claims were acknowledged by our Government under the act of 1874; but the remainder has been allowed to stay in the Treasury until the present time because of the inability of the Government to agree upon a plan of distribution. In the controversy which has existed between the different claimants, a person here and there has been found with the boldness to suggest that the fund in dispute would better be appropriated by the Government for the current expenses of the administration; but it is to the honor of the Government generally conceded that this money is not absolutely the property of the United States, but held by them subject to a high moral obligation to consider those who suffered specially by the depredations of the rebel cruisers.

In dealing with the question before us the thought naturally arises, how happens it that there should be this surplus on hand after payment of the undisputed claims, this apparent discrepancy between the award at Geneva and the award of the commissioners under the act of 1874?

Soon after the award was made at Geneva a controversy arose as to its distribution. Different parties, whose claims were adverse, disputed each others' rights and insisted on their own, and after a protracted debate Congress passed a bill providing for the payment of certain claims which were not disputed, and postponed the consideration of the adverse and contested claims until those parties whose losses were conceded had been adjusted and paid. There is now a sum in the Treasury about equal to half the amount of the Geneva award whose ultimate ownership is in dispute, involving equities and considerations not easily adjusted, but which can only be decided by the exercise of that wise discretion which is invested in the supreme legislative authority of the nation.

It might seem, in one aspect of the case, that the award was too large. But the discrepancy which exists between the Geneva award and the award of the commissioners arose in this way: the two tribunals acted with reference to two distinct objects. The tribunal at Geneva having decided to what extent Great Britain was responsible for the depredations committed by the rebel cruisers, proceeded simply to ascertain and assess the value of the property destroyed, without regard to its ownership or the validity of the different claims, and made their award accordingly. They had nothing to do with the character of the specific claims. That was a matter to be considered by the United States when the time came to make the distribution of the sum received from the award. The work of deciding the amount of compensation for property destroyed, after the liability of England had been determined, was easy; but the work of distribution, owing to the peculiar relations in which different parties stood to this fund and the different equities involved, was attended with some difficulty.

The object was to indemnify those who were the actual losers by the depredations of the rebel cruisers. The owners of vessels and property destroyed, in making their claims, were required to deduct the amount received by them for insurance. To pay without such reduction would be to pay them twice. But it was in application of this idea of indemnity to the case of the insurance companies that the trouble arose. It was argued in behalf of insurance companies that in dealing with them the Government should not take into consideration the general result of their business of war-risks, but should deal with each case separately, and allow the insurance companies, to the extent of insurance paid, to stand in the place of the vessel-

owner and receive the indemnity which otherwise he would have received. But it was decided to allow their claims only to the extent of their actual net losses, to be ascertained by striking the balance between all the losses paid and all the premiums received.

Their claims to indemnity, therefore, were limited to the amount of their net losses incurred in this branch of their business. But this principle of compensation, as applied to the insurance companies, disposed of only a small part of the award, so that after the claims of the owners of property to the extent of their actual losses, and of the insurance companies to the extent of their net losses, have been satisfied, there remains a considerable sum to be distributed to which no one has any clear title; a result which does not indicate that the sum awarded at Geneva was in excess of the amount due, but only shows that, owing to the complication and difficulties which have arisen in the course of business, it is difficult to determine who, in the most satisfactory sense, were the losers by the act of the inculpated rebel cruisers and have the strongest claims to indemnity.

This variance between the award at Geneva and the award of the commissioners under the act of 1874 is a complete answer to the assertion of the insurance companies, that in making their award the arbitrators passed on the validity of the different claims, and that it is not now an open question what claims should be allowed.

There are three classes of claimants:

First. The insurance companies, who insist that they should be subrogated to the owners of vessels destroyed, and whose losses they paid;

Second. Those who have lost by the payment of war premiums; and

Third. Those who have lost by the captures of confederate cruisers, for whose conduct the English Government was held not guilty by the arbitrators at Geneva.

The amount claimed by the insurance companies is \$5,500,000, without interest. The amount claimed by the war-premium men is about \$6,000,000, without interest. The amount claimed by those who suffered by the acts of the exculpated cruisers is, exclusive of interest, about \$1,200,000.

The conflict is mainly between the war-premium men and the insurance companies, whose claims have been, again and again, rejected by both the Senate and the House.

The subject has been referred this session to the Judiciary Committee of the House, who have examined it thoroughly, and have made two reports. The majority of the committee have recommended that a court of commissioners be appointed, with authority to decide upon the proof how the money shall be divided—

First. Between those who have suffered losses by the capture and destruction of their property by the exculpated cruisers for whose acts the British Government was held not responsible; and

Second. Between those who have suffered losses by the forced payment of war premiums, made necessary by the presence of rebel cruisers on the high seas.

The minority report of the committee, while repeating and enforcing the old arguments in favor of the insurance companies, based on the pretense that our Government acted as their agent or trustee in the proceedings at Geneva, or on the alleged right of subrogation, contains no positive opinion of the committee as to the proper distribution of the money, and no findings of fact or law; but, after reciting some circumstances and general considerations in favor of a judicial inquiry, concludes by a recommendation that an act be passed submitting the whole matter to the Court of Claims, with authority to distribute the money "according to the principles of justice, equity, and the law of nations."

This, at first sight, seems reasonable, and is, apparently, a fair solution of the question. It also commends itself by the fact that it delivers Congress from a troublesome responsibility, where it is impossible to please all parties. But it is clear, as will appear in the argument, that the insurance companies could not establish any claim, in any court of law or equity, to indemnity as against the United States, supposing that it consented to be sued, by force of any existing law or precedent, without the aid of this act. But the act proposed contains no directions to the court how to proceed in the distribution, and the court must, if it consents to take jurisdiction, therefore, act solely from a regard to its own ideas of justice and equity.

Now, is it to be argued that a court, in such a predicament, tied, as all courts are, by their practice and habits of thought, to precedent and authority, is more likely to deal with this case wisely and fairly, without instructions from this Congress, than it would under an act with a provision deciding how the money shall be distributed and leaving the proof of ownership and other matters of evidence involved in the work of distribution to the rules and methods adopted in such investigation?

But suppose the court should find that, according to the authorities, our Government could not be considered as an agent or trustee, and that the right of subrogation did not apply, and that there was no rule of law or equity applicable to the case, what would it then do? Would it attempt to deal with this fund upon its own vague notions of justice and equity or would it decide that upon no principle of law or equity known to the court is either party entitled to it, and so report the case back to Congress for its further action?

If the case is to stand upon general considerations of justice and equity, in the adjustment of conflicting claims, I prefer the judg-

ment of this House to the judgment of any court, which, in the given case, is authorized to proceed uncontrolled by precedent or authority, unsupported by any principle which has been judicially recognized and defined, and unaided by any direction of Congress. The only issue distinctly raised between the majority and minority of the committee is in respect to the expediency of committing the whole subject to a court, with or without instructions. The majority say that it is the duty of Congress to decide how this fund should be distributed among the different claimants, leaving the proof of the claims to be established before a judicial tribunal by the methods usually adopted in such proceedings.

To commit this case to the court, with authority to decide it according to its notions of equity and justice, is to commit it to their discretion; and it is difficult to see how Congress can do this without virtually abdicating the power and authority which it is its duty to exercise.

In *De Bode's case*, (8 Q. B. 217,) where a certain sum was paid by the French Government, and the claims of individual citizens were released by Great Britain, the plaintiff filed his petition of right against the Queen, and alleged that the sum paid was increased by the amount of his claim; but the court held that "there was no rule or principle by which his claim could be maintained; that the money in question was in the hands of the Crown, to be disposed of as her legal advisers might recommend; that no person had a legal right to any part of it." The counsel for the plaintiff, when pressed by the argument that there were no rules by which the court could make distribution, replied that it was sufficient to show that his client's claim was founded in general justice. To which Maule, J., replied, "Neither the Queen's Bench nor any other court administers justice in general."

The doctrine that a question of distribution in a case of this kind is a proper subject for the exercise of that discretion which resides in the sovereign authority of the nation, and not for judicial inquiry, has been held by the courts themselves.

In *Rustomjee's case*, decided by the Queen's Bench, in England, in 1875, where an attempt was made to direct by the court the disposition of money received by the Queen, under a treaty with China, the court said, "The distribution of this money must be left to her majesty's discretion." And in the same case Mr. Justice Cockburn said:

I do not think that it can be possibly said, that where the Queen has, as a high act of state, made a treaty and received money in consequence of an act of state, the mode of distribution is in any way enforceable by a court of law. * * * I think there is a moral claim that it be given to the right person, which must be investigated in the manner which her majesty is pleased to direct.

And in the review of this case by the court of appeals, Lord Coleridge affirmed the judgment of the Court of Queen's Bench, and said "that in all that relates to the making and performance of a treaty with another sovereign, it is the duty of the Crown to do justice to her subjects."

It is argued in behalf of the insurance companies, in the minority report, that the proposition to refer this question of distribution to a court is in accordance with the practice in like cases, and the statutes of the United States are cited in the cases of the treaties with Great Britain in 1826, with Denmark in 1830, with France in 1831, with the two Sicilies in 1832, with Spain in 1834, with Peru in 1841, with Brazil in 1849, and with China in 1858, in support of this statement. Now, it may be said in respect of these treaties, not only that they were cases of settlement of private claims, as distinct from national, and negotiated as such by our Government, but that in not one of them were the commissioners clothed with any powers beyond such as are usually vested in a board of commissioners whose function is purely executive and ministerial, to examine the formal proofs and audit the accounts, and perform the duty which is usually discharged by an auditor or master in chancery.

No person can examine these statutes without perceiving that no judicial inquiry, in the sense of adjudicating any difficult or important question of law or equity, was contemplated. This appears from the fact that there was no provision for an appeal, and that in nearly all these cases the whole work of distribution was to be performed by the commissioners in one year from the date of their commission. The only case of the appointment of commissioners under a treaty, to receive and examine claims, where the language used implies an intent to confer judicial function, as distinct from a ministerial one, is in the appointment of commissioners in relation to the Geneva award, under the act of 1874. In this act the board is called a court, and their decisions are termed judgments; but even in this act, the judicial power is so limited, that no right of appeal is provided, and the powers of the court, so constituted, are limited and defined by Congress precisely as the majority of the committee propose to do in their bill, which revives this court for the purpose of distributing the remainder of the fund.

The argument, therefore, that Congress has heretofore conferred unlimited judicial power on a court, as proposed by the minority of the committee, is unsupported by the facts, and it is safe to challenge the production of a single case which, upon examination, can be fairly cited as an authority for the course recommended by the minority of the committee.

This case, then, calls clearly for the exercise of the legislative powers of the Government. There are no rules recognized by the

courts under which the distribution could be made, and the injustice of submitting the rights of the claimants in this case to a board of commissioners, whose duties are mainly that of auditing accounts, is so manifest that the minority of the committee propose to give the litigants the right of appeal to the Supreme Court, which would postpone the ultimate decision of the case for an indefinite period, and, by unreasonable delay and expense, in many instances make the claim practically worthless. In other words, to avoid the injustice of compelling claimants to accept as final the decision of a court of limited jurisdiction upon questions of the adjustment of conflicting equities, growing out of complex relations and demanding for their satisfactory solution the exercise of the highest discretion, an appeal is given to the Supreme Court, which would be attended with such delay and expense as to afford but little satisfaction to the claimant.

Assuming, then, that it is the duty of Congress to decide to whom this fund will be paid, and that the proper discharge of this duty depends on considerations which Congress alone is competent to decide, I come now to the question, how shall this fund be distributed? And in dealing with it I submit that Congress is perfectly free to act as may seem to it, in its sovereign discretion, to be right under the circumstances, unrestrained by any rule or precedent, and unembarrassed by liabilities or complications of any sort growing out of its relations to any party to the case.

This has been denied by the insurance companies, who have endeavored to make it appear by an ingenious array of circumstances that the Government in the proceedings at Geneva was acting for them and was so committed to their fortunes and their interests that it could not honorably question their right to the fund. This view is so plausible, and is at first sight apparently so supported by facts, that some of the ablest men who have taken part in the discussion of this case have adopted it. But it has not stood the test of careful criticism, and is now virtually abandoned by some of the companies themselves. It is clear from a study and comparison of the facts and of the record that our Government in the proceedings at Geneva did not undertake to act for any individual claimant or any class of claimants. It sought to obtain redress for national injuries and to represent the rights or interests of individuals only so far as they were a part of the nation.

The absurdity of the pretense that our Government was virtually acting at Geneva as the agent of the insurance companies is clearly brought out when it is remembered that the relations of the Government to all the claimants were such that it could only undertake to act in good faith as a common guardian, and not as agent or trustee of one class, in derogation of the rights of others whose interests were adverse. And because of the complications which might ensue in case the Government could be considered the agent or trustee of any class of claimants, it was careful to issue the circular of September, 1871, in which it is stated "that the State Department could not undertake to direct what claims may be preferred, nor what proof may be necessary, nor the effect of insurance upon the question of compensation. It will present to the tribunal at Geneva all claims growing out of the Alabama claims, so called, which may be presented to the Department." Here is simply an offer to present, with no words which can be fairly construed into an undertaking to collect and enforce as agent for the claimants.

The same caution to avoid any liability as agent or trustee for any class of claimants is more clearly seen in the letter of Secretary Fish of 8th December, 1871, to the United States consul. The Secretary says:

In the treatment of this entire case you will be careful not to commit the Government of what may be awarded. * * * The Government wishes to hold itself free to decide as to the rights and claims of insurers upon the termination of the case. If the value of the property captured or destroyed be recovered in the name of the Government, the distribution of the amount received will be made by this Government, without commitment as to the mode of distribution. It is expected that all such commitment will be avoided in the argument of counsel.

Is not this letter a full and decisive answer to any argument that may be made, based on any implied agency which seems to be found in any circumstances or correspondence between the Government and any claimants?

I submit, therefore, that there is nothing in the history or record of this case, nor in the conduct of the Government, that invests it with the character of agent or trustee of any claimant, or that fairly commits the Government to the validity of any of the claims presented.

I pass on now to another branch of this case. Is there anything in the history of the proceedings at Geneva that shows that the arbitrators allowed or disallowed any claim or any class of private claims which had been presented them by our Government, or were their judgments limited to an estimate of the value of the property destroyed by the insurgent cruisers, without regard to the validity of the different claims? Upon this point there can be no doubt. The award is for a sum in gross, in full satisfaction of all the claims referred to the tribunal. The award was manifestly based on an estimate of the value of the property destroyed for which Great Britain was responsible. The arbitrators only had authority to award a sum in gross. In the event that they declined to exercise that authority, it was provided in the treaty of Washington that a board of commissioners shall be appointed to determine what claims were valid. In framing the treaty of Washington the high com-

missioners on the part of Great Britain at first objected to the clause giving authority to the tribunal at Geneva to award a sum in gross, and it was only at the urgent request of the commissioners on the part of the United States that they consented that the award might be so made as to leave the question of distribution open among the different claimants, to be decided by the United States.

But it may be said that while the tribunal at Geneva did not, in computing the amount of the award, pass upon the validity of each claim in detail, but only consulted the schedules of claims as convenient evidence for the purpose of approximating the actual value of the property destroyed, yet its action in disallowing the claim for the cost of the enhanced rates of premium and in holding that Great Britain was not responsible for the acts of the rebel cruisers, which are now called the exculpated cruisers, virtually decided that the money awarded justly belonged to the vessel-owners and to the insurance companies who had indemnified the owners whose vessels had been destroyed by the exculpated cruisers, so called.

It is true the tribunal at Geneva decided that, according to the principles of international law applicable to such cases, no compensation in damages could be awarded by them in respect to certain classes of claims submitted to them by this Government. It is also true that the claim for damages by reason of increased cost of insurance for war risks was included in this decision.

It is also true that, by reason of this decision, our Government withdrew this subject from the tribunal. But this fact is not decisive of the question now before us, namely, shall the war-premium payers have a part of this fund? and for this reason:

At the hearing at Geneva the United States submitted claims for compensation against Great Britain under the five following heads, namely:

First. Claims for losses caused by destruction of vessels and cargoes by insurgent cruisers.

Second. For national expenditures incurred in pursuit of cruisers.

Third. For losses incurred in transfer of our merchant vessels to the British flag.

Fourth. For losses incurred by payment of war premiums.

Fifth. For costs incurred by the prolongation of the war.

Now, it will be perceived from this statement that the United States preferred a claim at Geneva for losses caused by increased rates of insurance as a distinct and substantive ground of damage in addition to the claim for losses caused by the destruction of vessels and their cargoes. This claim was withdrawn by our Government after the tribunal had declared that it was not considered by them in that relation as a proper subject for compensation in damages. I repeat that our Government was attempting to recover compensation for enhanced cost of insurance in addition to what it might receive for destruction of vessels and property. As a distinct and independent element of damage, after the declaration of the tribunal at Geneva, it was withdrawn; but such action is not decisive of the right of the war-premium payers to a part of this fund, which was paid and received as indemnity for the losses suffered by the destruction of vessels and cargoes by rebel cruisers, when the question is upon the adjustment of the equities.

Here and now the question arises in an entirely new relation. The war-premium payer asks that he may have a part of the money which was paid by Great Britain for the destruction of vessels and cargoes for which she was held responsible. The award was made to cover the entire loss of property destroyed by the inculpated rebel cruisers, without regard to its ultimate distribution. But when the United States, in the discharge of its duty, attempted to distribute it among those of its citizens who, by reason of their relations to the subject-matter, had especial claim to consideration, it found itself confronted with certain equities and complications which have kept the question open till this time. It found no difficulty in allowing and paying the claims of the vessel owners, and of the insurance companies, to the extent of their respective losses, deducting from the value of the property destroyed the amount of the indemnity received by them from other sources. This payment took about half of the award, and when it came to the distribution of the remaining half, the war-premium men, and the losers by the exculpated cruisers, came in and urged their claims in opposition to those of the insurance companies. They said, you have not paid the vessel owner in full because your principle is indemnity for actual loss, and, under the peculiar circumstances, we have stronger claims on your bounty than those insurance companies who have actually realized a profit from their business of war risks. It is true that the tribunal allowed nothing for costs incurred by payment of extra premiums, and that the claims of those who suffered losses by the exculpated cruisers were disallowed; but such decisions are not conclusive on the question of distribution, which was never considered by the Geneva tribunal.

This money was received by the United States in its sovereign capacity as a nation—not as the agent or trustee of any person or corporation—with full liberty, therefore, to distribute it according to its own ideas of justice and equity. But it is bound by the highest considerations of justice and good faith to distribute it among those who suffered by the conduct of the rebel cruisers in a sense distinct from those who lost in common with the whole community.

Shall the owners of this property have it unconditionally? Or must they deduct what they have received from insurance companies

and recover only the balance? Can the owner object that the Government in the proceedings at Geneva presented his claim in the schedule for the full value of the property, and therefore is precluded from denying his right of recovery without deduction? This cannot be seriously maintained; and yet if the doctrine of the insurance companies be sound—that our Government at Geneva was virtually the agent of the claimants—it is difficult to see why our Government is not estopped from calling in question the amount due the vessel owner.

Again, if the fact of insurance is to be considered in ascertaining the amount due the vessel owner, and if the doctrine of subrogation is to be applied, why should the owner of an insured vessel which has been destroyed receive anything when, by the insurance law, the valuation in the policy is decisive, and whatever is recovered belongs to the company which has paid for a total loss? No one can deny that our Government did its full duty in relation to the owners of property destroyed by the rebel cruisers when it paid them from the award the amount of their claims, less insurance-money received. But because of these deductions, which are conceded to have been right and equitable, only about half of the money received from Great Britain has been distributed.

Three parties now insist upon a right to a share of the money: the war-premium payers, and the owners of the vessels that were destroyed by the exculpated rebel cruisers—on the ground that they were the actual sufferers by the acts of the rebel cruisers, and that it is the moral duty of the Government to so distribute this money as to indemnify the actual sufferers—and, lastly, the insurance companies, who make no claim to especial consideration on the ground of loss or hardship, but who demand it as their property. The insurance companies base their claim on two grounds:

First. That this Government, in collecting the money from Great Britain, acted as their agent, and therefore is precluded from denying their title.

Second. That, by virtue of their relation as insurers to the owners of the property destroyed, for which the Geneva award was indemnity, they succeeded to the rights of these owners, and, in professional phrase, should be subrogated to them, having to the extent of their undertaking indemnified the owners for losses which otherwise the Government would have paid. This two-fold title to the fund has been urged by the insurance companies with a confidence and assurance which would brook no denial, and in the history of the discussion in Congress it has been advocated by some of our most able and distinguished men. But it has not stood the test of close scrutiny and criticism. It has been found on careful investigation that it is unsupported by fact or law. An examination of the record shows that our Government, in the proceedings at Geneva, while presenting the different claims was careful not to assume any such character as that of an agent for the respective parties, and, to avoid any such construction, gave explicit direction to its counsel not to commit itself in any way that could possibly interfere with the exercise of the utmost latitude of discretion in respect to the distribution of the fund in case the arbitrators should award a sum in gross. It is not true, therefore, as a matter of fact, that our Government undertook to act as agent for the different claimants in any such sense as would impose on it the duties and liabilities which arise between principal and agent.

But not only is it true that there was no agency in fact, but, as the law is now settled and adjudged by the highest authority, no such relation as that of agent or trustee subsists between the Government and its citizens or subjects in the negotiation of a treaty, where the rights of individuals are involved as claimants. This point was carefully considered in 1875, in England, by the court of appeals, in the *Rustomjee* case, before cited for another purpose, and it is now the established law. In the words of Lord Coleridge, now chief-justice of England, "that in all that relates to the making and performance of a treaty with another sovereign, the Crown cannot be a trustee or an agent for any subject whatever. It cannot be trammelled by trusts or agencies of individual citizens." In this same case, Lord Cockburn said that "the notion that the Queen becomes an agent of her subjects seems to me too wild a notion to require a single word of observation." * * * "In like manner, to say that the sovereign becomes trustee for subjects seems equally untenable."

This doctrine enters as much into our system as it does into the principles of the British Constitution. (See remarks of Mr. Justice Strong in *Savings Bank vs. United States*, 19 Wall., 227.)

So that this pretension that the relation of an agent or trustee existed between this Government and the insurance companies is not only destitute of all foundation of fact, but it is inconsistent with that authority and responsibility which reside in the supreme power of the Government when negotiating a treaty with foreign powers in behalf of its citizens. It is true that the relation which subsists between the sovereign authority of a nation and its citizens is, in some respects, like that which exists between a trustee and the party interested beneficially in the trust, so that the service which is due from the Government to the citizen may resemble that performed by a trustee, or, in some respects, that of an agent.

But it is misconception of the true relation that exists between the sovereign authority of a nation and its citizens to construe what may be due in behalf of the citizen by the government, in

discharge of its duty of guardianship and protection, as implying any such relation or liability as exists between principal and agent, or of trustee and *cestui que trust*.

I dismiss, then, the argument in favor of the insurance companies based on any relation, express or implied, by which this Government was virtually committed to their interests and could not honorably deny their claims, as unsound and indefensible.

I come now to the argument in behalf of the insurance companies founded on the right of subrogation; and that needs but a short answer. The right of subrogation, as defined by high authority, "rests upon the well-known principle of law that where one person has agreed to indemnify another, he will, on making good the indemnity, be entitled to succeed to all the ways and means of which the person indemnified might have protected himself against or reimbursed himself for the loss." There must be a right of redress or reimbursement in the party insured to which the insurance company may succeed. And the misfortune of the insurance company in this case is that the ship-owner had no claim to redress or compensation in damage upon anybody. His ship had been destroyed by an act of war. The act of destruction was a lawful act, and though the neglect to use due diligence on the part of Great Britain, by which rebel cruisers made use of her ports, made such destruction possible, no right of action existed against Great Britain or the insurgent States, or even against the actors themselves in the work of destruction, in favor of the party injured.

It is well settled as a principle of law that no action will lie for an injury sustained by neglect of public duty on the part of a government, where no positive act of wrong has been committed. The insurance companies cannot therefore bring themselves within the doctrine of subrogation as defined by the authorities.

If this view be correct, the owners of the property destroyed had no legal claim for compensation on anybody. If the owner of the vessel destroyed had no legal right to any part of this award, clearly the insurance company standing on the right of subrogation is in no better predicament. But it may be said that the right of the owners of the vessel destroyed has been acknowledged by the act of 1874, and by the proceedings under which a portion of this award has been distributed, and that therefore Congress is now concluded from denying the rights to which the insurance companies claim to be subrogated.

The act in question was no such acknowledgment. It recognized the legal right of no claimant to any part of the fund. It is an attempt to indemnify those who actually suffered by the acts of the insurgent cruisers, for which Great Britain was held responsible to this nation. The principle of that act is indemnity for actual losses, not because there is any obligation, legal or equitable, which could be enforced against the Government in any court, if the Government could be sued, but because the Government, in its sovereign political capacity, not as agent or trustee, but as the guardian of all its citizens, of its own motion, recognized the considerations of natural justice in dealing with those of its citizens who met with special losses by the acts of the rebel cruisers. And, in the continuance of the policy established by this act, it is now our duty to distribute what may remain of this award among those who may be regarded as entitled to special consideration by reason of their losses. Those whose vessels were destroyed by the cruisers, for which Great Britain was held responsible, had the first equity, and their claims have been paid, and also those of the insurance companies, to the extent of their net losses.

I have shown that the claim of the insurance companies that the Government was a trustee for them in this business could not be maintained, and that the right of subrogation, in their favor, was also untenable. Is there anything in this case analogous to the right of subrogation which should give them a valid claim on this fund? The companies insist that as they indemnified the owner of the vessel, who was insured, and thereby released the Government from its duty to pay him to the extent of the insurance, that they should succeed to his right to indemnity, and receive from the Government what otherwise the owner of the vessel would have received; that this money, which would otherwise have gone to the vessel owner, is to be considered in the nature of salvage which should now come to them. But it is submitted that the principles which underlie the doctrine of salvage or subrogation should not apply in this case—

First, because in ordinary marine insurance the chance for salvage is so considerable that it enters into the premium rates, which are, to a certain extent, reduced in expectation of salvage; but in war risks, no salvage is anticipated, and the rates are correspondingly increased and adjusted to the theory of a total loss.

In the pamphlet recently published by the Atlantic Insurance Company, entitled "Some Brief Considerations," it is said, "capture by a rebel cruiser meant total destruction: hence the underwriter was forced to advance the premium upon the risk liable to capture." To allow, then, the claim of underwriters, unconditionally, in this case, would be unjust, as it would be, in effect, allowing the claim for salvage, when the war premiums were adjusted at increased rates, which were only justifiable on the ground that all losses would be total losses, and no salvage would be possible.

Second. It is objected that the doctrine of subrogation, though a well-defined doctrine, is founded on equitable considerations, and if

applied in this case, would confer an undue and unjust advantage on the insurance companies, because, as before stated, the war premiums were adjusted at high rates with no allowance for salvage, and because the war-premium business, as conducted by the insurance companies, in the great majority of cases, has been attended with the expected profit, which was very remunerative.

To grant indemnity to the companies to the extent of their demands would be to give them salvage where war premiums were charged and received as adequate compensation for the risks assumed, and to add to the already large profits derived from this branch of their business the enormous sum of more than five millions of money, a result too unjust and too inconsistent with any fair view of indemnity to be possibly sanctioned or tolerated by any tribunal that was free to do justice, unembarrassed by rule or precedent.

This answer to the unconditional demand of the underwriters to stand in the place of the vessel-owners is not the invention of claimants whose interests are adverse to those of the insurance companies, and who are endeavoring to defeat their claims by arguments which, though specious, are unsound. The glaring injustice of allowing the underwriter to stand, unconditionally, in the place of the vessel-owner insured, was so apparent that Sir Roundell Palmer, who is not only by common consent at the head of the English bar in learning, intelligence, and integrity, but a statesman eminently just, high-minded, and upright, declared in the hearing at Geneva, in his argument as counsel for Great Britain, that, "with respect to the insurance companies, it must be remembered that, as against the losses which they paid, they received the benefit of the enormous war premiums which ruled at that time, and that those were the risks against which they indemnified themselves (and it is not to be doubted so as to make their business profitable upon the whole) by those extraordinary premiums. Would it be equitable now to reimburse them, not only the amount of their losses, but interest thereon, without taking into account any part of the profits which they so received?" The same thought was manifestly in the minds of the commissioners on the part of the United States, who negotiated the treaty of Washington, when they urged the English commissioners to consent to the provision which authorized the tribunal at Geneva to award a sum in gross, leaving the entire subject of distribution to the discretion of this Government. The same thought was also in the mind of the Secretary of State when he wrote to our counsel at Geneva that our Government wishes to hold itself free to decide as to the rights and claims of insurers upon the termination of the case. "If the value of the property captured or destroyed be recovered in the name of the Government, the distribution of the amount recovered will be made by this Government, without committal as to the mode of distribution."

Is it not clear from the evidence that the injustice of allowing the claims of insurance companies full indemnity for losses paid by them was perceived and admitted by our Government in the commencement of the proceedings at Geneva, and that our Government purposely avoided anything which would commit it to the interests of any class of claimants, and succeeded in obtaining an award which left the question of distribution open to the discretion of the Government, to be dealt with as it thought proper, acting under a high sense of its responsibility, and with a desire to do justice to all parties? And yet parties representing the insurance companies persist in the declaration that the Government, by its conduct in the preparation of the case, and in the proceedings at Geneva, was so identified with the interests of the insurance companies that it was no more competent for it to question their rights than it would be for an agent who had collected money for his principal to pocket the money, and challenge his master to prove his title. This case illustrates the importance of using terms with precision, and of the grave errors which may arise from the confounding one relation with another to which it bears some resemblance.

It is interesting to observe that while the insurance companies in the beginning made no appeal to the generosity and favor of Congress, but demanded a share of the fund as their undoubted right, and while some persons most vehemently still attempt to enforce that view—to deny which, they insist, would be an act of gross and flagrant injustice—in a very recent pamphlet, before mentioned, published by the Atlantic Mutual, entitled "Some brief observations," no allusion is made to the obligations of this Government, as their agent and trustee to pay them, nor is any stress laid upon the right of subrogation; but the authors content themselves with a criticism on the conduct of the war-premium payers, and assert that they are entitled to special consideration, "because in engaging in the business of war-risks they acted solely from a sense of national duty and honor."

The persistency and pertinacity with which the insurance companies have attempted to make the country and Congress believe that the Government was so committed to their interests that it could not honorably deal with the question of distribution as an open question is a confession of the weakness of their case, when compared with that of others whose claims were also presented by the State Department at Geneva but who are content to stand upon their equitable claims to a favorable consideration when the Government shall distribute this fund according to the principles which should control the exercise of that discretion which belongs to the sovereign authority of the nation in its legislative capacity, and which is alone competent to deal with the complications in this case.

Rejecting, as untenable, any title which the insurance companies assert to this money by virtue of any relation which subsisted between them and the Government, or between them and the owners of the property destroyed, it is, I submit, a full answer to their claim to indemnity, that, upon a fair computation of their gains and losses in the business of war insurance, they met with no loss for which they have not been reimbursed, under the act of 1874; that they have now, therefore, no claims to consideration as actual losers by the acts of the insurgent cruisers which the Government is bound to respect.

I come now to the war-premium men. Have they any right or equities, in a moral or political sense, which give them any claim on a part of this fund, which should be respected and allowed? The war-premium men make no claim on the Government like that set up by the insurance companies, though the Government represented their interests at Geneva. They have never pretended, with the hope of gaining any unfair advantage, that the Government was their agent or trustee at Geneva, and that, if their interests were sacrificed by that tribunal to secure some national benefit, the Government is legally bound to make their losses good. They are willing to rest their case upon the fact that they were actually losers by the acts of the rebel cruisers, and that it was the war premiums paid by them that furnished the means with which the insurance companies indemnified the owners of vessels that the cruisers captured and destroyed. They say with truth that the money now in the Treasury to a large extent can be fairly traced to the war premiums which they paid and which were forced from them by the presence of the rebel cruisers on the high seas, and that such forced contributions were actual losses, for which they have received no compensation in any form.

The war premium, which was a severe tax, was so much added to the cost of their adventures, which they could not charge to their customers, and in that way get it back, because the prices of merchandise and freight were controlled by foreigners who were not subject to this expense, and who could therefore compel the American merchants to compete at disadvantage or retire from business. Such a retirement was impossible, as it involved an election between doing business at disadvantage or allowing the ships to rot at the wharves. It was therefore in no fair sense a voluntary payment, but a contribution forced from the merchants by the dangers arising from the rebel cruisers, which our Government, laboring under the heavy burden of maintaining large armies in the field to suppress the rebellion, was powerless to prevent.

It is therefore clear that after the owners of the vessels whose property was destroyed are indemnified to the extent of their losses, those who suffered losses by the forced payment of war premiums and who indirectly contributed to the formation of the indemnity fund in the Treasury should be allowed a distributive share of what may remain.

The claims of those who suffered losses by the acts of the exculpated cruisers, so called, that is by the acts of the cruisers for which Great Britain was not held responsible, may, it seems to me, be well maintained on grounds peculiar to this class of claims. But this class of claimants is well represented on this floor by other members, who will present their case forcibly and effectively, and I shall content myself with the statement that they stand upon considerations which strongly appeal to the sense of justice and equity of this House and to those reasons of public policy which make it the duty of the State, in cases of peculiar loss and hardship, to come to the aid and relief of the citizen.

Mr. Speaker, I have endeavored to set forth the reasons which, in my judgment, should lead the House to deny the claims of the insurance companies, and to favor those of the sufferers by the acts of the exculpated cruisers, and those who have lost by the forced payments of war premiums. I hope that the action of this House will justify the view which I have endeavored to express, and that before it adjourns this Congress shall make a final dividend of the money derived from the Geneva award, which has been too long retained for the credit and good name of our Government.

When the civil war was concluded and the people had time to breathe, their first thought was satisfaction from Great Britain for its cruel and unfriendly conduct in the time of our extreme peril, when the future was almost without hope and the life of the Union seemed suspended by a thread. A spirit of indignation pervaded all classes of our loyal citizens, so intense that any slight act of imprudence on the part of the Government would have provoked another war with all its evils. But fortunately for us and for Great Britain, the destinies of the two nations under Providence were committed to the keeping of statesmen who were equal to the exigency, and the result was the treaty of Washington, the great diplomatic triumph of this age. It is a brilliant illustration of the possibilities of statesmanship which can evolve from the differences of nations that threaten to eventuate in the unspeakable calamities of war a solid and genuine peace, the essential condition of true national grandeur and prosperity. It will take its place hereafter among the notable historic events which mark the progress of nations in the onward march of civilization. Among the valuable results of that treaty was the judgment of the tribunal at Geneva, which established for our guide in the future important rules of conduct and liability between neutrals and belligerents, and awarded a gross sum to this country as

compensation for certain losses for which Great Britain was adjudged responsible.

This award has been paid, and upon us has devolved the duty of its distribution among those of our citizens who, in the judgment of the nation, as represented by its supreme legislative authority, have a moral claim upon its favor and consideration. No party has any title to it, in law or equity. The Government alone, in the exercise of its own discretion, and according to its own sense of duty and honor, must be its own judge of what is right and proper, and is responsible to no tribunal, foreign or domestic, for the propriety of its action. But every right-minded member of this Congress, because of this freedom from responsibility, will be only the more careful to so act as to deserve the commendation of mankind when this transaction has passed into history and is seen in that dry light which is free from passion and prejudice.

It has been said that we can do what we please with this money, give it away, or appropriate it to the payment of the ordinary current expenses of administration, and nobody will have a right to complain. If it be meant by this remark that no government or foreign power could, with propriety, criticise the action of this Government in dealing with a purely domestic question that exclusively concerns its own citizens, I agree. If it be meant that this Government can safely afford to treat disdainfully the enlightened opinion of the civilized world, I dissent. No nation, however strong in its resources, however prosperous, can dismiss with contempt, as an impertinence, that impartial public opinion which, when matured, is the best product of the best minds. Let us be careful lest, in the plenitude of power, we contract something of the insolence of power. Let us deal with this question with a due sense of our responsibility to the demands of honor and good faith, anxious only, in the exercise of that latitude of discretion which is the prerogative of the supreme legislative authority, but which, for wise reasons, is denied a judicial tribunal, to distribute, without unnecessary delay, that which is not morally ours among those of our citizens who, by reason of their losses and their relations to this fund, have special claims for indemnity which we are bound in honor to respect.

Mr. HILL. Mr. Speaker, I do not propose to occupy much of the time of the House in discussing this bill. I am opposed to the bill in its present shape. I am sure careful examination into the facts connected with the Geneva award must convince all that Congress cannot honorably reverse the decision made by the tribunal at Geneva.

The business before them was of the highest importance and received most careful consideration. It has been stated "that the insurance companies charged so immense a premium that when they got through they had actually recouped their loss and paid themselves 30 or 40 per cent. premium on their business." I do not so understand it, and it is easier making the assertion than it is to prove the fact.

It has also been stated that losses paid by citizens engaged in the business of protecting other citizens from loss by insuring them against the risks of war are not to be reimbursed, for the reason that they charged and received a premium for the insurance; and, further, for the reason that they, or some of them, may have received, in the aggregate, a larger amount of premium on all the risks insured than the aggregate amount paid for those that were lost; and, therefore, if such was the case, they have really sustained no loss, but, on the contrary, have made a profit by their business; in substance the same as stated above, and, finally, that although ordinarily the insurers on the payment of a loss become subrogated to all the rights of the party insured, yet this rule may not possibly hold good when it is a question of national wrong committed upon the high seas, which can only be settled between two nations, and which the government of the individuals suffering by it is not bound to pursue to a settlement for the benefit of a few of its citizens beyond the limit which its own discretion and its view of the public interests may dictate and, therefore, that as the right of subrogation under these circumstances has only such practical vitality as may be given to it by the action of the government, it may acquire thereby some color of right to determine what disposition shall be made of the indemnification recovered through its intervention. What are the facts in regard to these claims? To me they are simple and very plain, and I cannot see how this honorable body can honestly go behind the verdict rendered by the tribunal of arbitration.

After the treaty of Washington, in 1871, it became necessary for our Government to prepare its case for submission to the tribunal of arbitration. It advertised for claimants to send in their claims, and as insurers were known to be large claimants and were in possession of the proofs, it addressed a circular to all insurance companies requesting them to forward their claims. This they did, transmitting them with all the evidence and the assignments made to them by the parties to whom they had paid the losses. These claims, together with the claims of parties who had stood their own insurers, (commonly called uninsured,) were collated by the State Department and printed in a volume, in which the name of each claimant, insurance company, and uninsured party appeared, with full particulars of the property destroyed, when, where, and by what cruiser. It also printed in the same volume a claim on behalf of the Government itself, for expenses of the "prolongation of the war," &c., and also

some few claims of parties for "premiums" paid for insuring against "war risks."

When the tribunal met, the British Government refused to go on with the arbitration unless all claims for indirect or consequential losses were withdrawn. For a time it looked as if the arbitration would be a failure.

Thereupon the tribunal considered the subject, and on the 19th of June, 1872, announced:

That after the most careful perusal of all that has been urged on the part of the Government of the United States in respect of these (indirect) claims, they have arrived, individually and collectively, at the conclusion that these (indirect) claims do not constitute, upon the principles of international law applicable to such cases, good foundation for an award of compensation or computation of damages between nations; and should, upon such principles, be wholly excluded from the consideration of the tribunal in making its award, even if there were no disagreement between the two governments as to the competency of the tribunal to decide thereon.

Thereupon the counsel of the United States at Geneva advised their Government "that this declaration of the tribunal should be submitted to, and that the United States, with a view of maintaining the due course of the arbitration on the other claims without adjournment, should announce to the tribunal that the said (indirect) claims covered by its opinion will not be further insisted upon before the tribunal by the United States, and may be excluded from all consideration by the tribunal in making its award."

In reply to this, our Secretary of State communicated the determination of the President, as follows:

I have laid your telegrams before the President, who directs me to say that he accepts the declaration of the tribunal as its judgment upon a question of public law which he had felt that the interests of both Governments required should be decided, and for the determination of which he had felt it important to present the claims referred to for the purpose of taking the opinion of the tribunal.

This is the attainment of an end which this Government had in view in the putting forth of those claims. We had no desire for a pecuniary award, but desired an expression by the tribunal as to the liability of a neutral for claims of that character. The President, therefore, further accepts the opinion and advice of the counsel as set forth above, and authorizes the announcement to the tribunal that he accepts their declaration as determinative of their judgment upon the important question of public law as to which he had felt it his duty to seek the expression of their opinion; and that, in accordance with such opinion and judgment, from henceforth he regards the claims set forth in the case presented on the part of the United States for loss in the transfer of the American commercial marine to the British flag, the enhanced payment of insurance, and the prolongation of the war, and the addition of a large sum to the cost of the war and the suppression of the rebellion, as adjudicated and disposed of; and that, consequently, they will not be further insisted upon before the tribunal by the United States, but are henceforth excluded from its consideration by the tribunal in making its award.

This was announced to the tribunal; all claims for "war premiums" were withdrawn, and the arbitration was saved.

There then remained before the tribunal only the following claims:

1. The claims of insurers.
2. The claims of parties uninsured.
3. The claims of masters and sailors for personal effects and wages.

The above is quoted from Caleb Cushing's book, "The Treaty of Washington," pages 70, 72, 73, and the "decision and award," in the appendix to the same.

Now, as these losses had been occasioned by several different cruisers, the tribunal took up the case of each one separately, considered it, and made its decision as to whether Great Britain was liable for the loss of vessels and cargoes it had destroyed. The decision and award was that Great Britain was liable for the losses occasioned by seven named cruisers, and was not liable for the losses occasioned by eleven named cruisers.

The next step of the tribunal was to refer the list of claims presented by the United States in behalf of insurance companies and uninsured parties and masters and sailors to experts, to estimate and ascertain as accurately as possible the total amount of claims for such losses occasioned by the seven cruisers for which Great Britain was held liable, and having received their report and decided that it was just to allow interest, they awarded, on the 17th September, 1872, the sum of \$15,500,000 in satisfaction of all claims for these losses, and Great Britain paid it.

This is a brief and, I believe, true history of the award.

Our Government has distributed only a portion of it thus far to uninsured parties and masters and sailors. The balance of the award, received in payment of the claims of insurers, has not yet been paid. Why? Speculators sought out parties who had paid premiums for war risks, and made contracts with them to undertake their collection from the Geneva award for 50 per cent. or some other share of the amount they might collect. These speculators, employing agents and attorneys, have thus far succeeded in defeating payment of the claims of insurers, and in consequence another set of claimants have been encouraged to try their hand at it.

It is generally understood that if the insurers had consented to compromise with the "war-premium" claimants a bill could have been passed at the last session to distribute the balance of the award between both, *pro rata*. The insurers declined.

Now, as to this bill under consideration, it will be seen by section 5 that it is prepared in the interest of a new set of claimants, for losses by "exculpated" cruisers, *i. e.*, cruisers for which Great Britain was declared not liable and for which no part of the award was made. By section 8 these new claimants are to be paid first, and then if

there is anything left the "war-premium" claimants are to have it. The insurers are ignored entirely.

A large portion of the award was paid for losses sustained by insurance companies in the city of New York. With one exception they were all "mutual" companies, that is to say, the persons who insured with them paid the premiums charged, and if at the end of each year the premiums paid exceeded the losses, the excess was returned to them *pro rata*.

The Legislature of New York some years ago passed an act authorizing these mutual companies to distribute among the parties who paid the premiums any moneys that should be recovered from the Geneva award. Now, if the insurance companies recover their share of the award the parties who paid them the premium will get it.

All fair-minded persons concede that the underwriters ought to have the money that was collected in their name and on their behalf from Great Britain. Hon. Caleb Cushing, who acted as senior counsel of the United States at Geneva, wrote in October, 1872, as follows:

That the tribunal examined and scrutinized the schedules and estimates of individual losses presented by the United States, and on inspection thereof awarded a sum in gross which they conceived to be sufficient (and which I think is sufficient) to afford a just indemnity to the injured citizens of the United States. This gross sum will within a year be paid by Great Britain to the United States, with interest on any delay. It will be received and held by the United States as a trust fund to be distributed among parties interested conformably to the tenor and spirit of the award of the tribunal, and the Government will be bound to make such distribution promptly and justly by the moral force of its duty of good faith to England, and its obligations to fulfill the stipulations of the treaty of Washington. There is no contingency or uncertainty in all this. Parties in interest may, I do not hesitate to say, rest assured of the honor and good faith of the Government of the United States in this respect with just as much certitude as in the payment of the gold bonds of the Government.

Touching the relative positions, as claimants of the underwriters and war-premium parties, I quote the following statement of facts which have been brought to my notice:

The aggregate claims of the thirty-six companies on file in the Department of State (chiefly mutual) amount to something under \$5,000,000, and * * * there are not less than thirty thousand respectable merchants interested in the honest distribution of this indemnity, represented by numerous companies, scattered over our vast continent—in New York, Boston, New Bedford, Brooklyn, Baltimore, and California. These claimants repose so much confidence in the justice of their claims, and the honesty and capacity of Congress, that they have formed no speculative rings and have steadily declined to sell out or compromise, whereas their opponents have aggregated by purchase at nominal rates large blocks of these war-premium and other illegal claims, purchased very low, because the holders have had no confidence in claims ignored by the tribunal.

It will be found that the enormous sum of \$6,240,000 war-premium claims are held by only three hundred and forty-one individuals and firms, being an average of some eighteen thousand dollars each, while one-half of these claims, \$3,690,000, falls into the hands of but five individuals and firms. There certainly appears to be no poverty here, the five claimants averaging each the modest sum of \$738,000. The actual sufferers represented by the underwriters have, as is shown, an average claim of under \$200 each.

We are informed the thirty-six insurance companies whose claims are on file are located (if still alive) in all the larger commercial cities. But it is worth noting that ten out of the twelve Boston companies interested and one-third of the New York companies in the list of claimants are bankrupt, with numerous poor creditors looking for relief to this fund so justly their due. As to the largest claimant among the underwriters—the Atlantic Mutual Insurance Company—it appears that its claims, filed in the Department of State, aggregated \$1,653,889, and were made (the company being purely mutual) in behalf of 9,276 dealers or members. These claims were filed during the years 1862, 1863, 1864, and 1865—the heaviest loss having been incurred in 1863, namely: \$818,296, or nearly one-half of the whole sum claimed.

In the time allotted me I cannot enter into the details of this subject, but I trust I have said sufficient to convince the conscientious members of this House that they cannot support the bill now under consideration without nullifying the action of the tribunal of arbitration.

It would, in my opinion, be very unjust for the Government to pay either class of claimants provided for in this bill and ignore the underwriters and insurers; therefore it ought not to pass.

Mr. HUTCHINS and Mr. CONVERSE next addressed the House. [See Appendix.]

Mr. CONVERSE. I now yield ten minutes of my time to the gentleman from New Hampshire, [Mr. BRIGGS.]

Mr. BRIGGS. Mr. Speaker, at this stage of the debate and this hour of the day I do not propose to enter into any discussion of the pending question. Being on the committee that investigated it, I did hope I should have time to submit such views as I entertain and such opinions as I have formed from that investigation, but I will not ask this House to yield a moment to me for that purpose, because it is of greater importance the public business should be proceeded with than that I should make a speech. Consequently, I yield the floor.

Mr. REED. Mr. Speaker, I have thirty-five minutes which I did not take of the original hour, and I desire to yield fifteen minutes to the gentleman from New Hampshire, [Mr. RAY,] and then to move the previous question, unless gentlemen object on the other side, or unless the gentleman from Georgia would like to speak.

Mr. BUCKNER. Let us adjourn.

Mr. HAMMOND, of Georgia. If I had time I would like to make some remarks in support of this minority report, because all the gentlemen who have spoken have spoken from the stand-point of interest, one advocating the class of claims belonging to his constituents and another advocating the class of claims belonging to his constituents.

I have no constituents interested in this case except as a general taxpayer to the Government. For them not one word has been uttered. If the gentleman thinks it so very important there should be a vote to-night I will forego any expression of any views I may have on the subject. Otherwise I would like to have time.

Mr. BUCKNER. I move that the House do now adjourn.

Mr. REED. I think we had better come to a vote in regard to it. I am perfectly willing—

Mr. HOOKER. I suggest to the gentleman to let it go over until to-morrow.

A MEMBER. Does not the gentleman from Maine have an hour after the previous question has been ordered?

Mr. REED. I have. I now propose to give to the gentleman from New Hampshire fifteen minutes, and then I suggest the previous question be called; and after I have given ten minutes' time out of my hour, if I give twenty minutes to the gentleman from Georgia, and reserve twenty minutes to myself, will that be satisfactory to him?

Mr. HAMMOND, of Georgia. That depends when I am to get it. I can speak more in twenty minutes to-morrow than in an hour this evening. I am willing to take twenty minutes to-morrow.

Mr. REED. Very well; we will do that. I yield now to the gentleman from New Hampshire for fifteen minutes.

The SPEAKER. Does the gentleman from Missouri insist on his motion to adjourn?

Mr. REED. That is the understanding.

Mr. McLANE. When does the gentleman call for the previous question?

Mr. REED. It is understood distinctly the previous question is considered ordered at the end of the fifteen minutes which the gentleman from New Hampshire takes.

The SPEAKER. Does the gentleman from Missouri withdraw his motion to adjourn?

Mr. BUCKNER. I insist on the motion that the House adjourn.

Mr. MANNING. I ask unanimous consent—

Mr. McLANE. I ask the attention of the gentleman from Maine.

Mr. MANNING. I ask unanimous consent that Mr. LADD, who is necessarily absent at this time, be allowed to print some remarks upon this subject in the RECORD.

Mr. REED. I ask consent that there be given general leave to print upon this subject.

There was no objection, and it was ordered accordingly.

Mr. BUCKNER. I move that we now adjourn.

Mr. REED. Before that is done I desire that we shall reach a conclusion about which there can be no mistake in reference to the pending question. Is it understood that after the gentleman from New Hampshire has occupied the floor for fifteen minutes the previous question shall be considered as ordered?

Mr. BUCKNER. My motion was to adjourn; but the gentleman from Georgia [Mr. HAMMOND] occupies such a relation to this case that he ought to be allowed such time as he may require.

Mr. RYAN. If the gentleman from Georgia is satisfied with the arrangement what objection can there be?

Mr. REED. There is certainly no intention to be discourteous to the gentleman from Georgia. On the contrary I desire to meet his views entirely.

Mr. HAMMOND, of Georgia. I am satisfied that there is not; and the arrangement by which I may occupy the time to-morrow will be entirely agreeable to me.

Mr. REED. I understood from the gentleman from Georgia that he did not desire to be heard upon this question. Later, however, the gentleman informed me that inasmuch as no one had spoken directly upon his bill, he would like some time upon it; and I have endeavored to make such arrangement as would enable him to do so. I do not want any one to suppose that I would be in any way discourteous to a gentleman occupying the position he occupies, not only on the committee, but upon the floor of this House, and I am very sure the gentleman himself does not think any discourtesy was intended.

Mr. HAMMOND, of Georgia. I am entirely satisfied of that, and should prefer greatly to occupy the time to-morrow. I will be able then to occupy the twenty minutes more satisfactorily to myself than an hour now.

Mr. REED. Then I ask unanimous consent that the understanding be now clearly reached that after the fifteen minutes allowed to the gentleman from New Hampshire the previous question be considered as ordered, and that the gentleman from Georgia shall be allowed to occupy his twenty minutes in the morning.

Mr. HAMMOND, of Georgia. And I join in the request.

Mr. BUCKNER. To-morrow is private bill day.

Mr. REED. I know that; but this will soon be disposed of. Is that the understanding?

The SPEAKER. Is there objection to the proposition of the gentleman from Maine?

Mr. RANDALL. There is objection, unless it is also understood that the House after this bill is disposed of shall have the privilege of exercising its volition as to whether or not it will then go on with the Private Calendar.

Mr. REED. There is no objection to that.

Mr. RAY. I do not care to occupy the floor for the time allowed me. The SPEAKER. The Chair will then submit the question to the

House. Is there consent that the previous question shall be now considered as ordered upon the pending proposition, with the further understanding that the gentleman from Georgia have leave to occupy his time to-morrow?

There was no objection.

So the previous question was ordered.

Mr. HAMMOND, of Georgia. I ask further consent, that inasmuch as the bill of the minority has not been read, it be printed in the RECORD and be before the House to-morrow morning.

There was no objection.

The minority bill is as follows:

A bill to provide for the further distribution of the moneys received under the Geneva award.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons and corporations claiming any portions of the moneys now under the control of the United States, which were received from the Government of Great Britain in payment of the Geneva award, or as interest thereon, be, and they are hereby, authorized to sue for the same in the United States Court of Claims, at any time within one year from the passage of this act, in the same manner in which other claims are sued in said court; and the said court shall render judgment for each claimant for such amount only as, in their opinion, he shall be justly entitled to recover under said treaty and award according to the principles of justice, equity, and the law of nations, but all payments heretofore made on any claim by the United States shall be deducted from the judgment to be rendered thereon.

SEC. 2. That in determining the amount for which judgment is to be rendered in favor of any claimant, interest shall be allowed at the rate of 4 per cent. per annum upon the amount of such claim from the date when the court shall in each case decide that the loss out of which the claim arose was sustained by the claimant; but in entering the judgment, the amount of principal and interest shall be stated separately.

SEC. 3. That such persons and corporations or the United States may respectively appeal to the Supreme Court of the United States from judgments of the Court of Claims rendered under this act, and such appeals shall be in the form now prescribed by law.

SEC. 4. That all judgments in favor of claimants under this act not appealed from or affirmed on appeal shall be paid out of the aforesaid moneys. Every person or corporation who shall sue under this act shall, within one year from the passage thereof, file with the clerk of the Court of Claims a copy, under oath, of his or their claim; and, at the expiration of the said year, the clerk of said court shall ascertain the total amount of the money and interest thereon, then under the control of the United States, received from Great Britain in payment of the Geneva award; and thereafter each claimant, at the expiration of ten days after a judgment shall be perfected in his favor, (provided no appeal is taken; and if an appeal is taken, at the expiration of ten days after final judgment in his favor,) shall be entitled to be paid out of the aforesaid moneys the ratable proportion thereof to which he would be entitled if the entire claims so filed were allowed. The remainder of each judgment shall be paid at the expiration of three years from the passage of this act, with interest at the rate of 4 per cent. per annum from the recovery of such judgment; but if the sum of the judgments be greater than the moneys aforesaid, then the remainder of such judgments shall be paid ratably.

SEC. 5. That, if necessary for the dispatch of business under this act, the clerk of the Court of Claims may appoint one or more assistants, and their salaries and all other expenses under this act shall be paid out of the said moneys.

SEC. 6. That no claim which was provable under the acts organizing and continuing the court of commissioners of Alabama Claims and was there duly presented, and was there adjudged, shall be provable under this act.

SEC. 7. That claimants under this act shall be admitted to testify in their own behalf.

SEC. 8. That appeals arising under this act shall take precedence of all other cases in the Supreme Court.

SEC. 9. That after the payment of all judgments rendered in pursuance of this act, if there shall remain any part of the said money, the same shall be and remain a special fund, to await the further action of Congress.

ORDER OF BUSINESS.

Mr. MARTIN. I move that the House do now adjourn.

The SPEAKER. Pending the motion to adjourn, the Chair desires to lay before the House certain executive communications and a report from the Committee on Enrolled Bills.

ENROLLED BILL AND JOINT RESOLUTION SIGNED.

Mr. ALDRICH, from the Committee on Enrolled Bills, reported that they had examined and found duly enrolled a bill and joint resolution of the following titles; when the Speaker signed the same:

A bill (H. R. No. 869) for the relief of Thomas J. Wharton; and

A joint resolution (H. R. No. 204) making an appropriation for fuel, lights, water, &c., for the fiscal year 1882, and for other purposes.

PRE-EMPTION ENTRIES, 1881.

The SPEAKER laid before the House a communication from the Secretary of the Interior, transmitting report of the Commissioner of the General Land Office as to pre-emption cases approved during the fiscal year ending June 30, 1881; which was referred to the Committee on the Public Lands, and ordered to be printed.

SIGNAL SERVICE, UNITED STATES ARMY.

The SPEAKER also laid before the House a letter from the Secretary of War, containing a corrected statement of the expenditures for the United States Signal Service, the report transmitted on March 18, 1882, having been found erroneous; which was referred to the Committee on Expenditures in the War Department, and ordered to be printed.

CHEROKEE INDIANS OF NORTH CAROLINA.

The SPEAKER also laid before the House a letter from the Secretary of the Interior, in response to resolution of 25th of February, relative to lands and funds of the Eastern band of Cherokee Indians in North Carolina; which was referred to the Committee on Indian Affairs, and ordered to be printed.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted to Mr. FISHER, for four days, on account of important business.

EXPENSES OF INDIAN DELEGATIONS.

Mr. SPAULDING, by unanimous consent, introduced a bill (H. R. No. 6160) to pay expenses of the present and former delegations of the Eastern band of Cherokee Indians of North Carolina; which was read a first and second time, referred to the Committee on Indian Affairs, and ordered to be printed.

JAMES G. EDWARDS.

Mr. SPAULDING also, by unanimous consent, introduced a bill (H. R. No. 6161) granting a pension to James G. Edwards; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

WILLIAM P. SNOW.

Mr. SPAULDING (by request) also, by unanimous consent, introduced a bill (H. R. No. 6162) to increase the pension of William P. Snow; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

SAMUEL GRAHAM.

Mr. SPAULDING (by request) also, by unanimous consent, introduced a bill (H. R. No. 6163) to restate the pension of Samuel Graham; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

ANNE ARUNDEL COUNTY, MARYLAND.

Mr. CHAPMAN, by unanimous consent, introduced a bill (H. R. No. 6164) granting the right of way to the county of Anne Arundel, in the State of Maryland, through the United States Government grounds near the city of Annapolis, Maryland; which was read a first and second time, referred to the Committee on Naval Affairs, and ordered to be printed.

HORACE CHANDLER.

Mr. DWIGHT, (by request,) by unanimous consent, introduced a bill (H. R. No. 6165) for the relief of Horace Chandler; which was referred to the Committee on Invalid Pensions, and ordered to be printed.

RETIRED LIST FOR NON-COMMISSIONED ARMY OFFICERS.

Mr. STEELE, by unanimous consent, from the Committee on Military Affairs, reported back with amendments the bill (H. R. No. 4761) to authorize a retired list for non-commissioned officers of the United States Army who have served therein continuously, honorably, and faithfully for a period of thirty years or upward; which was referred to the House Calendar, and the amendments and report ordered to be printed.

Mr. STEELE also, from the Committee on Military Affairs, reported back the bills (H. R. Nos. 705, 1001, 2513, and 3030) and the petition of Patrick McDonald for relief as above; and moved that the committee be discharged from the further consideration of the same, and that they be laid on the table.

The motion was agreed to.

TERRITORY OF ALASKA.

Mr. VAN VOORHIS, by unanimous consent, presented the views of the minority on the bill (H. R. No. 5900) providing a civil government for the Territory of Alaska; which were referred to the Committee of the Whole House on the state of the Union, to accompany the report of the majority, and ordered to be printed.

T. ALONZO WALKER AND OTHERS.

Mr. BLANCHARD, by unanimous consent, introduced a bill (H. R. No. 6166) referring the claim of T. Alonzo Walker and Augusta C. Todd, for proceeds of cotton, to the Court of Claims for adjudication; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

ENTRIES OF LAND IN DAKOTA.

Mr. STRAIT, (by request,) by unanimous consent, introduced a bill (H. R. No. 6167) to confirm certain entries of lands in Dakota Territory, and to authorize the issuing of patents therefor; which was read a first and second time, referred to the Committee on the Public Lands, and ordered to be printed.

WILLIAM C. DODGE.

Mr. STRAIT (by request) also, by unanimous consent, introduced a bill (H. R. No. 6168) for the relief of William C. Dodge; which was read a first and second time, referred to the Committee on Patents, and ordered to be printed.

Mr. STRAIT also, by unanimous consent, introduced a bill (H. R. No. 6169) for the relief of W. C. Dodge; which was read a first and second time, referred to the Committee on Patents, and ordered to be printed.

COALING DOCK, ETC., AT PORT ROYAL, SOUTH CAROLINA.

Mr. TILLMAN, by unanimous consent, introduced a bill (H. R. No. 6170) providing for a coaling-dock and naval storehouse at Port Royal, South Carolina; which was read a first and second time, referred to the Committee on Naval Affairs, and ordered to be printed.

MICHAEL A. DILLON.

Mr. HUMPHREY, by unanimous consent, introduced a bill (H. R. No. 6171) to increase the pension of Michael A. Dillon; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

LEVI H. KING.

Mr. HEPBURN, by unanimous consent, introduced a bill (H. R. No. 6172) for the relief of Levi H. King; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

SIDNEY HOWARD.

Mr. SINGLETON, of Illinois, by unanimous consent, introduced a bill (H. R. No. 6173) for the relief of Sidney Howard; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

JAMES B. WHITE.

Mr. PEELLE, from the Committee on Claims, reported back with a favorable recommendation the bill (H. R. No. 289) for the relief of James B. White; which was referred to the Committee of the Whole House on the Private Calendar, and the accompanying report ordered to be printed.

FANNY S. CONWAY.

Mr. HARRIS, of New Jersey, by unanimous consent, from the Committee on Naval Affairs, reported back with a favorable recommendation the bill (H. R. No. 4509) for the relief of Mrs. Fanny S. Conway; which was referred to the Committee of the Whole House on the Private Calendar and the accompanying report ordered to be printed.

JOHN W. ALYEA.

Mr. HASKELL, by unanimous consent, introduced a bill (H. R. No. 6174) granting a pension to John W. Alyea; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

GEORGE W. MANNING.

Mr. HASKELL also, by unanimous consent, introduced a bill (H. R. No. 6175) granting a pension to George W. Manning; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

SUSAN S. WHITE.

Mr. BINGHAM, by unanimous consent, introduced a bill (H. R. No. 6176) for the relief of Susan S. White; which was read a first and second time, referred to the Committee on the District of Columbia, and ordered to be printed.

BRIDGET CURTIN.

Mr. BINGHAM also, by unanimous consent, introduced a bill (H. R. No. 6177) granting a pension to Bridget Curtin; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

HENRY D. TODD.

Mr. BINGHAM also, by unanimous consent, introduced a bill (H. R. No. 6178) for the relief of Henry D. Todd, which was read a first and second time, referred to the Committee on Naval Affairs, and ordered to be printed.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted to Mr. SHALLENBERGER, for one week, on account of important business.

Mr. MARTIN. I must now insist upon my motion to adjourn.

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

PETITIONS, ETC.

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

By Mr. BUCHANAN: The petitions of citizens of Troup and Coweta Counties, Georgia, for an appropriation for educational purposes—severally to the Committee on Education and Labor.

By Mr. FORNEY: The petition of G. L. Brindley and others, of Cullman County, Alabama, for an appropriation for educational purposes—to the same committee.

By Mr. GEORGE: The petition of William Gallick, of Portland, Oregon, for compensation for cattle killed at Neah Bay Indian agency, Washington Territory, and used by the Government in feeding Indians—to the Committee on Claims.

By Mr. HARMER: The petition of Mrs. Esther Hudson, for a pension—to the Committee on Invalid Pensions.

By Mr. LEWIS: The petition of James McFarland, for a pension—to the Committee on Pensions.

By Mr. McLANE: The petition of Augustus Jay, for the release of title by the United States to certain real estate in the District of Columbia—to the Committee on the District of Columbia.

By Mr. MOREY: Papers relating to the pension claim of Jane Blackmer and of Benjamin Morgan—severally to the Committee on Invalid Pensions.

By Mr. PRESCOTT: The petition of citizens of New York, protesting against the repeal of the tax on matches—to the Committee on Ways and Means.

By Mr. JOHN S. RICHARDSON: The petition of the board of health of Charleston, South Carolina, and of other citizens of said State, asking for the re-enactment of the law of June 2, 1879, defining the duties of the National Board of Health; and also asking that Sapelo Refuge quarantine station be continued—to the Committee on the Public Health.

By Mr. URNER: The petition of soldiers and sailors of Maryland, for the passage of the bill (H. R. No. 1410) increasing the pension of soldiers and sailors of the late war who lost a leg or an arm while in the line of duty—to the Committee on the Payment of Pensions, Bounty, and Back Pay.

By Mr. WADSWORTH: The petition of Swift Post, Grand Army of the Republic, of New York, for an increase of pension to soldiers and sailors of the late war who lost an arm or a leg while in the line of duty—to the Committee on Invalid Pensions.

By Mr. WHITTHORNE: The petition of R. H. Ogilvie, for compensation for property taken and used by the United States Army during the war of the rebellion—to the Committee on War Claims.

By Mr. YOUNG: The petition of Charles H. Ludwig and 20 business firms of New York City, for the passage of the bill providing for the taxation of glucose—to the Committee on Ways and Means.

SENATE.

FRIDAY, May 12, 1882.

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

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

EXECUTIVE COMMUNICATIONS.

The PRESIDENT *pro tempore* laid before the Senate a letter from the Secretary of War, transmitting, in answer to a resolution of February 2, 1882, a communication from the Chief of Ordnance in relation to the results of all trials and proofs of all guns of eight-inch caliber or upward, whether breech or muzzle loaders, and of all projectiles tested and proved under the act of June 6, 1872, to the present time, and what guns and projectiles of this kind are now on hand and untested or unexpended, &c.

Mr. ALLISON. I think the communication should be referred to the Committee on Military Affairs. It is in response to a resolution offered by the Senator from Alabama [Mr. MORGAN] some time ago.

The PRESIDENT *pro tempore*. The communication will be referred to the Committee on Military Affairs, and if the committee desire the accompanying papers printed they can make a report with that recommendation. The papers are very voluminous, and will be referred without printing.

Mr. ALLISON. I call the attention of the Senator from Alabama to the matter. He has just come in.

Mr. MORGAN. Inasmuch as the appropriation bill relating to that special subject has passed the Senate, and I believe also the House, I ask that the communication lie upon the table until I can have a chance to examine it, and see whether it is proper to have any part of it, or how much of it, printed.

Mr. ALLISON. I suggest to the Senator from Alabama that the communication and accompanying papers be referred to the Committee on Military Affairs, and let them examine it and see whether any of it ought to be printed, and if so, how much.

Mr. MORGAN. I have no objection to that reference. I supposed I could relieve the committee of some trouble, however, by examining it without a reference.

Mr. ALLISON. I have no wish about it.

Mr. COCKRELL. Let the Senator from Alabama examine it himself, and determine upon the question of printing.

Mr. ALLISON. Very well.

The PRESIDENT *pro tempore*. The communication will lie on the table without printing.

Mr. ALLISON. There is a letter from the Secretary of War accompanying the communication?

The PRESIDENT *pro tempore*. There is.

Mr. ALLISON. The letter perhaps should be printed in the RECORD.

The PRESIDENT *pro tempore*. The letter had probably better be read. It will be read.

The Acting Secretary read as follows:

WAR DEPARTMENT,
Washington City, May 11, 1882.

SIR: Referring to so much of the resolution of the Senate, adopted February 2, 1882, as directed the Secretary of War to transmit to the Senate "a full report of the results of all trials and proofs of all guns of 8-inch caliber or upward, whether breech or muzzle loaders, and of all projectiles tested and proved under the act of June 6, 1872, to the present time, and what guns and projectiles of these kinds, with their cost, are now on hand and untested or unexpended, and what officers or agents of the Government are, or have been, personally interested in inventions or patents for the same," I have the honor to transmit herewith a communication from the Chief of Ordnance, dated the 10th instant, together with the following documents:

First. Report of Lieutenant-Colonel T. G. Baylor, president of the ordnance