By Mr. MILLIKEN: Remonstrance of Andrew P. Wiswell and others, against the law relating to telegraph company—to the same committee.

By Mr. MURPHY: Petitions of citizens of Iowa, relative to banks, &c.—to the Committee on Banking and Currency.

By Mr. NICHOLLS: Resolutions of the New York Leaf-Tobacco Board of Trade, favoring the repeal of the internal-revenue laws imposing a tax on tobacco—to the Committee on Ways and Means.

By Mr. NUTTING: Petition in regard to record of soldiers in the late war for use of the State of New York—to the Committee on Military Affairs.

By Mr. POLAND: Papers relating to the pension claim of William Bridges, jr.—to the Committee on Invalid Pensions.

By Mr. RIGGS: Papers relating to the bill for the relief of Mrs. Elizabeth Leebrich—to the Committee on War Claims.

By Mr. WOOD: Resolutions of Veteran Post No. 41, Grand Army of the Republic, Department of Indiana, relative to pensions, &c.—to the Committee on Invalid Pensions.

By Mr. WOODWARD: Petition of W. C. Hobart and others, ex-prisoners of war, in favor of the passage of H. R. 1189—to the same committee.

By Mr. YOUNG: Petition of R. D. Goodwyn, to refer claim to the Court of Claims—to the Committee on War Claims.

Also, petition of R. D. Goodwyn, to refer claim to the Quartermaster-General to rehear—to the same committee.

Also, papers relating to the claim of R. D. Jordan, guardian of minor children of Claiborn De Loach, deceased—to the Committee on Claims.

SENATE.

TUESDAY, *May* 27, 1884.

Prayer by Rabbi E. B. M. BROWNE, of New York city.

JAMES DONALD CAMERON, a Senator from the State of Pennsylvania, appeared in his seat to-day.

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

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate a communication from the Attorney-General, transmitting, in answer to a resolution of the 8th instant, certain correspondence relating to the shooting of Black Wolf, an Indian, by Hal Palfarino in the Territory of Montana, and the measures taken for his arrest and trial; which, with the accompanying papers, was referred to the Committee on Indian Affairs, and ordered to be printed.

PETITIONS AND MEMORIALS.

The PRESIDENT *pro tempore* presented the memorial of Charles Sheldon and 23 other citizens of Rutland, Vt., remonstrating against the establishment of a governmental postal telegraphic system; which was ordered to lie on the table.

Mr. LAPHAM presented a petition of 91 citizens of Mexico, N. Y.; a petition of 22 citizens of Yonkers, N. Y.; a petition of 50 citizens of Oswego, N. Y., and a petition of 291 citizens of the city of New York, praying for the passage of Senate bill No. 1223, providing that all qualified physicians be made equal before the law in the Government service; which were referred to the Committee on Civil Service and Retrenchment.

Mr. SHERMAN presented a petition of 104 citizens of Lima, Ohio; a petition of 60 citizens of Columbus, Ohio; a petition of 22 citizens of Duncan's Falls and Chancellorsville, Ohio; a petition of 51 citizens of Middletown, Ohio, and a petition of 40 citizens of Belleville, Ohio, praying for the passage of Senate bill No. 1223, providing that all qualified physicians be made equal before the law in the Government service; which were referred to the Committee on Civil Service and Retrenchment.

Mr. SEWELL presented the petition of Dr. C. J. Cooper and 100 other citizens of New Jersey, and the petition of Dr. H. F. Hunt and 84 other citizens of Camden, N. J., praying for the passage of Senate bill No. 1223, providing that physicians shall be made equal before the law in appointments in the Army and Navy; which were referred to the Committee on Civil Service and Retrenchment.

Mr. LOGAN presented the petition of Dr. George F. Roberts and others, citizens of Illinois, Iowa, and Minnesota, praying for the passage of Senate bill 1223, providing that all qualified physicians be made equal before the law in appointments in the Government service; which was referred to the Committee on Civil Service and Retrenchment.

Mr. LOGAN. I present also a memorial of the Methodist Episcopal conference, colored, recently held at Baltimore, asking that a resolution now pending before Congress providing for the appointment of a commission to investigate the condition of the colored people in the South may be favorably acted upon at an early day. The resolution was reported adversely, I think.

Mr. BLAIR. It was reported adversely, but I shall call it up at some day and offer a substitute for it.

Mr. LOGAN. I move that the memorial lie on the table, inasmuch as the resolution is now on the Calendar.

The motion was agreed to.

Mr. LOGAN presented a petition of ex-Union soldiers of Ludlow, Ill.; a petition of ex-Union prisoners of war of Columbus, Ohio; a petition of ex-Union soldiers of Martinsville, Ill.; a petition of Thomas Watson Post, No. 427, Grand Army of the Republic, Department of Illinois; a petition of Kenesaw Post, No. 77, Grand Army of the Republic, of Danville, Ill.; and a petition of Post No. 81, Grand Army of the Republic, of Kirkwood, Ill., praying for the passage of such legislation as is recommended by the pension committee of the Grand Army of the Republic in regard to pensions; which were referred to the Committee on Pensions.

He also presented a memorial of citizens of Waukegan, Ill., and a memorial of citizens of Freeport, Ill., remonstrating against Government control of the telegraph system; which were ordered to lie on the table.

He also presented resolutions adopted by one hundred and sixty-eight posts of the Grand Army of the Republic, Department of Ohio, favoring the passage of the bill granting public lands to soldiers and sailors of the war of the rebellion; which were referred to the Committee on Public Lands.

He also presented a petition of citizens of Rock Island and Moline, Ill., for the enforcement of the eight-hour law; which was referred to the Committee on Education and Labor.

He also presented the petition of Frank Schwartz, of Saint Clair County, Illinois, praying to be allowed a pension; which was referred to the Committee on Pensions.

Mr. McPHERSON presented memorials of citizens of Ramsey's, Deckertown, Passaic, and Paterson, N. J., remonstrating against the enactment of any measure relating to the telegraph which shall increase the number of public officials or establish a Government monopoly of the telegraph business, or which shall employ the functions of Government to destroy the property of individuals who have embarked in legitimate enterprise to provide ample facilities for the public accommodation; which were ordered to lie on the table.

He also presented a memorial of the Legislature of New Jersey; which was read, and referred to the Committee on Commerce, as follows:

[Joint resolution No. 8.]

STATE OF NEW JERSEY.

Joint resolution requesting Congress to pass a bill to promote the efficiency of the revenue-marine service.

Whereas the eminent services rendered by the brave men of the revenue marine entitles them to the highest commendation; and

Whereas no provision exists in the present laws for the retiring of the meritorious, aged, or disabled in that service: Therefore,

1. *Be it resolved by the senate and general assembly of the State of New Jersey*, That the Senators and Representatives from this State are earnestly requested to use their influence for the passage of the bill pending in Congress, H. R. No. 4483, "to promote the efficiency of the revenue-marine service," whereby the officers of the revenue marine who have grown old or who have been seriously injured in the performance of their duty may be retired, in accordance with provisions similar to those now in force in relation to the naval officers of the United States.

2. *And be it further resolved*, That copies of these resolutions be forwarded to the Senators and Representatives in Congress from New Jersey by the secretary of state.

Approved May 9, 1884.

Mr. ALLISON presented a memorial of citizens of Charles City, Iowa, remonstrating against the Government assuming control of the telegraph business of the country; which was ordered to lie on the table.

He also presented the petition of the National Association of Ex-Union Prisoners of War, praying for the passage of a bill granting pensions to all soldiers who were confined in confederate prisons; which was referred to the Committee on Pensions.

He also presented a petition of Selina Milne, praying that an increase of pension be granted to widows and dependent relatives of persons of the military service; which was referred to the Committee on Pensions.

He also presented the petition of Carbee Post, No. 270, Grand Army of the Republic, of Springville, Iowa, praying for the equalization of bounties, and for such amendments of the pension laws as were recommended by the pension committee of the Grand Army of the Republic; which was referred to the Committee on Pensions.

He also presented the petition of clerks employed in the post-office at Cedar Rapids, Iowa, praying that a classification be made of the clerks in the distributing department of all first-class post-offices, and that salaries be so adjusted that all clerks doing the same kind of work be placed in the same class and receive like salaries; which was referred to the Committee on Post-Offices and Post-Roads.

He also presented the petition of J. S. Duffie and others, praying for an amendment of the bill (H. R. 6094) relating to fees allowed to attorneys in pension cases; which was ordered to lie on the table.

Mr. INGALLS presented the petition of Dr. W. G. Graham and 22 other citizens of Winfield, Ky., praying for the passage of Senate bill 1223, making all qualified physicians equal before the law in appointments to the Government service; which was referred to the Committee on Civil Service and Retrenchment.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Mr. CAMERON, of Wisconsin. I present a petition in regard to the needs of the Signal Service, very numerously signed by business men of Milwaukee, Wis. The signers are Frankington & Armour; George M. Tibbets, agent of the Western Union Transit Company; G. Hurton, agent of the Goodrich Transportation Company; Alexander Mitchell, George W. Allen, Edward Sanderson, and many others. I move that the petition be referred to the Committee on Appropriations.

The motion was agreed to.

Mr. CALL. I present the petition of numerous prominent citizens of Key West, in the State of Florida, praying for an investigation in the interest of Mr. F. N. Wicker, late collector of the port at Key West, who was removed on untrue charges of collusion with Aguero and others in the expedition to the coast of Cuba. The petition is very numerously signed and contains the names of citizens of high character, and is very earnest in its vindication of Colonel Wicker, the late collector of the port of Key West. The request of this petition is certainly reasonable and just, and the solicitude which the people of Key West feel that a citizen and officer of the Government should not be condemned when he is innocent is honorable to them.

If it is competent for the Senate to institute some proceeding which will enable Colonel Wicker to be entirely vindicated I shall give it my support. In the mean time, as I do not know what action it is competent for the Senate to take, I ask that the petition lie on the table.

The PRESIDENT *pro tempore*. A telegraphic petition on the same subject was referred some days ago to the Committee on Foreign Relations.

Mr. CALL. Then I move that this petition be referred to the Committee on Foreign Relations.

The motion was agreed to.

Mr. BROWN. I present a petition of numerous citizens of Atlanta, Ga., and of Macon, Roswell, and other points in that State, stating that at the present time the opinions and practice of physicians of equal learning, ability, and honesty differ so widely as to divide them into sects, such as those commonly called allopathic and homeopathic; that one of these sects, calling itself "regular," has now, and has always, held absolute medical control of all the Departments of the Government service, thus compelling all Government employés to submit to its arbitrary choice of medical treatment; that no candidate for appointment to medical service under the Government who avowed his belief in any other system of medical practice than that called "regular," however learned and well-qualified in other respects, has heretofore been accorded an appointment or even an examination for the same in any Government service except in the Pension Office; that such discrimination in favor of one medical system against all others equally high in the confidence of the people of the United States is an evident usurpation of powers not granted to the said public servants by law, and therefore tacitly prohibited to them; and they pray the passage of a law to prohibit this practice in the future. I move that the petition be referred to the Committee on Civil Service and Retrenchment.

The motion was agreed to.

Mr. BUTLER presented a petition of the Charleston (S. C.) board of health praying for the passage of the House bill to prevent the introduction of infectious and contagious diseases into the United States and the establishment of a national board of health; which was referred to the Committee on Epidemic Diseases.

Mr. BUTLER. I present a memorial of the Sumter Silk Culture Association of South Carolina in regard to the practicability of raising silk in that State. I ask that the memorial, which is made by the ladies of South Carolina, go to the Committee on Manufactures.

The PRESIDENT *pro tempore*. The Chair thinks that similar memorials have been referred hitherto to the Committee on Agriculture and Forestry.

Mr. BUTLER. I should prefer that the memorial go to the Committee on Manufactures.

The PRESIDENT *pro tempore*. The memorial will be referred to the Committee on Manufactures on the motion of the Senator from South Carolina.

Mr. PALMER presented the petition of the students of the University of Michigan, and the petition of W. D. Scott and 38 other citizens of Lowell, Mich., praying for the passage of Senate bill No. 1223, making all schools of medicine equal in appointments to Government service; which were referred to the Committee on Civil Service and Retrenchment.

He also presented the petition of Bishop Harries, Hon. H. P. Baldwin, and 17 other citizens of Detroit, Mich., praying that an appropriation of $400,000 be made for the proper maintenance of Indian schools; which was referred to the Committee on Indian Affairs.

Mr. MILLER, of New York, presented petitions of citizens of Port Jervis, New York city and vicinity, Brooklyn, Troy, Poughkeepsie, Middletown, Bath, Lockport, Hamilton, Hartwick, N. Y., praying for the passage of Senate bill No. 1223, making all qualified physicians of whatever school of medicine equal in appointments to the Government service; which were referred to the Committee on Civil Service and Retrenchment.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. CLARK, its Clerk, announced that the House requested the return of the bill (H. R. 5377) for the allowance of certain claims reported by the accounting officers of the United States Treasury Department.

The message also announced that the House insisted upon its disagreement to the amendments of the Senate to the bill (H. R. 5261) making an appropriation for the Agricultural Department for the fiscal year ending June 30, 1885, and for other purposes, agreed to the conference asked for by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. G. G. DIBRELL of Tennessee, Mr. THOMAS WILLIAMS of Alabama, and Mr. MILO WHITE of Minnesota managers at the conference on its part.

RETURN OF BILL TO THE HOUSE.

The PRESIDENT *pro tempore*. The Chair lays before the Senate a message from the House of Representatives, which will be read.

The Chief Clerk read as follows:

Ordered, That the Clerk of the House be directed to request the Senate to return to the House the bill (H. R. 5377) for the allowance of certain claims reported by the accounting officers of the United States Treasury Department.

The PRESIDENT *pro tempore*. If there be no objection the request of the House of Representatives will be complied with and the bill named will be returned to that body. It is so ordered.

REPORTS OF COMMITTEES.

Mr. SLATER. I am instructed by the Committee on Public Lands, to whom was referred the bill (S. 2036) to forfeit the unearned lands granted to the Northern Pacific Railroad Company to aid in the construction of a railroad from Lake Superior to Puget Sound, and to restore the same to settlement, and for other purposes, to report it with sundry amendments. I shall ask the leave of the Senate at some future day to file a report.

Mr. SHERMAN, from the Committee on Finance, to whom was referred the bill (S. 344) to regulate the payment of bills of exchange drawn in foreign countries on persons, firms, companies, or corporations in the United States, where the amount to be paid is named in foreign coins, reported it without amendment, and submitted a report thereon.

Mr. HILL. I am instructed by the Committee on Post-Offices and Post-Roads to submit a report to accompany the bill (S. 2022) to establish a postal telegraph system reported from the committee on the 9th of April last. I give notice that as soon as the report is printed I shall ask the Senate to fix a day for the consideration of the bill.

The PRESIDENT *pro tempore*. The report will be received. The Senator from Colorado has also sent to the Clerk's desk sundry bills.

Mr. HILL. Those bills are reported back.

The PRESIDENT *pro tempore*. What is the nature of the report on the bills?

Mr. HILL. The committee reported an original bill, on which the report has just been submitted.

The PRESIDENT *pro tempore*. What disposition does the Senator desire to have made of the bills?

Mr. HILL. They may be indefinitely postponed.

The bills were postponed indefinitely, as follows:

A bill (S. 17) to provide for the establishment of a postal telegraph system;

A bill (S. 227) to establish a system of postal telegraphs in the United States; and

A bill (S. 1016) to provide for the transmission of correspondence by telegraph.

Mr. HILL, from the same committee, to whom were referred the following petition and resolutions, asked to be discharged from their further consideration; which was agreed to:

A petition of officers and members of the Board of Trade and business men of Winona, Minn., praying for the control by the Government of telegraph lines in the United States;

Joint resolution and memorial of the Eighth Legislative Assembly of the Territory of Wyoming, praying for the establishment of an independent postal telegraphic system to be owned, controlled, and operated by the United States;

A resolution by Mr. VAN WYCK directing the Committee on Post-Offices and Post-Roads to inquire whether the Western Union and Baltimore and Ohio Telegraph Companies at any time entered into contract or negotiations with a view of consolidation;

A resolution by Mr. PLATT instructing the Committee on Post-Offices and Post-Roads to inquire into operations of the Western Union Telegraph Company;

A resolution by Mr. VAN WYCK, directing the Committee on Post-Offices and Post-Roads to inquire into transactions between the Baltimore and Ohio and Western Union Telegraph Companies; and

A concurrent resolution of the State of California indorsing the postal telegraph bill introduced in Congress by Hon. Charles A. Sumner.

ALLEGED ELECTION OUTRAGES IN VIRGINIA AND MISSISSIPPI.

Mr. LAPHAM. The Committee on Privileges and Elections, who were directed by a resolution adopted by the Senate in January last to examine into the circumstances attending the alleged outrages on colored citizens at Danville, Va., on the 3d day of November, 1883, have instructed me to submit a report thereon, together with the testimony.

The PRESIDENT *pro tempore*. The Senator from New York from the Committee on Privileges and Elections submits a report on the subject mentioned in the Senate resolution inquiring into certain transactions in the State of Virginia. The report will be placed on file, and printed under a standing order.

Mr. VANCE. In connection with the report submitted by the Senator from New York [Mr. LAPHAM] in relation to the investigation by the Committee on Privileges and Elections into alleged outrages at Danville, Va., I shall ask leave on the part of the minority to present the views of the minority in the course of a few days.

The PRESIDENT *pro tempore*. The Senator from North Carolina asks leave as a member of the Committee on Privileges and Elections to submit hereafter, within a short time, the views of the minority in respect of the subject reported on by the Senator from New York. That order will be entered if there be no objection.

Mr. LAPHAM. I should like to inquire of the Senator from North Carolina how much time he will want in which to submit the views of the minority. The reports are all in now and it is desirable to have them printed as soon as practicable.

Mr. VANCE. I shall want this week.

Mr. SAULSBURY. Some days ago the majority of the Committee on Privileges and Elections, who had examined under a resolution of the Senate into the condition of affairs in Copiah County in the State of Mississippi, submitted their report. At that time I gave notice that the minority of the committee did not concur in the report of the committee and that I should at a future day ask leave to submit the views of the minority. I now ask leave to present the views of the minority and ask that they be printed in connection with the report of the committee.

The PRESIDENT *pro tempore*. The Senator from Delaware presents the views of the minority of the Committee on Privileges and Elections on the subject named by him, and asks that the views of the minority be printed. That order will be entered, if there be no objection.

PUYALLUP BRANCH OF NORTHERN PACIFIC.

Mr. CONGER. I move to take from the Calendar the resolution under discussion yesterday which was submitted by the Senator from Nebraska [Mr. VAN WYCK] on the 8th instant.

The PRESIDENT *pro tempore*. It will not be in order to move to take it from the Calendar until resolutions have been called.

Mr. CONGER. I will reserve the motion, then.

BILLS INTRODUCED.

Mr. LOGAN introduced a bill (S. 2260) for the relief of Assistant Surgeon Thomas F. Azpell; which was read twice by its title.

Mr. LOGAN. I introduce this bill at the request of a gentleman in this city, one of the comrades of Mr. Azpell. I do not know anything about it. I move its reference to the Committee on Military Affairs.

The motion was agreed to.

Mr. LOGAN introduced a bill (S. 2261) to extend the patent issued P. M. Justice; which was read twice by its title.

Mr. LOGAN. This bill I also introduce by request. I know nothing about it except that a constituent of mine sent it to me and asked me to introduce it on account of his being interested in the patent. I move the reference of the bill to the Committee on Patents.

The motion was agreed to.

Mr. LOGAN introduced a bill (S. 2262) granting a pension to Sedate P. Martin; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Pensions.

Mr. CAMERON, of Wisconsin, introduced a bill (S. 2263) granting a pension to Abel J. Lewis; which was read twice by its title, and referred to the Committee on Pensions.

Mr. INGALLS introduced a bill (S. 2264) to provide for the sale of the lands belonging to the Prairie band of Pottawatomie Indians in Kansas; which was read twice by its title, and referred to the Committee on Indian Affairs.

Mr. ALLISON (by request) introduced a bill (S. 2265) to extend the provisions of an act approved March 2, 1855, entitled "An act for the relief of purchasers and locators of swamp and overflowed lands, and for other purposes;" which was read twice by its title, and referred to the Committee on Public Lands.

He also introduced a bill (S. 2266) for the relief of William H. Manning; which was read twice by its title, and referred to the Committee on Claims.

Mr. PALMER (by request) introduced a bill (S. 2267) for the relief of Capt. W. J. Lyster; which was read twice by its title, and referred to the Committee on Military Affairs.

He also (by request) introduced a bill (S. 2268) for the relief of Robert J. Ballort; which was read twice by its title, and referred to the Committee on Pensions.

AMENDMENT TO A BILL.

Mr. MCMILLAN submitted an amendment intended to be proposed by him to the bill (H. R. 6861) making appropriations for the support of the Army for the fiscal year ending June 30, 1885, and for other purposes; which was referred to the Committee on Appropriations.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. CLARK, its Clerk, announced that the House had passed a joint resolution (H. Res. 255) appropriating the further sum of $100,000 for the sufferers by the overflow of the Mississippi River and tributaries, in which it requested the concurrence of the Senate.

WITHDRAWAL OF PAPERS.

On motion of Mr. MILLER, of New York, it was

Ordered, That Eugene C. Johnson have permission to withdraw his papers from the files of the Senate.

PUYALLUP BRANCH OF NORTHERN PACIFIC.

The PRESIDENT *pro tempore*. "Concurrent and other resolutions" are now in order.

Mr. HARRIS. If there be no further "concurrent or other resolutions" I desire to ask the Senate to proceed to the consideration of the Mexican pension bill.

The PRESIDENT *pro tempore*. The Chair feels obliged under the courtesy of the Senate to recognize the Senator from Michigan [Mr. CONGER] who addressed the Chair previously for the purpose of submitting a motion.

Mr. CONGER. I renew the motion made that the Senate now proceed to the consideration of the resolution directing the Secretary of the Interior to withhold certain land patents claimed by the Northern Pacific Railway Company.

The PRESIDENT *pro tempore*. The question is on agreeing to the motion that the Senate now consider the resolution.

Mr. VAN WYCK. Mr. President——

The PRESIDENT *pro tempore*. The motion is not debatable. The question is on agreeing to the motion. [Having put the question.] The ayes have it, and the resolution is before the Senate. The question is on the motion of the Senator from Michigan [Mr. CONGER] to refer the resolution with instructions to the Committee on the Judiciary.

Mr. CONGER. I have been requested to waive for a moment the consideration of the resolution to allow the Senator from Wisconsin [Mr. SAWYER] to ask unanimous consent to take up a measure which he assures me will occupy no time.

CINNABAR AND CLARK'S FORK RAILROAD.

Mr. SAWYER. The Senator from Michigan yields that I may ask the Senate to take up the bill (S. 1373) granting the right of way to the Cinnabar and Clark's Fork Railroad Company.

The PRESIDENT *pro tempore*. The Senator from Wisconsin, pending the question of the reference of the resolution now under consideration, asks unanimous consent that the Senate consider the bill named by him.

Mr. HARRIS. Let the bill be read at length for information subject to objection.

The bill was read, and by unanimous consent the Senate, as in Committee of the Whole, proceeded to its consideration.

The bill was reported from the Committee on Railroads with an amendment after the word "Montana," in line 9, to insert:

By the way of the Yellowstone River to its junction with the East Fork of said river, thence by the way of said East Fork to the Soda Butte Creek, thence by said creek to the Clark's Fork mining district.

So as to make the bill read:

Be it enacted, &c., That a right of way is hereby granted the Cinnabar and Clark's Fork Railroad Company, a corporation duly organized under the laws of the Territory of Montana, across such portions of the northern border of the Yellowstone National Park as may be necessary to reach, by the nearest practicable route from Cinnabar, the Clark's Fork mining district, in said Territory of Montana, by the way of the Yellowstone River to its junction with the East Fork of said river, thence by the way of said East Fork to the Soda Butte Creek, thence by said creek to the Clark's Fork mining district, upon such location as may be approved by the Secretary of the Interior, subject to the provisions of the act of Congress entitled "An act granting to railroads the right of way through the public lands of the United States," approved March 3, 1875.

The amendment was agreed to.

Mr. CONGER. I move to add at the end of the bill the following proviso:

Provided, That the right of way hereby granted shall be of the width only of one hundred feet for road-bed, for the track of the road, and for necessary turnouts and side-tracks, water-tanks, turn-tables, and buildings necessary for the use of its employés. Nor shall the company erect any hotel, boarding-house, or building other than as above described. Nor shall it cut any timber within said park except within the one hundred feet hereby granted for right of way; and to such trees as, if left standing, might endanger said buildings and constructions. Nor shall it take any stone, gravel, or dirt from without said one hundred feet limit, except upon the special permission of the Secretary of the Interior in writing, and then only for the necessary use of the company in the construction of the road and buildings within the limits of the park. The control of the Secretary of the Interior over the Yellowstone National Park shall be in no wise affected or impaired by the provisions of this act except as herein expressly and especially provided.

The PRESIDENT *pro tempore*. The question is on agreeing to the amendment of the Senator from Michigan [Mr. CONGER].

Mr. VEST. This is a charter to a railroad to run through the northern portion of the Yellowstone National Park. I have opposed the chartering of any railroad through that park, and I express the belief now that if this system is commenced it will end in the utter destruction of the park for the purposes for which it was originally created.

I recognize the fact, however, that there is an overwhelming public sentiment in the Territory of Montana, adjoining this portion of the park, in favor of this project. I have received a number of letters from prominent persons in that Territory, including the governor of the Territory, urging upon me to withdraw any opposition to this railroad project for the reason that large mining interests are involved in the construction of the road. There are valuable mines, not in the northeastern portion of the park, but in the section of the country immediately adjoining that portion of the park, and it is alleged that this road is absolutely necessary to carry the ores from those mines through that part of the park for smelting purposes.

While I am opposed to any railroad going into the park, I have no question but what they will be forced in there for some purposes; and if this bill is to be passed I hope the amendment which is now pending will be adopted. That confines the right of way to one hundred feet and prohibits the company from taking any stone or timber except for the absolute purposes of the construction of the road and off the right of way.

I shall not myself vote for the bill, but the committee has reported in favor of it, and the pressure seems to be overwhelming in favor of its passage. However, I want to say distinctively now and here that if this is to be a precedent for the construction of other railroads under schemes which are now pending and under bills which are now before the Senate, I shall protest against it. If it is to be simply an ore road, to carry out the ores from the Clark's Fork mine, then I recognize the fact that the interests involved will secure the passage of the bill, especially with the report of the committee as it now stands.

Mr. CONGER. The bill before the Senate giving the right of way through the National Park, which by the action of Congress and the approval of the President and by the judgment of the people of the United States was intended to be set apart solely for the purposes mentioned in the act, and not to be passed through by a highway nor to be infringed for any other purpose than as a health and pleasure ground of the people of the United States, met with and has the opposition of the Committee on Territories. Unless some provisions may be adopted like the one which I have presented, which will guard as far as possible the intrusions of business and those who might injure the wonderful works there, the committee will oppose it individually, I believe, and I should oppose it now with any amendment, with all amendments, were it not for the fact that at the northeast corner and outside of the park there are said to be—and the proof is perhaps sufficient in that respect—valuable mines belonging to citizens of the United States, which have been worked, and there are many miners engaged; and that after examination there is no practical outlet for any railroad or railroad communication except down the valley of the river along which the charter runs and across the north part of the National Park down a branch of the river to reach a point where a railroad and some buildings have been constructed. There is no other way for the citizens located in the Clark's Fork mining district to find an outlet for their ores and to carry on their business, as we are told. If so, this would seem to be a necessity.

The original bill had no particular restrictions about it. It followed the usual course of bills which grant the right of way through territory belonging to the United States. This amendment restricts the width of the right of way to one hundred feet. It prevents any buildings except those absolutely necessary along the line of this road from being constructed, even on the one hundred feet, and allows side-tracks and turn-tables and houses for employés, and prevents the cutting of timber in the park except within the one-hundred-feet limit, or such timber as by overhanging the track or buildings might be dangerous if left standing. With these and some other provisions which are in the amendments, I reluctantly agree to the passage of the bill, guarding it as strongly as can be done from any abuse, and I desire to join the Senator from Missouri in stating here before the passage of this bill, if it shall pass, that the peculiar circumstances of this case and the necessity of granting to our own citizens the only right of way out from their mines to the markets of the world compel me to yield this much of my own judgment in regard to the use of the National Park. I do not desire that it shall ever be taken as a precedent, or be considered as a consent of the Committee on Territories or of myself, that highways and railroads shall be run through this National Park, or that this shall ever be taken as a precedent for the granting of rights of way to other railroads unless some such extreme urgency should arise.

Mr. GARLAND. I think the passage of this bill will amount in the end to a virtual nullification and repeal of the act originally passed in reference to the Yellowstone Park. If we intend to reserve that park, my judgment was in the Committee on Territories when the matter was before us that no such bill as this should be passed. I think the amendment proposed by the Senator from Michigan is eminently a proper one. While I shall vote for the amendment I shall vote against the bill after it is amended. But my purpose in rising was simply to suggest to the Senator from Michigan that his amendment should be amended by adding to it:

And the right of Congress to repeal, modify, or amend this act is hereby reserved.

Mr. CONGER. I have no objection to that amendment. I assume that that right inheres in Congress, but the expression of it is usual in such bills, and I will accept that, if the Senator desires me to do so, as part of my amendment.

The PRESIDENT *pro tempore*. The Senator from Michigan accepts the amendment proposed by the Senator from Arkansas.

Mr. SAWYER. I can see no objection to that amendment.

The PRESIDENT *pro tempore*. The amendment of the Senator from Arkansas [Mr. GARLAND] accepted by the Senator from Michigan [Mr. CONGER] will be read for information.

The CHIEF CLERK. Add to the proposed amendment:

And the right of Congress to repeal, amend, or modify this act is hereby reserved.

The PRESIDENT *pro tempore*. This addition is accepted by the mover of the original amendment, the Senator from Michigan. The question is on the amendment as modified.

Mr. CALL. Mr. President, I hope that this bill will not be passed. I think when the Senate have deliberately passed a bill setting aside this park as a national reservation, then an attempt to pass another act at the same time which virtually destroys the force and efficacy of that reservation and the purposes for which it was made, and which must end in the destruction of the game that may be found there, ought to be opposed unanimously by the Senate. There can be no doubt that the passage of a railroad through this reservation must destroy the game found there. The park and the natural curiosities there and the game were set aside to be preserved for future generations, for the naturalist and the philosopher. Great public objects will be promoted by faithfully adhering to this policy. We cannot estimate the value of the preservation of the remnants of the almost extinct animals of the western continent to science. For one I shall vote against the bill.

Mr. HARRISON. I call the attention of the Senator from Michigan to the fact that the bill as it now stands, in lines 14 and 15, provides that this grant of right of way shall be "subject to the provisions of the act of Congress entitled 'An act granting to railroads the right of way through the public lands of the United States,' approved March 3, 1875." I was trying to find that act, but have not yet done so. I understand it provides for a right of way of two hundred feet in width and may perhaps contain other provisions not consistent with the provisions of this bill. I suggest, therefore, that after the word "subject" in line 14 these words be added, "except as herein otherwise provided," so as to bring this grant under the general law "except as herein otherwise provided."

The PRESIDENT *pro tempore*. The amendment suggested by the Senator from Indiana will be in order after the present amendment is disposed of. The question is on the amendments of the Senator from Michigan.

Mr. VAN WYCK. The Senator from Indiana was inquiring as to the width of the right of way.

Mr. HARRISON. I stated that I understood the general law provided two hundred feet.

Mr. SAWYER. It does.

Mr. VAN WYCK. "To the extent of one hundred feet on either side of the center line of said road."

Mr. HARRISON. One hundred feet on each side. That is two hundred feet.

Mr. VAN WYCK. Two or three Senators who have spoken on this subject have spoken with some degree of force and emphasis, desiring to be understood that what shall be done now shall not be a precedent in the future. I do not exactly understand the force of that suggestion, whether it is intended that hereafter when an application may be made on its merits for any other road through any other corner of this park it shall be antagonized by the proceedings of the Senate at this time as a sort of conclusion or understanding that no other road shall ever go through the park. I desire as earnestly to protest on the other side that it shall not be understood that this shall not be considered as a precedent if an application is made from any other source.

Mr. CONGER. I had only for myself said that the peculiar necessities of this case were all that would induce me, with all the restrictions we could put on it, to consent to the passage of this bill. I protested against its being considered a precedent for any other road whatever through the park, and qualified it by saying unless the extreme emergency of the necessities of citizens might make it a proper case. I think on that protest of my own, backed up by the protest of the Senator from Nebraska, no person will ever dare to come to Congress to ask for such powers.

Mr. VAN WYCK. I desire to protest on the other side.

Mr. LOGAN. I did not intend to take any part in the discussion of this matter for the reason that I supposed from what I had understood that the persons who were examining into it would explain to the Senate and show an opposition that would have some influence on the minds of Senators. The fact that Senators protest against this being a precedent for the future is, as all of us know, nothing to be taken into account if any corporation shall desire a similar charter hereafter. I have heard this remark made very frequently in the Senate that we pass a bill merely because the necessities of the hour require it, but it must not be taken as a precedent in the future. Now I humbly protest against the passage of this bill at all, and in a very few words I will give my reasons.

This tract, by the legislation of Congress, was laid out as a national park on account of its beauty, its scenery, and the many curiosities that are there found, and the intention was that it should be kept for the use of the people of this country and visitors as a great and beautiful park where the people might resort at all times for the purpose of seeing the greatest curiosities that had ever been found in the world. But we find to-day, just as we have always found in the Congress of the United States, some corporation desires a railroad to run in there to disfigure the beauties of this park, and all that is necessary and has been in this country for years is for some corporation to ask Congress to do something, and, no matter what the request is, it is always done, but not to be taken as a precedent for the future!

I traveled through this park last summer with some other members of the Senate. We entered at the Montezuma Hotel, where the geysers that have existed in years gone by are about extinct, went through the fine passes of the mountains and the beautiful hills and valleys until we struck the immense geyser basin, the equal of which in beauty and grandeur and as a curiosity does not exist in the world. In passing around there I said (and we talked frequently about it) that we would never permit it, so far as we were concerned, to be invaded by a railroad or anything else that should be calculated in the future to destroy it or be a precedent for others to come and invade it.

Now, what is the object of this railroad? We are told that some gentlemen have got a mine up there in the hills and therefore they must have a railroad to come to their mine. Will Senators tell me that that is the only mine there is in that country? Will Senators tell me when they come to examine the hills and mountains in sight of the park that no other mines are to be found? And if, forsooth, another mine is found in or near the park, another railroad must be built for the benefit of the individual or the company that owns it?

My friend from Wisconsin [Mr. SAWYER], who knows all about railroads, thinks it will not injure the park to have a railroad, because somebody might be benefited by it. I find that men who are connected with railroads are always in favor of sending them anywhere, no matter where they desire to go. I ask any Senator who favors this bill, if another mine is found on the other side, why shall you not allow a railroad to be built to it as well as one to be built to this mine? What reason can Senators give for not granting the same rights to other parties which you give to this party? I should like some Senator to explain to me why it is that one party shall have the right to go into the park, and yet you say it shall not be a precedent; nobody else shall have the same right. If you give this right to one company, for the same reason that you give it to them you must give it to another, or else you do injustice. This is but the entering-wedge. This railroad means more than running to these mines; it means to branch off down the valley to the mines, and then the Senate will next be asked to allow a railroad to run from the Union Pacific Railroad up to the Cascades so as to make a continuous line across to the Northern Pacific; and that is the object of this. The "mine" is a mere gauze to cover it over. I heard it talked of when I was out in the park last summer that what was desired was to bring a branch road up from the Union Pacific line and tap it by a line from the Northern Pacific road. This is the entering-wedge for it, covered under a "mine."

I might as well say what I feel about this thing now. We passed a bill here saying that but ten acres of ground should be allowed for the purposes of a hotel, &c. What was done by the same Department from which this emanates? They divided up the ten acres into seven parts and gave to one company every place there was in the park for hotel purposes. They established one company with ten acres, securing every part of the park where a hotel could be established, and drove every body else out, ordered persons who had built cabins there for the benefit of poor travelers to leave the park so that these men should have the sole control of it.

I do not care who is hit. It makes no difference to me. There is an attempt being made, if I may use the expression, to gobble up everything in the park by railroads and hotel companies and herders. We found there men who seemed to have a monopoly given them by our Government, with herds of cattle and herds of horses, and places used as herding-grounds; and one of the objects was to have possession of every spot of ground where people would likely stop to view the curiosities in the hands of one company, and then that vast domain would be a vast ranch for them out of which they would make millions. That was the intention beyond all question. Now, a railroad must go in; some company that has a mine must have a chance to destroy the beauties of the park that was intended for the people of this country.

Sir, I think it is about time for us to stop in this career that we have been marching in for years. The Congress of the United States seems to be a mere football to be used according to the desires of men who wish to use everything in this Government for their own personal gain.

This much I have said, sir, in opposition to invading the National Park, for whenever you do it you will destroy it. There is not a government on earth, I believe, except our own that if it owned this beautiful park would allow it to be invaded or interfered with or used for any purpose except that which was contemplated by the bill that was first passed reserving it for the benefit of this people as a beautiful resort. I hope, Mr. President, that I may be pardoned for saying a word here that perhaps may not sound very pleasant to some persons outside, but I have been lobbied more this winter in behalf of this railroad by an official of this Government who is getting $5,000 a year than I ever was before in my life. It had no effect on me. I do not mean to say whether lobbying does have an effect or not, but this at least had not. I know the gentleman well, but I thought it was in very bad taste when one Department has charge of this park, put in its keeping for its preservation and to prevent its being despoiled, for an officer belonging to that Department to become a lobbyist for the destruction of the park which was put in the hands of his Department for preservation.

With all the respect that I have for all officers of the Government, whatever this gentleman may think about my remarks is immaterial to me. He and I have always been good friends; but I must say that in a great measure I lose my respect for any man who is an officer of this Government that will allow himself to use his influence for a corporation. That has been done persistently in the Senate and in the House day after day, and I think perhaps Senators enough have been button-holed to pass the bill to destroy this park; but I beg leave to enter my protest on the record against the action of the Government of the United States if it intends to go in the direction of this demand for the destruction of the park that was made for the people of this country.

Mr. VEST. Mr. President, when the bill passed the Senate at this session which is now pending in the House to amend the original act creating the National Yellowstone Park, a considerable portion of the northeast corner of the territory that was proposed to be added to the park by the bill as introduced was left out. A piece ten miles south and running five miles east of the original boundary was left out on account of these Clark Fork mines. They were represented to be mines of great value and that a considerable town had sprung up there. Rather than have the complications which would arise from a mining town inside of the limits of the National Park, the Committee on Territories ran the line ten miles south and five miles east so as to leave out these mines. After that bill had passed through the Senate and went to the House, this project, of which I had never heard before, was sprung upon the Senate to run a railroad through the northern portion of the park from Cinnabar, which is the terminus of the branch of the Northern Pacific Railroad, in a southeastern direction down the Yellowstone River to Cooke City, which is the village at which the Clark Fork mines are located. I said then that in my opinion this was an entering-wedge to a system of railroads that would utterly destroy the Yellowstone National Park.

I addressed a letter to General Sheridan on the subject to know whether some other survey could not be made and some other route discovered to these mines than the one that is presented in the bill before the Senate. General Sheridan submitted the matter to an engineer officer who had made a survey in a northern direction from Cooke City to the Northern Pacific Railway up Boulder Creek, and this officer replied that it was entirely feasible to construct a railroad upon that route without touching the Yellowstone Park at all. Notwithstanding that fact letters were brought before the Committee on Territories from the survevor-general of Montana, from the officials, from all the leading men, representing that it was absolutely necessary to construct this road in order to get at the ores in the Clark Fork mines. It seemed a foregone conclusion that the road would be constructed, and the question was whether it should go in a northern direction up Boulder Creek, or on the route that was proposed in the bill before the Senate.

In my opinion on the testimony a route could be found outside of the Yellowstone Park entirely, but the testimony was brought as I have said in such a fashion that I could not blame Senators for coming to the conclusion that in order to get across to these mines at all it is necessary to take the route projected in the bill now before us. I believe with my knowledge of the American people, and especially of the Western people, that if these mines turn out to be as valuable as they are supposed to be and as they are reported to be, they will in some sort of way and by some sort of means and influence force a railroad through the park in order to reach the mines.

What the Senator from Illinois has said in regard to the management of the park is every word true, and he might have added in addition to it that besides nullifying the act of Congress passed at the last session which limited for hotel purposes the tracts granted to ten acres, after cutting up ten acres into seven parts and giving them to one company known as the Rufus Hatch Improvement Company, the Secretary of the Interior then permitted an order to be made, a copy of which I have myself, in which no transportation could be hired by or granted to any tourist or traveler in the park except from this improvement company itself. Every provision in the act of Congress was nullified, and the result has been as the Senator from Illinois stated, that the park has been as absolutely under the control of that improvement company as if it was their private property. Recent events have been such that the orginal object of the company has entirely failed, and I received the other day a letter from the mechanics who constructed the hotel at the Mammoth Hot Springs, stating that they had seized the hotel and they were now in possession of it in order to secure their wages and the cost of its construction, and declaring that they intended to hold it, there

being no other law in the park, by force of arms until they received the money which was contracted to be paid to them.

Mr. VOORHEES. May I ask the Senator from Missouri a question for information?

Mr. VEST. Certainly.

Mr. VOORHEES. What company is to build this railroad through the park?

Mr. VEST. The title is given in the bill—a company called the Cinnabar and Clark's Fork Railroad Company. The initial point is Cinnabar, which is the terminus of the branch running from the Northern Pacific Railroad down toward the park, and the terminus of the road is at Cooke City, which is the point where the Clark's Fork mines are located.

Mr. VOORHEES. How much of the track is to be laid in the park?

Mr. VEST. About sixty miles, I think.

Mr. HARRISON. I think a little less than that. I think the estimate of the whole distance is about fifty or sixty miles—perhaps forty in the park.

Mr. VEST. It may be that.

Mr. VOORHEES. Now I desire to make a single remark with the consent of the Senator from Missouri. This seems to be a novel subject to the Senate at this time. We have set aside the park because of its great natural curiosities; it is rich in the graces and beauties of nature; and we have not had it set aside more than a year and a half for the enjoyment of the American people, in the cultivation of esthetic taste, until a railroad drives headforemost, locomotive light up, to lay its track down through it. I am not going to vote for this bill as at present advised, and I think the Senate ought to vote it down and look the matter over a little more fully at least. If this is to be done, then it is just as well to throw open this reservation that we have set aside and be done with it, and let each person go in for a grab. When you open up a Government reservation set aside because of its curiosities and its game and the wonders of nature to one railroad track, there will be another railroad track and another one, and all this talk about its not being a precedent, just as the Senator from Illinois says, amounts to nothing at all. Whenever another company wants the same favor, it will be backed up by the same reasons for granting it, and it will be granted.

I do not know whether it was the wisest thing at the beginning to set aside this reservation. If it was, it ought to be retained as such. If it was not, it ought to be abandoned. For the present I propose to stand by existing legislation, and protect it, until I know of more cogent reasons than have been presented, why this should be done.

Mr. MCPHERSON. Will the Senator from Missouri yield to me to ask a question for information?

Mr. VEST. Certainly.

Mr. MCPHERSON. How near does any railroad come to the park anywhere?

Mr. VEST. Cinnabar, which is the terminus of the branch of the Northern Pacific Railroad, is a few miles from the northern boundary of the park.

Mr. MCPHERSON. Within a convenient distance?

Mr. VEST. Within five miles, I think.

Mr. MCPHERSON. The Senator spoke of the monopoly that had absolute control of the hotel improvements in the park. Is there anything in the law requiring that the charges for accommodations there shall be reasonable?

Mr. VEST. The general law simply puts this park under the control of the Secretary of the Interior, and he grants contracts for hotel privileges. The rates of charge are approved by the Secretary of the Interior and published.

Mr. MCPHERSON. Are those rates exorbitant, in the opinion of the Senator?

Mr. VEST. I can not say that they are. I never examined them particularly. I heard considerable complaint of them last summer in the park, but you always hear more or less of that from persons who are tourists. What I complain of, if I complain at all, what I call the attention of the Senate to is that after we had limited the amount of land for hotel privileges after a debate here in the Senate of which the Interior Department was perfectly aware, after we had by law limited the amount of land for hotel purposes to ten acres for any one tract, then the Interior Department nullified that act of Congress by taking a tract of ten acres and cutting it into seven parts and giving one seventh to each of the objects of interest in the park and the control of those objects to one company. The object of Congress was that there should be no monopoly, and in order to bring that about we provided that not more than ten acres should be granted to any one person or corporation. The Secretary of the Interior evaded that by taking ten acres, having originally by contract allowed this company to have nearly 5,000 acres of land for hotel purposes, and after Congress had destroyed that contract and limited it to ten acres, he then took ten acres and allowed one-seventh of ten acres to surround each one of the geysers and the Yellowstone Falls, so as to give them sole absolute control of the park with only a smaller quantity of land.

Mr. HARRIS. Seven hotel locations instead of one.

Mr. VEST. Seven hotel locations.

Mr. ALLISON. I do not understand it in that way. Do I understand the Senator from Missouri that there are seven hotel locations in the park?

Mr. VEST. Yes, sir; seven hotel privileges.

Mr. ALLISON. And that at each one of these places he gave one company one-seventh.

Mr. LOGAN. This company?

Mr. VEST. Only one company.

Mr. ALLISON. He gave this one company the one-seventh, allowing six others to have what?

Mr. LOGAN. No, sir.

Mr. VEST. No; he did not allow anybody else but one company.

Mr. ALLISON. Then I understand the Senator from Missouri to say that this park is now in the control of a single corporation absolutely.

Mr. VEST. That is what it is, except that the corporation is bankrupt. That is all that saves us. Every word of that is the truth.

Mr. SAWYER. I do not see what that has to do with this bill.

Mr. LOGAN. If the Senator from Missouri will allow me, I wish to suggest to him in the line of his remarks that he give the distance between these hotels belonging to the same company. There is one for instance at the Mammoth Springs; then the next one—I forget the name of the stream it is on—the next at the geysers, and so on around, and at the Yellowstone Falls; there are seven spots for locating hotels belonging to the same company on the ten acres given to that company, and some of them are fifty miles apart.

Mr. ALLISON. And can nobody else have the right?

Mr. LOGAN. No, sir.

Mr. ALLISON. Then they have absolute control of the park.

Mr. VEST. In order that this may be understood, as we have gone thus far——

Mr. INGALLS. Do I understand also in that same connection further that no person can get into the park except upon the horses or vehicles belonging to this company?

Mr. VEST. That was the order a copy of which the Senator from Massachusetts [Mr. DAWES] has and I have. Although we had actually provided by act of Congress that there should be no monopoly and no exclusive privileges to any corporation or person, still the Secretary of the Interior permitted, or at least it was done, and I saw the notices publicly there and brought one of them away.

Mr. INGALLS. A good deal like the Garden of Eden after the angel with the flaming sword was stationed before the gate.

Mr. SAWYER. I should think my friend from Missouri would be willing to have this railroad so as to have a way to get in there.

Mr. HARRISON. It was expressed to be by order of the superintendent of the park.

Mr. VEST. The superintendent called on me and showed me an order from Mr. Joslyn, Assistant Secretary of the Interior, authorizing him to issue this order. But I want to say to the Senator from Iowa, in order that there may be no mistake in regard to what I stated about the contract which was attempted to be made by the Interior Department more than a year ago, that six hundred and forty acres of land in seven tracts, each one of these tracts surrounding one of the principal objects of interest in the park, including the geysers and the Yellowstone Falls and a portion of Yellowstone Lake which is visited by tourists, the rest of the lake being inaccessible—by this contract these seven tracts of six hundred and forty acres each were to be leased to Rufus Hatch & Co., with absolute control of transportation and hotel privileges in the park.

By the action of Congress that contract was stopped, and the chairman of the Committee on Appropriations will recollect a debate which we had in regard to an amendment I offered to the sundry civil bill, limiting the amount to forty acres in each tract. Upon motion of the Senator from Indiana that was further decreased to ten acres, and the amendment to the sundry civil bill, which became a law, prohibited the Secretary of the Interior from leasing more than ten acres in any one tract to any one person or corporation for hotel purposes, and provided that not more than one tract should be leased to any one person, the object being to destroy this very monopoly which had been attempted to be created. Congress had not adjourned one week until the Secretary of the Interior made a contract with the very same company, Rufus Hatch & Co., cutting up a tract of ten acres into seven parts, and putting the fractional pieces of land around the same objects of interest. The only difference between it and the contract was that Rufus Hatch & Co. hold all the geysers, the falls, and a part of the lake, altogether ten acres cut into seven pieces, instead of six hundred and forty acres in each tract around each one of these objects.

Mr. ALLISON. Now, I ask the Senator what becomes of the remaining portion of the ten-acre tract around these objects of interest?

Mr. VEST. There was no remaining portion, because they cut the ten acres into seven parts.

Mr. ALLISON. That gave one-seventh to this company.

Mr. VEST. One-seventh around each object of interest, one acre and three-tenths at one point, one and four-tenths acres at another, and so on, so as to amount exactly to ten acres in all.

Mr. ALLISON. I seem to be obtuse about this whole business. Now, I understand that there are seven places of interest.

Mr. VEST. Yes.

Mr. ALLISON. And the law of last year required that not more than ten acres at each one of these places should be leased to one person.

Mr. VEST. Yes; that was the sundry civil act.

Mr. ALLISON. Now, at one of these places this company, as I understand, took a lease of one-seventh of ten acres.

Mr. VEST. Yes.

Mr. ALLISON. Now, I want to know what became of the other six-sevenths of that particular ten acres?

Mr. VEST. That was applied to the other objects of interest. The Department took ten acres and divided them into seven parts and put one fraction around each one of these objects of interest, and thus made a contract for the whole ten acres. Now you have the thing.

Mr. ALLISON. You have only ten acres, and there must still be sixty acres undisposed of. What I want to know is what has become of the remaining sixty acres?

Mr. VEST. Under the construction of the Secretary of the Interior, he held that ten acres could be let to one person and divided as the person pleased.

Mr. ALLISON. The Senator does not still get the point I want to understand. There are seventy acres set apart about these objects of interest. Now, the company of which the Senator speaks took ten acres. What has become of the other sixty acres?

Mr. VEST. Under the construction of the Secretary of the Interior, there is no residue. Under the construction that I gave to it, and that I thought Congress gave to it, there were seventy acres.

Mr. VOORHEES. May I ask the Senator from Missouri a question?

Mr. VEST. Certainly.

Mr. VOORHEES. The description which the Senator gives of the administration of affairs in the Yellowstone Park is very entertaining and very interesting; and now I should like to know, and I am sure it is what the Senator from Wisconsin would like to know, what connection that has with the railroad bill?

Mr. SAWYER. That is what I should like to know.

Mr. VOORHEES. It has some connection, I presume.

Mr. VEST. I am sorry I have been led into this discussion, which has nothing to do with the railroad particularly, except that this railroad runs through the park and is associated with the park.

As to this railroad I want to say only one word more, and I am done with it. In my judgment no railroad at all ought to be permitted to go through the park; no railroad ought to be permitted to touch in any direction or at any place. I have opposed the construction of any such road, but there seemed to be an overwhelming sentiment against me, and I am satisfied that sooner or later some road will be constructed through some portion of it, though I hope that time will never come.

Mr. HARRISON. Mr. President, I only want to say a word.

Mr. WILSON. Will the Senator from Indiana yield to me a moment?

Mr. HARRISON. Yes, sir.

Mr. WILSON. The Senator from Indiana made some suggestion covering the position of the superintendent of the park in connection with this matter. I wish to say, in justice to the superintendent of the park, that in correspondence with me he has expressed himself as utterly opposed to all invasions of the park by railroad or hotel companies or in any other respect. I wish to make that statement in justice to that officer, and, in addition thereto, I will state that there is correspondence from the superintendent of the park on file in the Interior Department which, in justice to him, I shall call for by resolution of the Senate at an early day. I think it ought to be communicated to the Senate and put in our possession.

Mr. VEST. All that information is before the Senate in a printed form.

Mr. WILSON. It is not. There is a letter from the superintendent of the park that is not embraced in that document.

Mr. HARRISON. Of more recent date probably.

Mr. VEST. Very likely.

Mr. WILSON. Or it may be of a date earlier, but may not have reached the Department at the time the communication was made to the Senate by the Secretary in response to the resolution.

Mr. LOGAN. I take it that the Senator from Iowa is right in what he says in justification of the superintendent of the park; and these reflections, if they may be so considered, in reference to the notices that were published over the signature of the superintendent of the park should not fall on him, because the notices were published in accordance with directions issued to him from the office of the Secretary of the Interior. When we were there the letters, notices, and everything were shown to us, and I saw them myself, so that there is no fault with the superintendent. It was simply a subordinate carrying out the instructions given to him.

Mr. HARRISON. Mr. President, in making the inquiry which I did a few moments ago of the Senator from Missouri as to the authority upon which these notices seemed to have been issued, I had no intention of reflecting upon the superintendent of the park or anybody else. I only wanted to know whether these placards or posters or circulars were issued by the hotel and improvement company as a claim of certain exclusive privileges, or whether they had an official character. That was the object of my inquiry. Certainly if the superintendent of the park issued those orders in pursuance of instructions from his superior, the Secretary of the Interior, no criticism can be made upon his conduct.

But I rose, Mr. President, simply to explain to the Senate the course which this bill has taken up to this time. From the fact that the members of the Committee on Territories have been proposing these amendments and have been chiefly occupying the time which has been given to the discussion of the bill, I thought perhaps some might get the impression that this bill had been reported from that committee. The fact is, as Senators will see by looking at the bill, that it was reported from the Committee on Railroads, the appropriate committee to consider this question perhaps. When it was reached upon the Calendar objection was made either by myself or the Senator from Missouri to this invasion of the park by a railroad, and we asked that it might be passed over without prejudice until our committee could consider the question. Therefore the interest which members of that committee have taken in this bill and in its discussion.

For one, I have been persuaded from the beginning that no railroad would be constructed upon the line proposed here solely for the purpose of bringing out ore or any other produce or freight from the Clark's Fork mining district, or Cooke City, as it is called. I have believed that as this railroad would bring tourists nearer to the falls of the Yellowstone, would certainly bring them close to Barnett's Bridge at the crossing of the Yellowstone, it was thought to be a profitable venture in connection with tourist travel in the park. I have not believed that, separated from that consideration, it would be proposed to construct this route. At the same time, as the Senator from Missouri has said, there was evidence furnished to the committee of the existence of important mines which were turning out a considerable amount of bullion at Cooke City, and it was represented by divers persons in official and in private position in Montana that this route was the only practicable one to reach Cooke City with a railroad. Now, upon information to which the Senator from Missouri has alluded, and upon information which I have had myself in a letter or two, one especially from a miner located at Cooke City, I have believed that it was practicable to construct a road entirely outside of the park down what is called the Big Boulder Creek in a northerly direction toward the Northern Pacific Railroad. I have believed that was practicable. Perhaps it would be a more expensive route; that would have to be determined by an actual survey. The Committee on Territories only yielded so far that they would withdraw their objections—the matter was not before us in any formal shape in which we could take action—to the consideration of the bill, and would propose certain amendments, leaving each member free to take his own course as to favoring or opposing the bill itself.

I think, for one, that it were well to have more definite information, that those who desire to reach the mining camp should lay before us some survey of the two routes which have been made—observation surveys; they need not be detailed, but observation surveys of these two routes, in order that we might definitely determine whether there was not a route entirely outside of the Yellowstone Park over which these people could build their road and get out their freight and produce to Cooke City. This road, if it is built, runs up the valley of the Yellowstone to the mouth of the East Fork, and, as indicated in a rude way upon the map which we have seen, would probably cross the Yellowstone River several times.

I sympathize somewhat with what the Senator from Illinois has said as to the particular direction from which urgency for the passage of this bill has come. I hope the efforts which were made by the person to whom he has referred without naming him were made without any reflection upon what seemed to him and seemed to me the impropriety of that course. I have no other information as to who it is that is interested in this project. I have been disposed to consider it as in part a proposition to reach these mines, and having at least a subsidiary interest connected with it of getting a road that entered the park that would be valuable as a tourist road in the summer time.

For one, I am not in favor of the passage of the bill. I think that even if the interests in connection with those mines are shown to be so important that they should dominate, what some may call the sentimental interest connected with the preservation of this park as a pleasure resort, it is not yet demonstrated—and when it is there should be added to that proof a demonstration that there is not some equally advantageous route by which they may reach the Northern Pacific Railroad.

The PRESIDING OFFICER (Mr. HARRIS in the chair). The question is on the amendment of the Senator from Michigan as modified.

Mr. VAN WYCK. Probably the Senator from Michigan will accept an amendment to his amendment which I wish to propose.

The PRESIDING OFFICER. An amendment to the amendment is in order.

Mr. VAN WYCK. This is it:

That the rates for passenger and freight traffic over said road shall be first approved by the Secretary of War.

The PRESIDING OFFICER. The amendment of the Senator from Nebraska will be read.

The SECRETARY. The amendment to the amendment is:

That the rates for passenger and freight traffic over said road shall be first approved by the Secretary of War.

The PRESIDING OFFICER. The question is on the amendment to the amendment.

Mr. VAN WYCK. Does the Senator from Michigan accept my amendment?

Mr. CONGER. I have no right to accept an amendment in regard to the charter of this road of which I am not in favor. If the Senate shall pass this bill my amendment is to restrict it to the smallest possible territory and to the least possible encroachment on the park. I have nothing to do with the general bill. My object will be accomplished if the bill pass by having the most stringent regulations possible, to make it as little injurious to the park, to that great preserve, as possible. It is not for me to accept any amendment in regard to the general character of the bill. My object is to place restrictions upon it and confine it to a right of way one hundred feet wide, and prevent any timber whatever being taken except from the one hundred feet, or stone or dirt or anything. I join with the other gentlemen—I believe I have already expressed it—that I am unwilling to favor any bill that shall encroach on this park, as I think our Committee on Territories are; but if the bill passes I think it proper that we should make it a mere right of way without any other appurtenances that should make this a road for traffic in the park either for passengers or freight, and therefore this is left just as a mere passage-way.

There was proof to my mind before the committee that in the other direction, up the stream to which this road is to pass, and over the mountains which intervene from the north and northeast between these mines and the Northern Pacific, there is a shorter route than this; but there are ranges of hills that run in such a direction that they must be passed over to reach the nearest creek on the map, and the opinion of some who have spoken on the subject is that such a road not only would be excessively expensive but that it is impracticable for any route to pass that way. I agree that if it is possible, even at much greater expense, to go off from these mines in an easterly direction by any practicable route, not in the park at all, it would be much more satisfactory to me.

With these views, I have nothing to do with accepting or rejecting any proposition. I have no other amendment to make to the bill, either to accept or reject, than that, if this must go through the park, to restrict it to the least possible danger of injury to the park or encroachment upon it.

I may say here that if this road ran in the neighborhood of the main, leading curiosities in the park, the geysers, and the beautiful things that are to be preserved there, or if it went off nearer to the boundaries of the park than where it enters the park, I should oppose its going there at all, let the mines go up or down.

Mr. VAN WYCK. I agree with what the Senator from Michigan has said, but I still further think that the limitation should be extended as to the rates which this road shall charge.

Mr. CONGER. The Senator will allow me to suggest to him that the proper place for his amendment is in the body of the bill granting powers, and not in my amendment.

Mr. VAN WYCK. I thought it better to put it on the amendment, to complete the amendment, as the amendment was restrictive. The committee which reported this bill gave this railroad company, without intending it, the right to take all the timber they wanted from the public domain, except as it is curtailed and limited by the amendment of the Senator from Michigan, and I desired to make that restriction still more effective, so that there shall be some benefit to the people, if this road must be built, by allowing the Secretary of War to restrict and fix the price of transportation over the road. Congress already, having control of this park, has provided how the rates of hotel charges shall be fixed; and why should we not also provide some way in which the charges over this road shall be fixed?

I presume this is a branch of the Northern Pacific Railroad. All these roads of course need this restriction, and I may be allowed to say here that I think the country will rejoice that light is beginning to break on the United States Senate. It would not be so strong if some Senator had not seen and felt the power of these grasping monopolies. Senators who have visited the Yellowstone Park have seen it and felt it, and what they have seen and felt there the citizens of this Republic have seen and felt in all the Territories of this Union. There is nothing more for censure in the administration of the affairs of the Yellowstone Park than there is in every other Territory. I take it that it is not disputed that this road is a branch of the Northern Pacific Railroad.

Mr. CONGER. I understood, and I think the committee did, that this is an independent road, entirely distinct from the Northern Pacific Railroad. I have no information on the subject, however.

Mr. VAN WYCK. The Northern Pacific have a branch to Cinnabar, have they not?

Mr. CONGER. I do not know anything about it.

Mr. VAN WYCK. This is a branch from Cinnabar to the Yellowstone Park, the Northern Pacific now having a branch to Cinnabar. These branches are under the cover of another organization of their own creation; that is what it means; and the excuse for this is the existence of a mine in that section of country, as the Senator from Illinois says.

Mr. MCPHERSON. May I ask the Senator from Nebraska a question?

Mr. VAN WYCK. Certainly.

Mr. MCPHERSON. As I understand this case, all matters pertaining to the park are under the control of the Secretary of the Interior. Why is it that the honorable Senator now proposes that the simple matter of the regulation of transportation rates shall be delivered over to the Secretary of War? Does it require two great Departments of this Government, one to regulate all the affairs of the park in respect to hotels and their accommodations, and the other to regulate transportation charges?

Mr. VAN WYCK. Yes, sir; it will require two Departments to do it effectually and to accomplish anything. One has not done much except on one side of the case.

Mr. MCPHERSON. Perhaps it was an improper question for me to ask, as I know nothing about the facts, but judging from the admissions made by Senators on the other side of the Chamber those gentlemen certainly have a faculty of wandering widely from the law more than any political party of which I have any knowledge.

Mr. VAN WYCK. I heard the words of the Senator and tried to catch his idea, but really I did not see the application. If the Senator will please make his application a little plainer I shall be glad.

Mr. MCPHERSON. I do not think it is necessary.

Mr. VAN WYCK. If the Senator is satisfied, very well. The Senator wonders why I desire two Departments to have charge of this. Evidently one has not been able to do it. If there is any political aspect of the case, it comes from the political associates of my friend. I am rejoiced to know that there is no politics in this matter, that there is one thing which can come up in the American Senate affecting the people generally without regard to politics. One Department has not been able to do this, it seems, and the Secretary of War I suppose would be probably the best, because he can a little more easily perhaps resist certain influences.

Mr. MCPHERSON. Has the Secretary of the Interior had an opportunity of regulating the charges on this railroad?

Mr. VAN WYCK. He has had the regulation of the eating and sleeping arrangements of the hotels.

Mr. MCPHERSON. But I understood the Senator to say—perhaps I did not understand him correctly—that the charges at the hotels and for other services rendered to tourists by the so-called monopoly in the park were not exorbitant or extravagant; that they were reasonable. Now if the charges are reasonable, both for hotel accommodations and for stage accommodations, which, as I understand, are very much needed by tourists in the park, as it is impossible to reach the points of interest except by stages—if sufficient accommodations are afforded both as to hotels and stages, and the Secretary of the Interior has managed them prudently and well, why not leave to him the minor question of regulating the transportation of passengers, and not call on two great Departments of the Government to do what one can do just as well.

Mr. VAN WYCK. Here is a railroad concerned. I do not care so much about the hotel as the railroad.

Mr. MCPHERSON. I will say to the Senator now that I expect to vote against granting privileges to a railroad to cross the park except necessity for it can be shown, and I will qualify my remark by saying this further: If it can be shown that there is a communication leading to important industries beyond the park, even at an extravagant cost to reach them by some other route, I should certainly vote against letting a railroad line cross the park. If it can be shown—and I have no knowledge of the facts—that lying beyond the park there are important industries to reach which it is necessary to cross the park, I care not whether those industries be mining or agricultural or what they are, I say then it is the duty of Congress, under certain regulations, under certain restrictions that can be as onerous as you please, to give the facilities for communication. But that is not shown; no Senator has so stated; and therefore it is my expectation to vote against the construction of this railroad across the park. Therefore the Senator need not say there is any influence on behalf of railroads in my course.

Mr. VAN WYCK. Then, as to the regulation of railroads, the Senator will not deny that we can regulate the charters of railroads which we allow to go through our public park.

Mr. MCPHERSON. Now, perhaps if the Senator will yield to me he will not follow me quite so far as I would go on the question of the regulation of railroads. I believe that it is within the power of the National Government, where railroads cross the national territory, and within the power of the State governments in the States, and that it is the duty of both the National and the State Governments, to regulate the charges upon railroads.

The PRESIDENT *pro tempore*. The hour of 2 o'clock having arrived, it is the duty of the Chair to lay before the Senate the unfinished business.

Mr. SAWYER. I ask the Senator from Massachusetts to give us a few minutes. I do not want two minutes' time. I merely ask to have the report read and that we may have a vote on this bill.

Mr. HOAR. I would do more for the Senator from Wisconsin than for any other man in the Senate, but if he takes his vote now his bill will be beaten, and if it goes over until to-morrow he will have a chance to save it. I think I must object.

The PRESIDENT *pro tempore*. The Utah bill is before the Senate.

Mr. LOGAN. I wish to offer an amendment to the railroad bill, so that it may be printed:

Provided, That an examination shall be made by some competent engineer of the Army, under the direction of the Secretary of War, and if any other route can be found to the Clark's Fork mines mentioned in this act over which a railroad can be constructed without passing through any part of the said park, then on the report of this fact to the Secretary of War this act shall be null and void.

The PRESIDENT *pro tempore*. The proposed amendment will be printed.

NOTICES OF BUSINESS.

Mr. HARRIS. I desire simply to give notice, which I suppose is quite unnecessary, that immediately on the conclusion of the regular morning business on to-morrow morning I will move to proceed to the consideration of the Mexican pension bill.

Mr. CONGER. I wish to give notice that until it is disposed of I shall ask the Senate from day to day as opportunity may arise to consider the resolution of the Senator from Nebraska which I have moved to refer to the Committee on the Judiciary.

Mr. VAN WYCK. I trust the Senator will also see that when he calls it up and gets it before the Senate for consideration he will not yield the floor to a measure which will occupy the whole of the morning hour.

Mr. CONGER. It was the opinion of some of my friends that we might engage a part of the time in a little useful business rather than be occupied during the entire hour that I understood would be occupied by the Senator from Nebraska in discussing the resolution.

HOUSE BILLS REFERRED.

Mr. JONAS. I wish to call up the House joint resolution lying on the President's table.

The PRESIDENT *pro tempore*. The Senator from Louisiana asks that the Chair lay before the Senate a joint resolution from the House of Representatives, which the Chair accordingly does.

The joint resolution (H. Res. 255) appropriating the further sum of $100,000 for the sufferers by the overflow of the Mississippi River and tributaries was read twice by its title.

Mr. JONAS. If I thought it would not take too much of the time of the Senate I would ask for the present consideration and passage of the resolution.

Mr. HOAR. I must object.

The PRESIDENT *pro tempore*. Objection is made, and the joint resolution will be referred to the Committee on Appropriations.

PAY OF SENATE EMPLOYÉS.

Mr. VOORHEES. I offer a resolution and ask that it be printed and go over until to-morrow.

The resolution was read, as follows:

Resolved, That the Secretary of the Senate be, and he is hereby, authorized and instructed to pay the officers and employés of the Senate their respective salaries for the month of May, 1884, on the 29th day of said month.

Mr. VOORHEES. The House has passed a similar resolution for their employés. I move that this resolution be printed.

The motion was agreed to.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. CLARK, its Clerk, announced that the House had passed a bill (H. R. 5377) for the allowance of certain claims reported by the accounting officers of the United States Treasury Department; in which it requested a concurrence of the Senate.

ENROLLED BILL SIGNED.

The message also announced that the Speaker of the House had signed the enrolled bill (H. R. 3967) for the establishment of a bureau of animal industry, to prevent the importation of diseased cattle, and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals; and it was thereupon signed by the President *pro tempore*.

ALEXANDER SWIFT & CO.

Mr. HOAR. I ask unanimous consent to make a report at this time. I am directed by the Committee on Claims, to whom was referred the bill (S. 567) for the relief of Alexander Swift & Co., partners, and Alexander Swift & Co. and the Niles Works, to report it with an amendment in the form of a substitute. I should like to call the attention of the Senator from Mississippi [Mr. GEORGE] to it.

Mr. GEORGE. The chairman of the Committee on Claims [Mr. CAMERON, of Wisconsin] and myself dissent from that report, and we ask leave to present our views hereafter.

The PRESIDING OFFICER (Mr. GARLAND in the chair). The request will be granted if there be no objection. The Chair hears no objection.

BILLS INTRODUCED.

Mr. MANDERSON introduced a bill (S. 2269) to extend the provisions of the act of June 10, 1880, entitled "An act to amend the statutes in relation to the immediate transportation of dutiable goods, and for other purposes," to the port of Omaha, in the State of Nebraska; which was read twice by its title, and referred to the Committee on Commerce.

Mr. SHERMAN introduced a bill (S. 2270) to extend the limit of cost in the construction of the Government building at Columbus, Ohio; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

JOHN ALGOE.

Mr. CULLOM. I ask leave to report from the Committee on Pensions upon the amendment of the House of Representatives to the bill (S. 783) to increase the pension of John Algoe, and I move that the Senate concur in the amendment made by the House. I will state that the Senate passed the bill making the pension $50 a month. The House has reduced it to $45. I move that the Senate concur in the amendment.

The amendment was concurred in.

HOUSE BILL REFERRED.

The bill (H. R. 5377) for the allowance of certain claims reported by the accounting officers of the United States Treasury Department was read twice by its title, and referred to the Committee on Claims.

POLYGAMY IN UTAH.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 1283) to amend an act entitled "An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," approved March 22, 1882.

Mr. BROWN. Mr. President——

Mr. HOAR. Before the Senator proceeds, I wish to be indulged for a moment. There was an amendment offered by me, not formally offered by the Committee on the Judiciary, but on consultation with at least one member of the committee in regard to dower, which I should be glad to have embraced in the understanding by which the amendments offered should be considered as part of the bill, with the right to amend them as if they were parts of the bill. The effect will be that it will give the right to make additional amendments.

The PRESIDENT *pro tempore*. Does the Senator from Georgia yield for this purpose?

Mr. BROWN. I do.

The PRESIDENT *pro tempore*. The Senator from Massachusetts asks unanimous consent that the amendment which will now be read shall be considered as a part of the bill.

The Chief Clerk read as follows:

Add the following as an additional section:

SEC.—(a.) A widow shall be endowed of the third part of all the lands whereof her husband was seized of an estate of inheritance at any time during the marriage.

(b.) The widow of any alien who, at the time of his death, shall be entitled by law to hold any real estate, if she be an inhabitant of this State at the time of such death, shall be entitled to dower of such estate, in the same manner as if such alien had been a native citizen.

(c.) If a husband, seized of an estate of inheritance in lands, exchanges them for other lands, his widow shall not have dower of both, but shall make her election, to be endowed of the lands given, or of those taken, in exchange; and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange, within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

(d.) When a person seized of an estate of inheritance in lands shall have executed a mortgage of such estate before marriage, his widow shall nevertheless be entitled to dower out of the lands mortgaged, as against every person except the mortgagee and those claiming under him.

(e.) Where a husband shall purchase lands during coverture and shall at the same time mortgage his estate in such lands to secure the payment of the purchase-money, his widow shall not be entitled to dower out of such lands as against the mortgagee or those claiming under him, although she shall not have united in such mortgage, but she shall be entitled to her dower as against all other persons.

(f.) Where, in such case the mortgagee, or those claiming under him, shall after the death of the husband of such widow cause the land mortgaged to be sold either under a power of sale contained in the mortgage or by virtue of the decree of a court of equity, and if any surplus shall remain after payment of the moneys due on such mortgage and the costs and charges of the sale, such widow shall nevertheless be entitled to the interest or income of the one-third part of such surplus for her life as her dower.

(g.) A widow shall not be endowed of lands conveyed to her husband by way of mortgage unless he acquire an absolute estate therein during the marriage period.

(h.) In case of divorce, dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.

The PRESIDENT *pro tempore*. The Senator from Massachusetts asks unanimous consent that this amendment be treated as a part of the text of the bill and subject to amendment. Is there objection? The Chair hears no objection, and it is so ordered.

Mr. BROWN. Mr. President, as the question I am about to discuss is an important one, and I have prepared my remarks with some care, I desire to say in advance that I will not submit to interruptions during the delivery of my speech. At the close of it I will cheerfully answer any questions that may be propounded by Senators, or engage in any running debate to the extent I may think necessary to a full understanding of the whole question. As the bill reported by the committee is one professing to have for its objects, as stated by Mr. HOAR, in charge for the committee, on yesterday, the correction of improper social habits in Utah and the punishment of illicit intercourse between the sexes and the preservation of the purity of the family by the suppression of polygamy, it would seem not only to be germane to the objects of the bill but proper that we should also consider what is necessary to protect the family against the wrongful dissolution of the mar-

riage tie and the contracting of other marriages which are illegal and immoral. In other words, if the protection of the family against illegal and immoral marriages is a proper subject of Congressional legislation, then the protection of the family against illegal dissolution of the marriage tie and adulterous remarriages is likewise a proper subject for our consideration.

The question of the marriage relation and of the manner of dissolving the marriage tie is often discussed with propriety in ecclesiastical and clerical assemblages. And some may consider it an encroachment upon the proper prerogatives of that jurisdiction to discuss the subject here.

But as the question of the family and of the marriage relation is considered necessary for discussion in and action by Congress, it follows that the moral principles which lie at the foundation of the family and the dissolution of the bond of marriage are also proper for discussion while these questions are under consideration in the Senate.

If, then, in the remarks which I shall make I may seem to trench upon the rights of any other jurisdiction, let it be borne in mind that our own jurisdiction over the question can not be properly discussed nor our own duties properly performed without an examination into the great moral principles which underlie this whole question. Before I proceed further I will ask the Secretary to read the amendment which on yesterday I proposed as an additional section to this bill.

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

The Chief Clerk read as follows:

That the voluntary sexual intercourse of a married person with one of the opposite sex, not the husband or wife of such married person, shall be cause, and the only cause, of absolute divorce from the bond of marriage in the District of Columbia and in the Territories of the United States and in other places subject to the exclusive jurisdiction of the United States; but the courts of the United States may, in proper cases, as at common law, grant divorces from bed and board in said District, Territories, and other places subject to the exclusive jurisdiction of the United States.

Mr. BROWN. The bill is directed against the abuse of the family by an illegal plurality of marriages in Utah, which is called polygamy. My amendment is directed against the destruction of the family by the rapidly increasing practice of divorce, which is forbidden not only by the principles of sound morality, but by the divine law itself, and against the polygamy which is rapidly increasing by remarriages by numerous parties who have been illegally divorced. But before entering upon that part of the subject, I shall make some remarks upon the constitutional guarantees which are thrown around religious liberty in this country, and upon the proper organization of the family.

Mr. President, the Constitution of the United States expressly declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Webster, in his dictionary, defines religion as follows:

First, the recognition of God as an object of worship, love, and obedience; right feelings toward God as rightly apprehended; piety. Second, any system of faith and worship, as the religion of the Turks, of Hindoos, of Christians; true and false religion.

Then, Mr. President, the Constitution of the United States guarantees to every citizen of the United States the free exercise of his religion, whether he be Christian, Turk, Hindoo, or Mormon, and the Congress of the United States not only has no right by any act to restrict the free exercise of religion, or of religious opinion, but such restriction is absolutely forbidden. But this free exercise of religion which is guaranteed by the Constitution of the United States does not authorize the practice of gross immorality under the cloak or in the name of religion.

According to the general opinion of the Christian world, and according to the statutes of the Congress of the United States, the practice of polygamy is grossly immoral, and is not only prohibited by statute, but its practice is to be punished by penitentiary imprisonment. The Supreme Court of the United States has sustained this construction of the constitutional provision under consideration. It follows, therefore, that no Mormon or other person in a Territory of the United States can shield himself in any court when arraigned for the practice of polygamy by pleading his religious freedom as a justification. Then what follows? Those who commit polygamy in the Territories are subject to indictment, trial, and punishment in the courts of the United States. When convicted after a fair trial, it is the duty of the court to sentence the defendant to penitentiary imprisonment, just as it is the duty of the court upon trial and conviction to sentence any one who is found guilty of murder or any other felony.

The same rule which applies to the class of offenders known as polygamists applies in like manner to every other class of violators of the penal statutes of the United States; and the criminals of this class should be arraigned, tried, and convicted as are the criminals of other classes of violators of the penal code. I have repeatedly denounced polygamy on this floor. I consider it grossly immoral—in violation of the laws of God and man. Our law consigns polygamists to the same punishment, when convicted, to which it consigns any other like class of criminals. I admit, in the broadest sense of the term, that no Mormon or other citizen of a Territory can defend himself in court under an indictment for polygamy by pleading his right to the free exercise of religion.

But while this is true, I utterly deny that the Congress of the United States, or any department or officer of the Government of the United States, has any power to punish a Mormon or any other citizen of the Territory by imprisoning his person or confiscating his property, or depriving him of his right to vote or hold office, or of any other civil right, for bigamy or polygamy or any other crime without presentment or indictment of a grand jury and trial and conviction by due course of law. And I utterly repudiate the right of the Government of the United States or any department or officer thereof to ascertain the guilt of any such offender by the application of a test-oath, or to deny to any one the exercise of any right of a citizen on account of his or her refusal to take such oath or to be interrogated under oath as to his or her guilt or innocence.

And while it is true that the Mormon who commits polygamy is subject to indictment, conviction, and punishment, as any other criminal, it is equally true that the 100,000 Mormons who, as the report of the Utah commissioners appointed by the President shows, do not practice polygamy are protected by the provisions of the Constitution already referred to in the free exercise of their religious opinions. And no Mormon can be convicted or punished, or his goods seized, or his property confiscated, or his right to vote or hold office abridged, on account of any opinion he may entertain on the subject of polygamy, if he does not engage in its practice. A church or sect whose religious faith is that the Old Testament practice of polygamy is right and the Christian practice of monogamy wrong has as much right to the free exercise of its opinions as any other church or sect in the United States.

One sect or class of religionists believes in the Old Testament scriptures, and utterly repudiates the New; another believes in the present Christain Sabbath, while another repudiates Sunday as the Sabbath, and believes only in the Jewish Sabbath, or that Saturday is the true Sabbath.

Each of these is fully protected by the Constitution of the United States in the free exercise of his religious belief as long as the belief does not lead him into the actual practice of immorality. In other words, the Government has no right to punish any man, woman, or child within its broad limits for his or her religious belief, no matter what it may be, nor for the free exercise of that religious belief, as long as such exercise is not immoral, but the Government has the right to punish the practice of immorality in any and every sect or denomination.

Mr. President, in the early period of this debate I had the honor to submit some remarks on the question of the constitutionality of the law in reference to Utah known as the Edmunds act, in which I attempted, I trust successfully, to show that the vital part of that law, as construed and administered, was unconstitutional, and therefore null and void.

At this stage of the discussion I desire to submit some remarks on the moral aspect of this case, and to compare the civilization of Utah with that of other parts of the Union. If reform is necessary, and I think it is, let it apply to all sections where the same evil exists.

At the creation, God made them male and female, and said they twain shall be one flesh.

Notwithstanding the identity or oneness of the couple at the time of the creation, nearly all the nations had departed from this rule in practice. And even Moses lays down the rule in this language:

When a man hath taken a wife and married her, and it come to pass that she find no favor in his eyes because he has found some uncleanness in her, then let him write a bill of divorcement and give it in her hand and send her out of his house.

Under this law of Moses the Jews gave divorces and practiced polygamy without restraint. And at the coming of Christ probably every leading nation of the earth practiced it to a greater or less extent. If the Roman Empire was an exception in theory, its loose laws of divorce and its prostitution and concubinage were in practice the equivalent of polygamy. With the law of Moses standing in force, all the Jews considered it legal to put away their wives and marry others at pleasure.

If such were the law of Moses and the practice of the Israelites, what right have we at the present day to deny its validity or to arraign the people of Utah, or any other people, for the practice of divorce and polygamy? We should certainly have no such right if it were not for the law as laid down by Jesus Christ himself. He is the authority for the doctrine of monogamy. In Matthew xix, "He said, For this cause shall a man leave father and mother, and shall cleave to his wife; and they twain shall be one flesh." This excludes the idea of more than one wife, as the two, husband and wife, are one flesh under the law of Christ. Therefore if the husband marries a second wife while he has a living wife it is illegal, because he and the first wife being one flesh there can be no room for the second. And upon this doctrine of Christ's rests the law of monogamy, or of but one wife, throughout the Christian world. I believe all Christian denominations have adopted as correct the one-wife system, or the law confining one husband to one wife, because it is the law laid down by the Saviour himself. This doctrine of the Saviour, as I understand it, leaves no room for the practice of the Mormon Church which recognizes the right of the husband to have more than one wife. But bear in mind the Christian world places the doctrine upon the authority of Christ. It is His law; He did not find it in practice when He came into the world, but He announced it as the rule, and no Christian has a right to deny His authority.

It is true the Mormons believe there was a later revelation to their prophet, Joseph Smith, which again authorized polygamy. As I can not accept this revelation, and do not, as they do, regard Joseph Smith as a true prophet, I must reject the doctrine of polygamy and be governed by the divine doctrine of monogamy.

But in this connection I beg to invite the attention of the Senate to another proposition. The doctrine of monogamy, or but one wife to one husband, rests upon the authority of Christ, and the Christian world accepts Him as a lawgiver and recognizes His authority and is controlled by His teachings. If His authority or His word is the law upon which monogamy rests and polygamy is condemned, then the Christian world which accepts His authority for the one-wife system must accept also the rule laid down by Him as to the manner of dissolving the marriage relation between the husband and wife.

When the Jews called the attention of the Saviour to the fact that Moses commanded to give her a writing of divorcement and to put her away, he replied: "Moses, because of the hardness of your hearts, suffered you to put away your wives, but from the beginning it was not so; and I say unto you whosoever shall put away his wife except it be for fornication, and shall marry another, committeth adultery; and whosoever marrieth her who is put away committeth adultery."

In Mark, chapter x, verses 11 and 12, he says: "Whosoever shall put away his wife and marry another committeth adultery against her; and if a woman shall put away her husband and be married to another she committeth adultery." And in Luke, chapter xvi, verse 18, he says: "Whosoever putteth away his wife and marrieth another committeth adultery; and whosoever marrieth her that is put away from her husband committeth adultery."

Then, Mr. President, the law laid down by Christ himself is that a husband shall have but one living wife, and a wife shall have but one living husband; and when the marriage relation is entered into by parties competent to contract, it continues during the joint lives of the parties, and it shall in no case be dissolved, except for the cause of fornication. Two of the writers lay down the rule without any exception, that if a husband puts away the wife and marries another he commits adultery; and that if the wife who is put away marries another husband she commits adultery. But Matthew makes the exception distinctly, that it may be legally done for the cause of fornication, and for that alone.

Then, Mr. President, I feel fully authorized to assume the position as founded upon the rock of the authority of the Saviour himself, and firmly embedded in the doctrines of Christianity, that no husband shall put away his wife and no wife shall put away her husband except for the cause of fornication, and that if either puts away the other except for that cause and marries another, or they both marry others, they are guilty of adultery, and the second marriage according to the divine law is a nullity, and the parties are still husband and wife, refusing to discharge the duties of husband and wife toward each other, and living in adultery with other persons. Then there is no escape from the conclusion that according to the divine law every man who has divorced his wife except for fornication, and married another, or has married a second wife without divorce, is neglecting his legal wife and living in adultery with another woman. And every man who has married a woman who was illegally divorced from her husband is living in adultery with the wife of another man. And if the wife puts away the husband for like cause and marries another, she too has a living husband and is living in adultery with another man. And each having a plurality of wives or husbands living at the same time is living in the practice of bigamy or polygamy or polyandry. I apprehend this position can not be controverted by any one who admits Christ to be the Son of God and the divine lawgiver. All who deny His divinity and authority may reach a different conclusion. But those who deny Christ's divinity have no other sufficient authority for monogamy.

It follows, then, that a man, whether he lives in Massachusetts or Georgia, who has left his wife without a divorce, or has divorced his wife, except for fornication, and married another, and is now living with her, is a bigamist, and is living in a state of adultery, as much so as is a Mormon in Salt Lake City who has married two wives, under their system, and lives and cohabits with both. The only difference being that the Mormon relation is condemned by a statute passed by the Congress of the United States, while the bigamy practiced by the citizen of Georgia or the citizen of Massachusetts is legalized, in the very teeth of the divine law, by the authority of the State. They stand side by side alike condemned by the divine lawgiver of the universe. They are both bigamists, and they both live in a state of adultery; and the moral guilt of the husband in Utah who lives with two wives, one of whom he has no right to have, is no greater than the moral guilt of the husband who in Georgia or in Massachusetts has two wives and cohabits in a state of adultery with the one he has no right to have.

Now, if the doctrine of Christianity be true, and Christ is the lawgiver and his precepts are the law, I would like to hear some one draw a tangible distinction between the moral guilt of the Utah adulterer and the adulterer in Georgia or Massachusetts. If Christ be a lawgiver, and the law as announced by Him be authoritative, of which I have no doubt, then they are alike both adulterers, both bigamists, both polygamists—the only difference being that, in violation of one of the fundamental laws of the Christian religion, the State of Massachusetts or of Georgia, in the case supposed, has by human law declared legal that which the eternal lawgiver has declared to be illegal and adulterous.

Mr. President, I believe that that State or nation which in its legislation conforms most strictly to the great moral law laid down by the Creator himself will be most blessed and most prosperous. No member of Congress and no member of the Legislature of a State has a moral right to enact laws in the teeth of the divine law. We may avoid temporal punishment while we live in obedience to laws enacted in violation of a divine law, but the nation as well as the individual which habitually violates that law must sooner or later suffer the penalty.

Now, Mr. President, I propose with the indulgence of the Senate to contrast to a limited extent the social system of Utah with the social system of other parts of the United States, and to inquire whether there is any tangible distinction between polygamy as practiced in Utah and polygamy as practiced in other portions of the Union. Whatever attempt we may make by the enactment of laws to punish the guilty offender in one section of the Union, and leave him free from punishment and protect him in his adultery in another section, we can draw no moral distinction between the same practices in different sections. If it is murder maliciously to destroy the life of a human being in Utah, it is murder likewise to do the same in New England. If it is adultery to have more than one wife in Utah, it is also adultery to have more than one living wife in New England.

Having laid down this rule, which I think is sustained by the highest possible authority, I now proceed to inquire whether other sections of the Union are not more guilty of polygamy than Utah, and whether the bigamy, prostitution, and fœticide practiced in other sections are not more demoralizing and more destructive to society than polygamy as practiced in Utah. If so, why confine our legislation to Utah? Why not give it a broader scope? If our practice of divorce violates the divine law, why not check the immoral practice in all places subject to the jurisdiction of Congress?

Under the Mormon system the husband is married to a plurality of wives. He cohabits with them all as his wives, and they are generally prolific of offspring. According to the law of his Church he believes his offspring are legal, and it is his duty to care for and support them all alike. The mother of each is regarded as his legal wife, and each of the children is regarded as his son or daughter. The family is sustained and kept together according to the old patriarchal usage. The people are an industrious, laborious people; they are a thrifty people. No beggars or tramps are found in the streets. Pauperism is but little known in the Territory. Everybody seems to have plenty to do, and each person is at work to accomplish the task before him. What they call adultery, or the cohabitation by a Mormon husband with a woman to whom he is not married according to the rites of their Church, is regarded as a great crime. And I believe it is generally admitted that prior to the settlement of Gentiles, as they term outside people, among them neither prostitutes nor houses of ill-fame were known to any extent in the Territory.

But all this thrift, and order, and labor, and prosperity are, in my opinion, insufficient to justify the practice of polygamy, which is allowed by the Mormon Church. I refer to it only to contrast their system of bigamy and prostitution with our own system. Go to the other parts of the Union, where Mormonism is not known, and you will find it unfortunately true that prostitution is practiced to an alarming extent. In many States of the Union houses for the practice of it are either licensed by the public or permitted without interference by the police. Large numbers of illegitimate children are born without the protection either to the mother or child given to the plural wife and her offspring in Utah. In most instances the mother and child are discarded by the child's father, and they are cast together into the streets to make their living as best they can. I have not the statistics before me to show the exact proportion that the prostitutes bear to the population of any of our States, or to show the percentage of children born in the United States that are illegitimate. Our census reports are defective in this particular, but both classes are large.

Twenty-five years ago it was estimated that there were more than 6,000 prostitutes in the city of New York alone. Since that time the city has more than doubled in population, and I presume we have made fearful strides of increase in this pernicious practice. It is no doubt safe to assume the position that there are 12,000 prostitutes in that great city at the present time. And in the other cities of the Union, something like the same number in proportion to population. If this number is regarded too startling for belief, I beg to call the attention of the Senate to the fact that it is not so large as the statistics of some other countries show in proportion to population. I find it stated as a statistical fact that in the province of Brandenburg there were 10.9 illegitimate children out of every 100.

In the province of Schleswig-Holstein there were 9.6 out of every 100; in Berlin, there were 13⅝ out of every 100; in Magdeburg, there were 9.6 out of 100; in Hanover, 8.9. The same author gives the proportion which the prostitutes bear to the inhabitants of certain European cities as follows: In Hamburg, 1 to 48 inhabitants; in Berlin, 1 to 62;

in London, 1 to 91; in Vienna, 1 to 159; in Munich, 1 to 222; in Dresden, 1 to 236; in Paris, 1 to 247; in Brussels, 1 to 275; and in Strasbourg, 1 to 302. Unfortunately we have no reliable statistics in this country, as they have in Europe, by which we can give the correct proportion of population who are either illegitimate or prostitutes. But I fear it may safely be assumed that in proportion to population we are but little behind European countries in laxity of morals in this regard.

Now, let it be borne in mind that the Utah commissioners, who have applied the test-oath to both men and women, who are alike voters in Utah, have found but 12,000 in the Territory of Utah who could not take the oath that they were not bigamists or polygamists or that they had never at any time practiced bigamy or polygamy. Then the prostitution, counting all the polygamy of Utah as prostitution, is not so great as it is in the city of New York. And it should be borne in mind that of the 12,000 who refused to take the oath probably nearly 6,000 are males, and it would leave the polygamists, women, who are termed prostitutes by the opponents of Mormonism, at less than 7,000 in the Territory. For I believe it will not be charged truly against the Mormons that they practice prostitution to any considerable extent outside of their plural-wife system. Then the Mormon women who are engaged in illegal sexual practices are about the same in Utah that the number in the city of New York was twenty-five years ago. (See Sanger, on Prostitution, page 456, edition of 1858.) In other words, the number of females who practice illicit intercourse with the male sex in the city of New York is greater to-day, by almost double the number according to the best estimates and statistical information we can get, than the whole number who practice it in the Territory of Utah; but if it bears a much less proportion we are still guilty of great wrong. And if we may believe the reports which we see as to the chastity of Boston and Chicago and other cities as compared with New York, the city of New York will compare not unfavorably with them. It is probably safe to assume, then, that in either of the four or five largest cities in the Union prostitution is practiced to as great an extent as pologamy in Utah.

These are most unpleasant facts, but we can not shut our eyes to their existence. Thus far I have not referred to legalized bigamy in the States and Territories of the Union, but only to prostitution. And making allowance for the frailty of human nature in everybody but the Mormons, our commissioners have kindly made such reservation in the oath of the voter in Utah as to permit the Gentile who has one wife and half a dozen prostitutes in the Territory to vote, provided he does not claim to cohabit with the prostitutes in the "marriage relation." The language of the oath is: "I solemnly swear (or affirm) that I am not a bigamist nor a polygamist; that I have not violated the laws of the United States prohibiting bigamy or polygamy; that I do not live or cohabit with more than one woman in the marriage relation, nor does any relation exist between me and any woman which has been entered into or continued in violation of said laws of the United States prohibiting bigamy or polygamy." This is a very carefully worded document: "I do not cohabit with more than one woman in the marriage relation."

Doubtless there may be some who are called very respectable Gentiles there, each of whom has one wife and one or more mistresses not in the marriage relation. And as the votes of such were needed, the commissioners were careful to reserve to them the right to vote notwithstanding the plurality of women with whom they may cohabit. But the Mormon who has the same number of women, and claims that he lives in the marriage relation with all of them, though he is guilty of precisely the same practice as the Gentile, is carefully excluded from the right to vote or hold office. And I suppose if the Mormons would drop what is called the marriage relation, as recognized by their church, and cohabit with the same number of women they now keep as they are kept in other parts of the Union, we might find fewer public men and public journals denouncing them and crying, "Crucify them!" I certainly do not justify their illegal practices, but I have no stronger words of condemnation for the Mormon who cohabits with more than one woman, calling each his wife, than I have for the Gentile in the States or Territories who cohabits with a like number, calling but one of them his wife. It is simply the same crime under a different name, the Mormon having the advantage of position in this, that he claims and holds himself bound to support all his children, while the man with one wife and one or more mistresses denies his obligation to support the children of the latter. So much for polygamy as contrasted with prostitution.

Now, Mr. President, I desire for a time to contrast polygamy in Utah with polygamy in the States; and as most of the States have been inattentive to this great evil and have kept no statistical information that is reliable, and as our brethren in New England have dealt more fairly in this regard and have kept statistics of their polygamy, I shall be compelled from want of information from other States to draw the contrast between New England and Utah.

I have already referred to the law of Christ in reference to the marriage relation, which establishes monogamy, and also to His positive law in reference to the dissolution of the marriage tie. I have shown from that highest of all authority that every man who puts away his wife by divorce except for the cause of fornication and marries another commits adultery; in other words, when they marry again they both become adulterer and adulteress. And as the law of the State recognizes the legality of the marriage relation with the second wife, and as the law of God lays down the rule most distinctly that the marriage with the first wife is not legally and rightfully dissolved, he who has one or more divorced wives and is again married is as much a polygamist as he is in Utah who marries more than one woman. I see no just escape from this position unless we deny the authority of the law of Christ; and if so, we at once overturn the whole doctrine of monogamy, for it rests on His authority.

Now, Mr. President, how does polygamy in New England stand? On that subject I prefer to read from New England authors. Not with a view to assail New England, but for the purpose, as she is in the lead in the crusade against the Mormons and as she has kept statistics of her crimes, of drawing the contrast between her and Utah as to the practice of polygamy.

I shall make no apology to the Senate for reading from an article which appeared in the July number of the Princeton Review for 1882, from the pen of that very pungent and fearless writer, Rev. Dr. Leonard Woolsey Bacon, of Connecticut. The article is entitled "Polygamy in New England." I shall send it to the desk and ask the Secretary to read the parts of it which I have marked.

The PRESIDING OFFICER (Mr. GARLAND in the chair). The Secretary will read the part indicated by the Senator from Georgia.

The Chief Clerk read as follows:

POLYGAMY IN NEW ENGLAND.

It is only a careless student of American society who would allow himself to be misled by the mere use of the word "polygamy," in application to the social usages of New England and of Utah, into supposing that these usages are alike in all particulars. As a matter of fact the polygamy of these mutually remote regions of our common country presents points of dissimilarity hardly less striking than the points of resemblance. In both regions polygamy is very widely prevalent, probably more prevalent in Utah than in the New England States, although on this point the statistics of Utah are not sufficient for an exact comparison. In both regions it exists in spite of the distinct interdict of the sacred books that are held in reverence among the people; in both it is defended on the ground of later and fuller light on the subject; and in neither is there any serious difficulty in getting clergymen of the prevailing religion to "seal" the polygamous marriages in the name of the divine authority by which they are held to be interdicted. In both regions polygamy is attacked by a respectable but not numerically a strong party, and in both it maintains itself successfully in the general popular favor. These are certainly very numerous and curious points of resemblance.

But on the other hand in some striking particulars the two forms of polygamy, that of New England and that of Utah, depart from each other. In the first place, polygamy in Utah is unlawful. It is scarcely just to speak of it as an institution of that Territory when it is only a prevailing social usage, sustained by some religious sanctions. In the New Egland States, on the contrary, polygamy is distinctly instituted by act of Legislature, and the polygamous marriages, instead of being "sealed" in some private sacristy of a religious sect, are authorized by the highest judicial officers of the State under the seal of its superior court, a dignity which is not bestowed by these Commonwealths on ordinary Christian wedlock. The concubinage thus authorized is usually blessed in the name of the Lord Jesus Christ and declared to be Christian marriage by a minister of the Christian religion, which (as it can hardly be necessary to inform the reader) is the prevailing religion of the New England States. This singular rite is frequently made the occasion of a good deal of social festivity and merry-making. The perfect solemnity of visage with which the ecclesiastic goes through his part of declaring that in the name of the Lord to be Christian marriage which the Lord himself declares to be adultery tends to impart to the affair a *buffo* aspect that may naturally minister to the hilarity of the guests and spectators.

Another and perhaps more important point of difference between the New England and the Utah—perhaps it would be better to say the Puritan and the Mormon—polygamies, is this: That the Mormon polygamy is simultaneous, and the Puritan polygamy is consecutive. The Mormon polygamy is quite after the old patriarchal pattern. It does not require one to be "off with the old love" as a condition of being "on with the new." The fresher youth and beauty of the latest acquisition to the harem may indeed crowd out her predecessors from a proportionate share in the husband's affections. But the Mormon usage still permits, if it does not require, a support and a place of honor in the family to be conceded to the senior wife. And herein the Mormon usage would appear to a superficial observer to have the advantage in point of humanity over the Puritan institution, which requires ordinarily, under severe penalties, that the first wife, with or without her children, and with or without provision for her support, as the case may be, shall be put out into the street before the new wife is received. It seems a harsh requirement, partaking of the austerity of the Puritan traditions, or perhaps dictated by the narrow views of domestic economy which are sometimes imputed to the New England character. But a more considerate, not to say charitable, judgment is at no loss for a worthier motive. It is among the gravest accusations against the polygamy of Utah that it results in incessant and protracted jealousies, heart-burnings, and domestic discords.

There would seem to be an element of stern but not unkindly wisdom in the legislation which founded the polygamy of the New England States, and which provides against these direful possibilities by mercifully insisting that they shall be concentrated into one single pang and over with. If the half is true which is alleged of the dissensions that prevail in the scandalous and unlawful harems of Mormondom, and if the half is true which is claimed for the New England home, with its peaceful and lawful succession of wives, each happy for the time in the exclusive enjoyment of the home and affections of the husband, it can hardly be denied that the wisdom and mercifulness of the Puritan legislators is approved by the result. If the brazen advocates of the base system of Mormonism should have the hardihood in the face of our Christian civilization to claim it as an offset in their favor that this picture of domestic bliss under the New England system fails to represent the pining loneliless of the rejected wife, the sons of the Pilgrim Fathers would promptly retort that if the old wife pursued a solitary life it would be either her own fault or her misfortune, and in either case the law on which the institution of New England polygamy is founded must not be held responsible.

They would say that if, out of squeamish notions of morality or sentimentality, she should decline to enter into new relations which the law, with a noble impartiality, leaves free to her, that is her own affair; and that if, on the other hand, at the time of her being put away under authority of the State, her beauty, or youth, or fortune was too far impaired for her to be eligible for a new contract, this is one of the hardships that are incidental to human life in the best ordered society; the law makes what provision it can, by way of alimony, for such exceptional cases; but the great domestic institution of New England must

not be sacrificed on account of individual hardships. *De minimis non curat lex.* The disgusting defenders of Mormonism will do well to count the cost before attempting any such attack upon the Christian civilization of New England.

The discussion has already brought before us a third characteristic of the Puritan, as distinguished from the Mormon polygamy—its impartiality. The system in vogue at Salt Lake City has many historical precedents and contemporary examples. It is the patriarchal or the Turkish polygamy, which constitutes the household with plurality of wives under the headship of one husband. It looks down, no doubt, with scorn on the usages of some of the most undeveloped tribes of savages, in which that condition prevails which is known as polyandry—the marriage of one woman to a plurality of husbands. It is such a common device of a guilty conscience to comfort itself by finding some lower type of degradation than its own on which it can look down! It is well for Mormonism to have that conceit taken out of it by finding that the polyandry which it delights in despising is really an organic part of that civilization which claims to be the foremost in Christendom.

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The laws of the different States with reference to this general subject differ, of course, in detail and phraseology. Practically the substance of them may be stated thus: 1. Simultaneous polygamy is interdicted. 2. Consecutive polygamy is interdicted except by license from a magistrate. 3. When the two parties to a marriage consent to ask a license to marry again at their discretion there is no difficulty in obtaining it. 4. Even when one of the parties is reluctant the fact is not ordinarily a practical hinderance to the other party to get from the court the desired license for bigamy. 5. The bigamous or polygamous marriage, if duly licensed, is held by the State to be in all respects equally honorable with Christian wedlock. It must be conceded to the honor of these laws that they are not chargeable with favoritism toward any class in society. There is no indication in them of that blemish upon the usages of Turkey or of Deseret—that they make polygamy the luxury of the rich.

The license-fees are trifling, and for the slight professional work involved there is so lively a competition among gentlemen of the bar that the expense is kept down to a moderate figure. The most serious cost of bigamy is one not really necessary—the increased fee paid to the officiating clergyman in consideration of the awkwardness of his position and the strain upon his feelings. But this is a mere matter of compliment, or perhaps religious zeal, on the part of the bridegroom, for the case is rare indeed when five or ten dollars will not procure, for such an occasion, the services of a minister of the Gospel of unimpeached orthodoxy and good and regular standing.

The question will be raised by some reader, to what extent the facilities for polygamy thus offered by law are actually utilized by the people; to what extent the people of New England are actual polygamists, as compared with the population of other polygamous countries. An off-hand answer, given from general impression, is that actual polygamy prevails among the New Englanders to a greater extent than among the Mohammedans, but to a less extent than among the Mormons. But the basis for an exact comparison is wanting, for lack of statistics from Turkey and from Utah. Even in the New England States the statistics are defective. They give us the number of permits for bigamy issued by the courts in each year, and they give us the total number of marriages. According to these figures, the annual issue of bigamy permits in the State of Connecticut (which is a fairly representative State in this respect) is something like one-tenth of the total number of marriages. But a considerable proportion of the marriages in New England take place among a class of foreign population, the large increase of which is looked on by the representatives of the original Puritan stock with much solicitude as dangerous to morals and religious purity.

The people of this class do not easily keep pace with the rapid march of civilization among the population generally, and are obstinate monogamists. Leaving these out of the calculation, the number of permits for bigamy annually issued is to the total number of marriages in the proportion of about 1 to 8, varying in different States, and fluctuating from time to time, with a general and rapid tendency to increase. Each one of these permits, however, is good for two persons, so that practically where this ratio exists there is one permit for every four marriages.

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Altogether, the nearest that we can safely come to a statement of the ratio of polygamies to the total number of marriages among the New England population of native stock in the State named is that it is somewhere between 1 to 8 and 1 to 4. This estimate includes only the legal polygamies. The unlicensed or criminal polygamies are a class by themselves, and are generally regarded in good society as not only unlawful but immoral. Rarely, if ever, can an acknowledged bigamist maintain his position in society and his good standing in the church, unless he can show his authorization from the superior court. In view of the facility with which such authorization is granted, it is felt, not unreasonably, that a person desiring to indulge in bigamy is without excuse for not complying with the prescribed formalities.

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There is some reason to fear that the entirely dispassionate consideration of polygamy in New England may be hindered by sectional jealousy toward that highly favored region and people. For, whatever view may be taken of the merits of this institution of consecutive polygamy as established by law, there is no doubt that they are mainly to be accredited to the New England people of Puritan stock. The population of New England is indeed largely mixed with foreigners, but the foreign population in general, being of a lower grade of culture and of less enlightened religious faith, do not conform in this particular to the local institutions. And when the New England people migrate they carry with them the cherished usages of their home. Their orators and preachers delight to dwell on the distinguishing glories of the "New England zone," over which the tide of emigration has flowed due West, as if confined by parallels of latitude, marking its course everywhere with churches, schools, and colleges. But with a modesty rare in the festival panegyrist they have refrained from expatiating on the spread of that more unique and characteristic institution still—the Puritan Family, with its almost ascetic temperance counterbalanced by a genial freedom to

"Chop and change ribs *á la mode* Nov-Anglorum."

The Rev. Mr. Dike, who writes on this subject with an undisguised animosity against the institutions of his own State and section, but the accuracy of whose statistics can not be successfully gainsaid, distinctly shows the fidelity with which the westward-moving Puritans guard the sacredness of their domestic liberties. *Cœlum, non animum, mutant.* It is not only that they fix the legal guarantees of these liberties in the statute-books of new States; they set to the less-favored people round about the example of using their liberties. In the Western Reserve, peopled almost exclusively from New England, polygamy of the identical Puritan type is rife; in Ashtabula County, famed in the annals of reform, the ratio of polygamies to the total number of marriages rises to an extraordinary figure. In the southern counties f Ohio, on the other hand, that are said to have been injuriously affected by the influx of "poor white" population from the slave States, are to be found fewer indications of popular education, and religion, and nuptial liberty. Coming to a still higher latitude, we find in Wayne County, Michigan, according to a recent estimate, for every six marriages one application for a double-bigamy permit. It is often boasted that the qualities of the New England stock are intensified by transplanting into the western soil.

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The future of New England society it is not difficult, from present tendencies, to forecast. The present amount of polygamous marriage there prevalent is a fact, not of social statics, but of social dynamics. It represents a stream in motion, and in pretty rapid motion too. For polygamy as a legal institution has existed in New England for much less than two generations, and the present per annum and per cent. of polygamous marriages represents an irregular but rapid increase which is continually going on. The leaven has only begun to work. Old traditions and prejudices do not disappear at once. The old-fashioned law and Gospel conspired to repress with severe and solemn sanctions, in the mind of husband or wife, the risings of mutual anger or dislike, or the first wanderings of adulterous lust.

The new institution has changed all that. The traditionary phrase "until death shall part you" still lingers by force of habit in most marriage formulas; but from the wedding day, and from before it, the statute-book whispers intelligibly in the ear of bridegroom and of bride: "If you find that you don't like each other, or if you find that you like some one else better, there is a cheap, easy, quiet, and perfectly respectable way out of it;" and every new instance of prosperous and comfortable bigamy repeats the whisper of the statute-book in a resounding voice.

Withal the genial gospel preached so persuasively and amid so much applause in the new State-house of Connecticut by Hon. Mr. Sumner, ex-mayor of Hartford, in which he disposed with such easy jocularity of the notion of future punishment for sin and extolled the superior delights of what the New Testament somewhat harshly characterizes as adultery, in comparison with Christian wedlock, is a gospel sure of making converts, even from the lips of a less enthusiastic preacher. The carnal mind has no enmity to it whatever. The friends of progress, in the direction in which progress is now tending in New England, may count with confidence on the future. The time is not far distant when the ratio will be not, as now in some parts of New England, two bigamy permits to every eight marriages, but a much higher ratio. Progress in this direction is so rapid as naturally to alarm timid minds. But a calm faith in evolution, a well-grounded confidence in the perfectibility of human nature, a serene and abiding trust in Stuart Mill can witness unappalled the change that shall make polygamy the rule in New England and Christian wedlock the exception. Even minds unfriendly to the change may comfort themselves in view of the incidental resulting benefits. Whether it result happily or disastrously to New England, the experiment will be one of great value to social science, and the conservative and theological folk who are shocked at it as both sinful and ruinous ought to be able to find comfort for themselves in the favorite New England dogma concerning "willingness to be damned for the glory of God."

May we not hope, also, as the result of the progress before us, that "in the good time coming" the "envy shall depart" which has been unnecessarily stirred up between New England and Utah, between the Puritan and the Mormon? Already perspicacious minds can see that the difference between these antagonized parties is not really one of principle; that the question between the simultaneous polygamy and the consecutive polygamy, if it is worth disputing about at all, is one on which there is something to be said on both sides, and that really our only serious contention with our Mormon brethren is on the ground of their prematurity that they have usurped in their nonage privileges of legislation that belong only to a sovereign State. Let them wait their turn, avoid in the phraseology of their statutes any needlessly offensive expressions, and it will soon become obvious to all but fierce polemics on either side that there is really no moral question at issue between the two sections. When that happy day shall arrive, Judah and Ephraim shall cease their mutual vexations, apostolic delegates from the Church of the Latter Day Saints shall be welcomed with fraternal greetings in the national council of Congregationalists, and Methodist bishops from New England shall communicate in the peculiar Eucharist of the Deseret temple.

It has been no part of the plan of this article to enter into any discussion, either pro or contra, of the merits of the New England system of polygamy, considered from a moral, religious, or economical point of view. That debate, with its inevitable acrimony, is gladly remitted to such writers as by their tastes or talents for controversy are qualified for it. It is a humbler, but not altogether useless function dispassionately to depict the matrimonial laws, institutions, and usages of a remarkable people who are not always rightly judged nor understood by their fellow-citizens of other States, and who have many claims to the thoughtful attention of mankind, and especially to the critical observation of all students of social science.

Mr. BROWN. Again, in the same Review for November, 1883, the same writer says:

The disgraceful laws of the New England States that fall so far below the standard of good secular legislation have become the canons of church fellowship. Adulterers and adulteresses, the only mitigation of whose crime is that it is licensed by the State, which ought to punish it, sit down together unrebuked at the table of the Lord's Supper. And in one notorious instance at least a man who has put away his wife and given her a writing of divorcement is maintained without so much as the institution of an inquiry in the fellowship of the Congregationalist ministry.

It does not appear that there is often any serious difficulty either in New England or out of it to find a respectable minister of any desired denomination who for a ten-dollar bill will stand up before an adulterous couple and declare them in the name of the Lord Jesus Christ to be husband and wife.

If there has ever been an instance in which this transaction has brought the culprit under any formal censure from his brethren, or his superiors, the fact is not generally known to the public.

I desire in this connection to read a few sentences from the valuable book entitled "Divorce and Divorce Legislation," written by Theodore D. Wolsey, D. D., LL. D., then president of Yale College. On page 60 he says:

To claim for an adulterer and adulteress the protection of law in a Christian State, so that when free through their crimes from former obligations they may legally perpetuate a union begun in sin, is truly to put a premium on adultery. A Herod on that plan after sinning with his brother's wife would need only to wait for legal separation to convert incest into legitimate wedlock.

Again, on page 232, this able author says:

And are not all the churches, all right-minded people, all Protestants and Catholics, called upon to unite in a demand that there be some check on so great and threatening an evil?

On page 242 Dr. Woolsey says:

The minister, if his celebration of the marriage be not a farce, can no more join in marriage two persons who in his view have no right to form such a union than he can aid in any other immoral proceeding. Suppose the parties intending such a union be a woman put away for other cause than that of adultery, and a man, whoever he be, to whom our Saviour's words would have application, "that he who marrieth her who is put away committeth adultery," how can the fact that such a union is legal in the least degree justify a minister of Christ in giving a religious sanction to an act which he believes to be an adulterous one? Ought he not to say in solemnizing such a union, "Whom God hath not joined together let no man put asunder?"

On page 270 he says:

But any one, lawyer or not, must be aware of the miserable state of things now existing in some of the States, and no one who will compare the careful, thorough law of the code civil with most of our statutes relating to divorce will feel any great respect for American legislation.

Speaking of the ratio of divorce to the whole number of marriages, Dr. Woolsey agrees with Dr. Bacon and others from whom I shall quote in substance as to the state of things in Connecticut. He says on page 223, speaking of marriages between persons of foreign birth:

Now of these it is safe to say two-thirds, say eight hundred, were Catholics, who rarely petition for divorce in this State. Deducting them, we have the ratio of one divorce to less than eight and a half so-called Protestant, or rather non-Catholic, marriages.

To show the alarming extent to which this practice of bigamy has gone in New England, I beg leave also to refer to an article in the North American Review, entitled "Divorces in New England," written by Rev. Dr. Nathan Allen, of Massachusetts. He gives the statistics of divorce from 1860 to 1878 in Massachusetts, Vermont, and Connecticut: In Massachusetts the whole number during that period was 7,238, in Vermont 2,775, in Connecticut 7,781. And in Rhode Island, from 1869 to 1878, inclusive, or for ten years, the statistics not having been kept prior to 1869, the whole number for the ten years was 1,866, making an aggregate of 19,655 divorces for the period of eighteen years in the three first-named States and ten years in Rhode Island. If we had the statistics of Rhode Island for the other eight years it would doubtless increase the number to considerably over 20,000. The author says:

It is well known that the laws in Maine and New Hampshire are liberal, the causes alleged numerous, and divorces are of frequent occurrence, probably as much so as in any of the other New England States.

It would seem to be very safe then to put down the number in these two States for the period of eighteen years at not less than 7,000 in the aggregate, which is less than the number in Connecticut alone, making over 27,000 divorces granted in the six New England States within eighteen years. And as there are two parties to each divorce, this turns loose over 54,000 divorced persons upon the community to contract other marriages or to engage in the practice of polygamy.

The author goes on to add:

On an examination of the above tables two things are obvious: First, the steady increase of divorces in each State since 1860; secondly, the remarkable uniformity of this increase. If five years are taken as the commencement and closing of each table it makes a fairer comparison than one year. In Vermont the first five years averaged 1 divorce to 22 marriages; the last five years, 1 to 15, omitting fractions. In Connecticut, the first five years, 1 to 13; the last five years, 1 to 10. In Massachusetts, first five years, 1 to 50; the last five years, 1 to 22. In Rhode Island, the first five years, 1 to 13; the last five, 1 to 12. Thus in Vermont and Connecticut the increase has been nearly one-third. In Massachusetts the increase is more than double, while in Rhode Island the increase has been less than in either of these States.

In a note the author adds:

The Catholic marriages should be deducted in each State.

And the true ratio of divorces to marriages stands thus (omitting fractions): In Massachusetts, 1 to 15; in Rhode Island, 1 to 9; in Connecticut, 1 to 8; and in Vermont, 1 to 13. The author adds, on page 560:

What a strange spectacle does it present in social life that in twenty years more than 20,000 divorces should have been granted in four New England States; that in this period the marital relations should be severed between 40,000 persons. If we include the divorces granted in Maine and New Hampshire with those in the other four States, it makes 2,000 families broken up every year and 4,000 persons at the same time divorced. And it should be remembered that this destruction of the family does not apply to the foreign population, but is confined to the strictly native New Englanders.

Again he adds:

Among no Christian or civilized people at the present day do we find divorces sought and obtained to such an extent as in New England, and in only three instances in the history of nations can we find such a breaking up of the family by this means. The first indication of decline in Greece and Rome were disturbances in the family.

In 1790, when the flood-gates of the French revolution were open, the frequency of divorces became alarming. Within a year and a half more than 20,000 divorces were granted. But even these in proportion to the whole population of France at that time are not equal to the ratio of divorces to marriages as now found in Rhode Island and Connecticut.

It is well known that the charge of fœticide and of the use of means to prevent conception has often been made against the people of the New England States. This matter has not escaped the attention of the New England author from whom I am quoting. He says:

From the same reports it appears that the birth rate of the foreign class is more than twice as large as the American, and the marriage rate of the foreign is also considerably larger. It also appears that the birth rate and the marriage rate of the strictly American have for a long time been decreasing; so much so that the increase of numbers in this class is very small and in some places even doubtful.

It is a noted fact that the Irish and other foreign population which have settled in New England, and do not indulge in the practices above mentioned, have a birth rate double the native American. At this ratio another century will change New England into New Ireland, or convert her into the home of the Irish and other foreign population.

In view of this state of things, the timely warning by a well-known lady is worthy the serious consideration of the people of New England. Mrs. Elizabeth Cady Stanton is reported to have said in substance "that if this crime against the family, fœticide, continues as it has begun, the descendants of the Celt will soon trample upon the graves of the Puritans." I believe the Mormons have never been charged with the practice of fœticide or the use of means to prevent conception. They are an exceedingly prolific people. So that in this respect at least the polygamy of Utah has decidedly the advantage of the polygamy of New England.

An able writer in the Catholic World sets forth in substance the same facts that are so forcibly stated by Drs. Woolsey, Bacon, and Allen, corroborating them in almost every particular. But as I do not know whether the author was a New England man I shall not trouble the Senate with the quotations. As New England is the prosecutor of Utah, I prefer to learn from the pen of New England authors and divines the true condition of society in New England and the alarming increase of polygamy in that section.

Rev. Samuel W. Dike, of Vermont, in a carefully prepared article in the New York Independent, February 16, 1882, on certain crimes in Massachusetts, gives the statistics of convictions for crimes against chastity in that State for the period running from 1866 to 1869 and from 1876 to 1879. The column from 1866 to 1869, inclusive, foots up 1,960 convictions; the like period from 1876 to 1879, inclusive, 2,274 convictions. The author says:

The increase is pretty evenly distributed through the State. * * * Take for example adultery, which is perhaps as good a test as any. The increase from 109 sentences to 300 is found very evenly distributed.

He then says:

But when we come to the crimes against chastity, only 34 per cent. were by foreign born, while natives of this country were guilty of 63 per cent., and 3 per cent. unknown. About two-thirds of those convicted for prostitution were natives, though more like to escape the police than foreigners.

He adds:

There is also a remarkable parallel between several evils that may be regarded as kindred:

Crimes against chastity in Massachusetts, 1866 to 1869, 683; 1876 to 1879, 1,537.
Illegitimate births, 1866 to 1869, 1,625; 1876 to 1879, 2,766.
Divorces, 1866 to 1869, 1,352; 1876 to 1879, 2,255.
Marriages, from 1866 to 1869, 57,551; 1876 to 1879, 52,202.

This shows a constant increase in crime and a falling off in the number of marriages.

The sentences for crime against chastity as a whole, with the exception in Suffolk County, increased in Massachusetts in ten years 125 per cent. The five of these classed under "felony and aggravated crimes" show an increase in the whole State from 150 to 378, or 157 per cent. In the same period all crimes classed under that head increased 52 per cent., while all minor crimes and misdemeanors, including so-called "liquor offenses," increased 14 per cent. The population meanwhile gained about 22 per cent. Again, he says, a polished officer in Massachusetts, one especially competent to give an opinion of this sort, lately declared that in his judgment licentiousness is the cause of more crimes than intemperance.

Another, whose official duties gave him the best facilities for forming an opinion, believes that the direct or indirect murder of illegitimate children after birth is frightfully prevalent, and the author adds, "The Christian and the citizen, the man of business and the practical economists, have some work to do in the direction of these crimes and vices."

Mr. Dike, who has probably given more attention to statistics in New England on these questions than any other person, and who has at great pains gotten statistics in Maine and Vermont, in a circular lately issued gives the following statistics of divorce in New England, showing that in 1878 Maine granted 478 divorces, New Hampshire 241, Vermont 197, Massachusetts 600, Connecticut 401, Rhode Island 196, making a total of divorces granted in New England in a single year of 2,113, thus turning loose 4,226 persons to marry again, probably three-fourths of them divorced for causes other than adultery, which provides for an increase of nearly 3,000 cases of legalized bigamy in New England in a single year.

The following quotations are from a lecture delivered by Mr. Dike as one of the Boston Monday lectures of 1880 and 1881:

New Hampshire prints no statistics, either of divorce or marriage, but it has been found that there were 159 divorces in the entire State in 1870, 240 in 1875, and 241 in 1878. Three counties that had only 18 in 1840 and 21 in 1850 granted 40 in 1860 and 96 in 1878. In Connecticut we find that Benjamin Trumbull, in 1785, mourned that 439 divorces had taken place in that State within a century, and that all but 50 had occurred within the last fifty years. About twenty years later President Dwight was alarmed that there was one divorce to every one hundred marriages. Not one-fourth of these divorced cases are for adultery. Desertion and severity are the chief causes. The courts are crowded with unhappy couples, and often the cases are dispatched with unseemly haste. There is a daughter of a prosperous farmer, still a young woman, who has been divorced from three husbands, each of whom is living and married to another wife, while she has been lately married to the fourth husband. Nor is this the only or the worst case of the kind reported in the State of Connecticut."

Two Vermonters deliberately swapped wives by aid of the courts. Young people coolly reckon on divorce in contracting marriage. A Vermont couple married on trial for six months, agreeing to get a divorce if either party did not like. While, then, crime generally has increased 20 per cent., this class of crimes has increased 174 per cent., or eight times as fast as crime in general, and more than three times faster than the population, and with accelerating rate. Add to this the fact that the children born out of wedlock in the State have risen in the same period from 8 in 1,000 to 17 in 1,000, and the most rapid increase has been in the last six years, while in just those years England has as rapidly improved. In three-fourths of the localities reporting on this point licentiousness is said to be increasing. In nearly as many the destruction of unborn life goes on as fast, or faster, than ever.

The family of Massachusetts, including both native and foreign, fell from an average of 4.69 in 1865 to 4.60 in 1875.

The marriage-rate, that is, the ratio of persons married annually to the population, has fallen in twenty years from a higher figure than reported in any European country to the level of Austria, and lower than in any other country except Sweden.

The number of children under 5 years of age in Vermont was 159 in every 1,000 inhabitants in 1830, and 113 in 1870, having fallen to 100 in 1860, and rising chiefly because of the foreign element.

The birth-rate in New England is probably as low as in any country in Europe; among the native stock far lower.

Look at one more class of facts: In the Western Reserve, comprising the twelve northeastern counties of Ohio, settled mainly by emigrants who went from Connecticut long before that State made its new departure in divorces, and containing, it is said, a purer New England stock than can be found in the entire country, unless it be in parts of Maine, the ratio of divorce to marriage was 1 to 11.8 for the two years, 1878 and 1879, while in the rest of the State it is 1 to 19.9. Nor is the worst of the Reserve in the cities. The ratio in Ashtabula County, among a farming people originally from New England, is 1 to 8.5, and in Lake County the proportion of divorce suits begun to marriages is 1 to 6.2, and the divorces granted 1 to 7.4. Unless there be like counties in Maine this is the worst county for divorce in the United States, except for a few years Toland County, Connecticut. So this wretched business goes on apparently wherever New England people are found.

But if you will go down to Gallia County, peopled with Welshmen and Southerners, the ratio is 1 to 50.

Professor Phelps, of Andover College, wrote a year ago:

We are not half awake to the fact that by our laws of divorce, and our toleration of the "social evil," we are doing more to corrupt the nation's heart than Mormonism tenfold. Vice avowed, and blatant, and organized to a large extent nullifies itself so far as self-diffusion is concerned. But vice lurking and still trickles into all the crevices of society. A nation of Mormons is impossible—not so a nation of libertines.

I make but one more quotation from this able lecture:

Mormonism and the late Oneida system of social life are in no small degree other forms of the evils under consideration. They are both largely Yankee notions in their origin and leaders. Joseph Smith, Brigham Young, and J. R. Noyes were all born in Vermont.

I will now refer to a few facts contained in the official registration report of Massachusetts for 1882. I find on page 122 of that volume a statistical table showing the divorces granted by years, and the statute causes, for twenty years in the State of Massachusetts. It embraces the period 1863 to 1882, inclusive, and shows the divorces granted under each provision of the statute, as adultery, desertion, intoxication, &c., and foots up the aggregate at 8,610. This is a larger aggregate, as shown by the official figures of Massachusetts, than the aggregate reported by Rev. Dr. Allen or either of the other distinguished gentlemen from whose productions I have read. This shows officially, so far as Massachusetts is concerned, a larger aggregate of divorces than I have seen claimed by any one of the New England writers on this subject. They have palliated the practice by understating it.

I take it for granted, therefore, that the figures which have been given above are substantially correct. On page 139 of the same official volume I find a table showing the increase in the ratio of divorces, and increase of marriages from 1863 to 1882, inclusive, and the ratio of increase of population as shown by the census of 1860 and 1880.

The table shows the increase, under each head, in each county in Massachusetts. At the top of the page the aggregate is given for the whole State, and it shows an increase in the ratio of divorces, omitting fractions, of 147 per cent., and increase in the ratio of marriages of 62 per cent., and the increase in the ratio of population of 44 per cent.

I presume the correctness of these figures will not be doubted, as they are published by the authority of the State of Massachusetts. And they show a most alarming increase of divorces in that State. I am happy to say in this connection that Mr. Dike, as secretary of the New England Divorce Reform League, reports some diminution in divorces within the last year or two.

This league is composed of able, earnest, good men, who are justly alarmed at the terrible strides of the social evil in New England, and they have gone earnestly and actively to work to try to check the evil. I think they deserve the sympathy and best wishes of all good men who are cognizant of the facts as they exist.

In an article which I find in the North American Review of April, 1883, written by Judge John A. Jameson, of Chicago, referring to our lax laws of divorce and their bad influence on society, the learned judge says:

Cook County, in which is Chicago, had a population in 1880 of 607,468. In the year 1882 divorces were granted in 714 cases in that county. Of these 565 were cases in which no defense was interposed by the party accused, and 49 cases in which there was an issue tried by a jury or by the courts. Of the 714 divorces granted 318, or 44 per cent., were for desertion; 142, or 19.8 per cent., for adultery; 141, or 19.7 per cent., for cruelty; 93, or 13 per cent., for drunkenness. These figures—

Says the author—

are undoubtedly painful ones, but as intimated they are below those exhibited by some of the older States. Thus in Maine in 1878 there is said to have been 1 divorce to every 819 inhabitants; and in Penobscot County, the seat of a theological seminary, 1 to every 820 inhabitants.

When it is considered that Vermont is an old State with a fixed population, of nearly pure American descent the ratio of 1 divorce to every 13 marriages in 1878 indicates a much greater laxity in its divorce laws than prevails in Illinois, even if no credit be given to the assertion, made by citizens familiar with the facts, that in a certain county of Vermont, out of twenty-two divorces granted at one term of the court twenty-one were believed to be collusive.

If the truth could be ascertained, at least two-thirds, perhaps four-fifths of the 714 cases divorced during the past year in Chicago either were fraudulent in fact or with a reasonably conciliatory temper on the part of the couples divorced, and under sufficiently stringent legal conditions were avoidable or preventable. There is beyond question fraud in the inception of many cases.

These figures and statements are from a gentleman of character as I understand, and are worthy of careful consideration.

While they reiterate what so many others have said in reference to the practices in New England, they give us meager statistics of the practice in other States, and while the judge condemns the loose practice in his own State, he is somewhat consoled with the reflection that it is not so bad as it is in the New England States.

But, Mr. President, it may be said that this outrageous system of legalized polygamy by illegal divorce grows out of the practice of the States, and that Congress has no jurisdiction of the question in the States, and that we are not therefore responsible. This may be true as to the State Legislatures and the practice within the States. But we are equally guilty with the States, as our legislation is equally unjustifiable. Take the District of Columbia over which the Government of the United States has exclusive jurisdiction, and under the act of Congress there are seven causes of divorce from the bond of marriage. The three last are in the following language:

Fifth. For habitual drunkenness for a period of three years of the party complained against.

Sixth. For cruelty of treatment endangering the life or health of the party complaining.

Seventh. For willful desertion and abandonment by the party complained of against the party complaining for the full uninterrupted space of two years. (See acts Forty-third Congress, Statutes at Large, 1878, 1879.)

In other words, in the District of Columbia, under the legislation of Congress, habitual drunkenness, cruelty, and abandonment, which are the most prolific sources of divorce in the States, are causes of divorce under which a great many divorces are granted, in the teeth of the divine law; and adulterous marriages follow, and thus polygamy is legalised as well by Congress as by the State Legislatures. While we are providing a remedy for this great evil in the Territory of Utah let us remove the cause that produces it in the other Territories and in the District of Columbia. This is the object of my amendment, and I trust the Senate will adopt it.

As I have already stated, the commissioners appointed under the Edmunds act to take charge of the affairs of Utah prescribed a severe test-oath, permitting none to vote or hold office or to occupy a place of public trust who will not swear that he or she is not a bigamist or polygamist, and that he has not cohabited with more than one woman in the marriage relation. And this oath is administered to each man or woman who offers himself or herself as a voter, and it covers the whole period of the life of each Mormon. Now the fact is worthy of notice that the commissioners report only 12,000 men and women who refused to take the test-oath. As it requires the affiant to swear that he is not a bigamist nor polygamist, many who believe in polygamy but have not practiced it may have refused to take the oath.

Admit, however, that the 12,000 persons reported by the commissioners who refused to take the oath have at some period of their lives practiced bigamy or polygamy, then there are in the Territory of Utah 12,000 men and women; and we will here suppose there are 6,000 of each who have within the period of their lives, say the last twenty-five years, engaged in this unlawful practice.

In comparing the polygamy of Utah with the polygamy of New England how does the account stand? The statistics given by the Rev. Dr. Allen and the other able authors referred to show that within the last eighteen years, estimating for the number in Maine and Vermont, and putting it lower than the proportion in the other States, there were over 27,000 divorces granted in New England, making 54,000 persons who have been divorced there within that period.

Now, let us suppose that one-third of that number were divorced for the cause of fornication, and therefore legally divorced (though the statistics show a much smaller proportion), and when they married again were not adulterers under the divine law, and it leaves 36,000 who were unlawfully divorced according to the divine law, and who as each marries presents the case of more than one living wife or more than one living husband, and are therefore bigamists; and New England presents to the world 36,000 bigamists while Utah presents but 12,000, placing New England in the lead in the practice of bigamy by 3 to 1 as compared with Utah. I speak of the two sections, and not their relative population. If it be said that part of the 36,000 do not marry again, the reply is that the statistics show that less than one-third of the divorces granted are for adultery, and it is doubtless true that of the 12,000 in Utah who refused to take the oath that they were not bigamists or polygamists a very considerable number had never practiced polygamy. Therefore I think it is safe to say that the proportion is 3 in New England to 1 in Utah.

And let it be remembered that the percentage of divorce for the last twenty years has increased so rapidly that all the different writers above referred to agree that there are now over 2,000 divorces granted each year in New England.

The official statistics of Massachusetts show that the increase in divorce in that State for the twenty years from 1863 to 1882, inclusive, was 147.6 per cent.

The number now being over 2,000 divorces per annum granted in New England, if the increase should go on at the fearful rate of the last twenty years, and if Massachusetts is a fair sample of the other New England States, the whole number of persons divorced for the next twenty years would greatly exceed the number for the last twenty years.

At the present rate of 2,000 per annum, twenty years would show without any increase in the per cent. 40,000 divorces, turning loose 80,000 persons to marry again. If we add to this 147 per cent., which was the increase in the last twenty years, it will make 98,000 divorces, turning loose 196,000 persons in the next twenty years to marry again. This is a fearful destruction of families. It is a lamentable state of things to contemplate.

Let us earnestly hope that some benign influence will be brought to

bear to check this alarming evil, not only in New England but in all the States of the Union, and let us use all the power possessed by Congress to check and control it in the District of Columbia and in the Territories of the United States where Congress has jurisdiction.

Now I presume it is a fact that will be admitted by all that prostitution outside of the marriage relation is committed to an immensely greater extent in New England than in Utah; and that in the practice of fœticide and the prevention of conception Utah does not begin to compare in numbers with New England. And while I have not the statistics to enable me to make a perfectly accurate calculation, I think it very safe to say that, if we count the polygamy in New England from illegal divorces, the prostitution of New England, the practice of fœticide, and the prevention of conception, the *social evil* is five times as great in New England as it is in Utah.

Mr. President, this is a horrible record; and it behooves the Christian and the patriot to ponder well the consequences that must follow from such a state of society. The marriage of one man to one woman, by which they twain become one flesh, is the foundation of the family, and the family is the foundation of the state, and the preservation of its purity one of the fondest hopes of the church. Strike down the family or destroy its sanctity by a loose law on the subject of divorce, and all the other social evils referred to, and decadence, and decline must be the inevitable result. The patriot must look upon this picture with the most intense anxiety; and the ministry of all the churches of this land and all the Christian people of this country should unite in one solemn protest against this great and degrading evil. It must be admitted that while Protestants do not agree with the Catholic Church that marriage is a sacrament, that that church has set a noble example on the question of the sanctity of the marriage relation and the indissolubility of the marriage tie. Is it not time that the other churches should imitate her example on the question of preserving the family tie, and that the ministry of all the other churches should cry aloud and spare not until all good people awake from their slumbers and unite in one grand effort to save the country, and New England especially, from the demoralization and prostitution which is growing and spreading with such frightful rapidity.

Mr. President, in drawing this dark and gloomy picture of New England society on the social question from the statistics and statements of distinguished New England authors and divines, I beg to assure the Senate that I do it in sorrow rather than in anger, and that I am prompted only by a sense of duty in making the comparison between New England and Utah which is so unfavorable to New England. I have a great admiration for the activity, energy, enterprise, education, and growing wealth and prosperity of that important section of the Union, and I have selected her, as already stated, for a comparison because the statistics showing the unfortunate state of things there are at hand, and because her representatives take the lead in the prosecution of Utah.

Much as the Southern States have been condemned and denounced for their practices, and however much they may be at fault in some respects, it must be admitted by all who know anything of the state of society there, at least among the white people, the practices referred to do not prevail to anything like the extent to which they are practiced in New England.

Prior to the war a divorce was not to be obtained in South Carolina for any cause. After the war, while the government was in the hands of the carpet-baggers, a liberal divorce law was passed, but when the white people of South Carolina resumed their sway and obtained control of their own affairs they promptly repealed that statute, and, as I am informed by their representatives, the old rule of no divorce is again applied. And I hazard nothing in saying that there is no State in the Union where there is more conjugal felicity or the families of the State live more happily together than they do in the State of South Carolina. I regret to say that in my own State the law of divorce is entirely too liberal, but I am glad to be able to say that in practice divorces very seldom occur, and I trust all good people in every Southern State, as well as in every New England State and in every Western State, will unite for the suppression of this great, growing, and alarming evil.

The Christian churches denounce polygamy and demand its suppression by every constitutional and legal means in our power, and the churches are right. But how can they demand this and justify their inertness and neglect of duty while winking at divorce and illegal and adulterous marriages, to say nothing of their feeble denunciation of prostitution and fœticide nearer home.

How can the churches professing to worship Christ as the divine lawgiver with His word in their hands, which on this point is neither ambiguous nor doubtful, justify divorce, which He forbids, and the marriage of persons divorced in violation of His law, which he denounces as adulterous. And how can the churches sustain and recognize as ministers of Christ professed preachers of the gospel who for a small fee will join together in what they call holy wedlock persons whose union Christ, the head of the Church, denounces as adulterous, and the parties to the union adulterer and adulteress? It is a gross violation of divine law, a crime in the minister who professes to bless the adulterous union, and a shame on the church which sustains him.

It is no reply to say that the union is sustained by the law of the land. No law of the land compels any minister to officiate at such an adulterous union. If the law of the State authorized the practice of polygamy, would the Christian ministers be authorized to celebrate the marriage of the husband to his second or third wife while his first wife was still living? No minister could plead the law of the State as his justification for celebrating such polygamous marriage. Then how can he plead the law of the State as his justification for celebrating an adulterous marriage in violation of the express command of the Saviour himself?

If all the ministers of all the churches would do their duty and decline to officiate when the union is adulterous, the power and the influence of the churches brought to bear would soon correct popular sentiment, and sweep from the statute-book such wicked and immoral legislation as is now found in the laws of the States and the United States on the subject of divorce.

I claim no right to lecture either the Christian churches or the Christian ministry, but, as a Senator and as a citizen, I feel it my duty and my right here and elsewhere to express freely my opinions on this vital question. As it seems to me, this departure by the States and General Government from the divine law is fast undermining the sanctity of the family and threatening the safety of society and the very existence of the state itself.

But how to suppress polygamy is one of the greatest social problems of the day. As I have been quoting almost exclusively from New England authority as to the prevalence of this evil, I will now quote from another distinguished son of New England as to the remedy in Utah.

The Rev. Henry Ward Beecher has lately visited the Mormons in their homes, and closely scanned their modes of life and their system of ecclesiastical government. In extracts from his speech, which I shall now read, he refers to their life and practices, and then to the only remedy which in his opinion can suppress Mormonism. He says:

No matter what the past was, no matter who started it, no matter on what false ground the question is, there stands the phenomenon of the nineteenth century. What is its power? Wherein does it consist? What is it doing? It is a spiritual despotism absolute. It is founded on fanaticism and ignorance, absolute. It is founded on a literal acceptance of the Old Testament. I do not see how a man who believes in verbal inspiration can throw stones at the Mormons. Are they polygamists? So is the Old Testament saint. What sort of a fellow was Solomon? Inall his glory he was not arrayed like one of these. Mormonism in its religious philosophy is simply the attempt to introduce into modern economy the institution and beliefs of the Mosaic period of the Old Testament.

Of the orderly character of the Mormon people and of their morality he says:

Aside from the spiritual question, my impression is that no more orderly city exists on this continent than Salt Lake City. I suggested to an anti-Mormon that the way to reach them was to have Christian families of refinement and spiritual force introduced among them, whose example would be a perpetual testimony to the Mormons. I received a buffet, however, when I was told that the average Gentile was not so high up morally as the Mormons themselves were, and that in industry, frugality, truth-speaking, temperance, and chastity the contrast was in favor of the Mormon people.

Discussing the remedy, he adds the following:

Now, the question comes, is there any remedy? I think there are two. One is to let them alone, and the other is to put them to the sword. Let us look at both of them. And, first, the Edmunds bill was not only no disadvantage to the Mormon Church, but a great advantage. It has driven in all the wanderers and consolidated them. It has made them feel again and again that they were a persecuted people. They have felt this always. They have said, "We are kept outside of the United States. The laws that are made for us are perfectly different from the laws of any other State or Territory in the Union."

They harp upon this, and a superstition run to fanaticism and intensified by the sense of persecution is a power which is not easily dealt with. Now a commission appointed with absolute authority, despotic—a drum-head commission—with the Army at its back, settled down in Utah, with the command of the people of this continent to eradicate polygamy at all hazards. I do not know but that could succeed. This I know, that such a measure as that is foreign to our history, unknown to our laws, not according to the genius of our institutions, nor of our people. I think the poorest people on the face of the earth to play at despotism is the great intelligent American people, and to send forth a body of men armed to the teeth to exterminate polygamy, not bound by the laws of evidence, forming their own judgment as to guilt or innocence, laying the hand of power on whomsoever they think it necessary to lay it, that would be an extraordinary state of things. And yet I do not think any legislation short of that is going to accomplish anything.

Having thus disposed of the bloody remedy as indefensible, Mr. Beecher enlarges as follows upon the peaceful one:

Well, what is the other remedy? Let them alone; receive them into the Union; withdraw your soldiers; let them have their church; let them be open to all the influences that are affecting the public sentiment of every State in the Union; send there your intelligent teachers; establish schools among them as you do among the heathen; send in there those who can preach a better gospel. Do you believe that while we may convert the people of Asia and Africa there is nothing in the Gospel that can touch Utah? Take persecution off of them. Go back absolutely to moral influences. Take away from them the feeling that they are singled out from all the people on this continent, and held in and denied their civil rights, and are abused on account of their religion. Take away all that, substitute kindness and patient teaching and preaching of the Gospel with more piety and fervor than it is now preached to them, and wait for time. It is not likely that they are going to take possession of the United States.

If there be any such thing as superiority of intelligence over ignorance; if there be any such thing as the triumph of divine power or pure faith over an abject superstitious faith; if there be any truth in the claim that liberty emancipates men; if it be true, that the Gospel of Jesus Christ is adequate to all the emergencies of depravity and wickedness, in high places and in low, it would seem to me that the way of the future is the way of religion in all the days that have gone by. It is an odious thing to have such a stink-pot right in the midst

of the nation, we loathe the mere thought of polygamy, and yet I do not see any other way to eradicate it. So far as I can see at present there are but two courses, one by the sword of the Government and the other by the word of the Lord, and of the two it seems to me I would rather trust to the sword of the Lord than to the sword of Gideon. Set the New Testament against the Old Testament. If the New Testament can not whip out Moses and the prophets, then it is not what it pretends to be.

Mr. President, polygamy can not be increased in Utah, but must steadily decline. We have a stringent penal statute against it, dooming its perpetrators to penitentiary imprisonment. We appoint the judges and other officers of the courts, and popular sentiment requires a faithful execution of the penal law.

The law of the Mormon Church, as I understand it, makes polygamy permissive and not compulsory. The young men of the Mormon Church will not consent to engage in polygamy at the risk of penitentiary imprisonment and the addition when convicted of disqualification to vote or hold office. The priesthood will not continue to urge it in the face of these penalties, and immigration into the Territory from other States and Territories will constantly increase the non-Mormon element of the Territory of Utah.

The rule among Mormon husbands, being that they must treat all their wives alike in dress and other indulgences, will in this age of extravagance prevent many from engaging in it on account of the cost. If in addition to these impediments to polygamy the Christian churches of the Union will wake up to their responsibility in connection with this question, and send faithful, earnest, energetic missionaries into Utah, we may expect that a large proportion of the followers of the Mormon priesthood may be converted to what we consider the purer faith.

The Mormon Church will not be suppressed. They are earnest in the belief that they are right, and they are ready to make great sacrifices for their belief. The church may grow and still avow its belief in the lawfulness of polygamy, but in view of all its surroundings, of the odium heaped upon it, of the penalties annexed, and of the influence of better teaching, polygamy must steadily decline. And the causes enumerated will of themselves at no distant date eradicate it.

Now, Mr. President, I would be glad to hear a better remedy suggested, if there be one. Neither the imposition of illegal test-oaths nor the destruction of their Territorial government nor placing them under arbitrary commissions will suppress the evil. If the Government should send the Army to slaughter all the men, women, and childen who belong to the Mormon Church, that could suppress it, but the Government of the United States could neither justify the act before its own people, before the civilized world, nor at the bar of the Almighty God of the Universe.

If the different Christian churches of this broad land would do their duty thousands of the present deluded followers of the Mormon priesthood would throw off their present church government and renounce polygamy and the illegal practices of the Mormon sect.

But as long as the Government of the United States tyrannizes over the people of Utah and makes them feel that the hand of fifty millions of people is against them and that they are singled out for vengeance for the commission of crimes which are neither censured nor punished when committed by others, our unconstitutional legislation will, as Mr. Beecher says, only drive in the stragglers and consolidate Mormonism.

And if we treat the Mormons as a persecuted class, by that sympathy which is ever kindled in generous breasts in favor of the persecuted we shall add to their numbers and increase their strength. But it has been said on this floor that the Mormons are in rebellion against the Government of the United States, and that this authorizes the Government to tear down and destroy the republican form of government under which they live in the Territories and put them under an absolute tyranny.

Now, I deny the truth of this proposition. The Mormons are not in rebellion against the Government of the United States in any legal acceptation of that term.

They are a quiet, peaceable, orderly people, who have comfortable homes, work hard, and make an honest living, and who worship according to the dictates of their own conscience, and, as a mass, believe they are right. There are one hundred and ten to one hundred and thirty thousand Mormons in the Territory. Not more than 12,000 of this whole number, as has been ascertained by the Utah Commission, practice polygamy. The other one hundred and odd thousand believe it is right, but do not practice it. We have a penal law making the practice of polygamy in the Territory a crime punishable by penitentiary imprisonment. We have passed laws disfranchising those who practice polygamy, and we deny them the right to vote or hold office. It is true they may not have ceased the practice since the passage of these laws, but they stay at home quietly; there is no difficulty in serving process upon them. As a class they hold themselves subject to arrest at any time when an officer of the law has a legal warrant against them; they appear in court and defend themselves as best they may, and they offer no armed resistance and no forcible resistance to the execution of any law of the United States.

What constitutional lawyer or publicist can say that this is rebellion against the Government of the United States? The law forbids polygamy. Notwithstanding that law they have practiced polygamy, just as the law forbids murder, and some persons in every community not in rebellion commit murder. The officers of the law have free access to them; they do not obstruct the courts by forcible resistance, but submit themselves to their jurisdiction and obey their process as other citizens do. They offer no armed resistance or other forcible resistance to any act which any law requires any officer to do in the Territory. And still it is proposed to treat them as a people in rebellion because they do not cease to commit acts which we have passed laws designating to be crimes. I say you have no right to destroy the government of the Territory, to punish the 12,000 offenders who peaceably submit to the execution of your criminal laws and make the best defense in their favor, or the best evasion of the law they are able to make for themselves, as other criminals do.

But if there were any pretext for the destruction of republican government in the Territory, so far as the 12,000 are concerned, what sort of pretext or excuse is there for the destruction of the government to punish the remaining 100,000 who believe that polygamy is right but violate no law by the practice of it?

Is it rebellion against the Government of the United States for 100,000 people professing to be Mormons to avow their belief that the practice of polygamy is right though they never practiced it, or that it was right when practiced by David or Solomon? The proposition is simply monstrous. Neither this Senate nor this Government has the shadow of a right to punish any man for his opinions on any such subject, or to punish 100,000 people because of an erroneous opinion which they hold as a sect, or to punish 100,000 people of a particular sect because 12,000 of the same sect violate the penal code of the United States or of the Territory. If they should rise in armed rebellion, or in any forcible manner set aside the courts and resist the officers of the law, then there would be an excuse for the exercise of arbitrary military authority until the rebellion is crushed.

But there can be no excuse for any such arbitrary, illegal, or unconstitutional measures, on account of the belief entertained by the mass of the Mormons, or the violation of the criminal law by a small minority, who do not resist the process of the criminal courts. There is scarcely a State in the Union that does not have a penal law against the practice of adultery and fornication; there is not a city in the Union where these offenses are not practiced; but what constitutional lawyer would say that there was any excuse for an act of the State Legislature abolishing the charter and laws of the city and putting the people under arbitrary government, or putting them to the sword, because a portion of the citizens may practice adultery and fornication? So long as they hold themselves amenable to the criminal laws, and neither refuse to obey the process of the courts, nor use force to set their authority at defiance, no such act could be justifiable.

If the practice of these social crimes by a portion of the people of a community is rebellion against the Government, because the Government has passed laws declaring these offenses criminal, then there is not a city in the Union that is not in rebellion to-day. The proposition is preposterously absurd. But some persons profess to believe that these unconstitutional and arbitrary measures will ultimately drive the Mormons into open resistance and war. Possibly some hope so. But there is not the slightest probability of any such occurrence. Every utterance which we hear from the Mormon priesthood and the Mormon people is one of loyalty to the Government of the United States; and while they complain that they have been cruelly oppressed and feel that the hand of the Government has been placed heavily upon them, they advise each other to look to God for protection, and in no event to forcibly resist the laws of the United States, come what may.

Then tell me not that the violation of a criminal law by a portion of a peaceable people who offer no armed resistance to the execution of the law is rebellion, or such defiance of the law of the United States as to justify the enactment or enforcement of arbitrary and oppressive measures tending to the subversion of republican government and the destruction of the liberties of the people. No, Senators, you can not justify arbitrary oppression by any such false pretext. But some of you say their government should be destroyed, and arbitrary despotism established in its stead, because they persist in practicing polygamy in violation of penal law. We appoint their governors, their judges, their prosecuting attorneys, and their marshals. We have by statute declared a person who has practiced polygamy, or who believes it is right, ineligible as a juror to try a person indicted for polygamy in the Territory.

The governor of the Territory is appointed because he is opposed to polygamy; the judges, the prosecuting attorneys, the marshals, and the clerks are appointed for the same reason. Jurors are selected from the class alone who are opposed to the defendant. If they refuse to swear that they have not practiced polygamy and that they do not believe it is right to practice it, they are excluded from the jury-box. In other words, when a Mormon is put upon trial for the practice of polygamy he can be tried under the statute only by jurors who have not practiced it and who do not believe it is right. With all these advantages in favor of the Government we also enact the penal laws for them, and we have made polygamy in Utah a penitentiary offense, and we have punished some of the Mormons in the penitentiary for its practice.

This certainly gives the Government advantage enough over the unfortunate defendant. If he can be acquitted with the judge, jury, marshal, prosecuting attorney, and clerk of the court against him, it must be because he is not proven to be guilty. With all these advantages against them they offer no forcible resistance to the laws, but submit to them as other citizens do. Under these circumstances, if you destroy their government because you can not convict all who commit crimes, to be consistent you must tear down and trample under foot the government of the people of New England and other sections of the Union because they persist in practicing illegal marriage and prostitution in open violation of law.

If the Mormons should be destroyed because 12,000 of them practice polygamy, then how will you excuse the people of New England when 36,000 of them, divorced for causes unknown to the law of Christ, marry again at pleasure and practice polygamy in the teeth of the divine law, and when an army probably three times as large as all the polygamists of Utah practice prostitution and adultery in violation of the divine law and the criminal laws of the respective States? If you are ready to use force outside of the Constitution and in violation of it, why crush one and not the other?

Why destroy republican government in one and have no word of censure for the other? Or, to give it a broader scope, though our means of arriving at the facts are limited for want of statistics, I think I can safely say within the bounds of reason that for every one Mormon who practices illegal sexual intercourse twenty, and probably fifty, persons in all other parts of the Union practice the same crime. The Mormon says he does it in the marriage relation. The people of the other States and Territories of the Union practice it outside of the marriage relation. The crime is the same, the moral guilt is the same, in the one case as in the other. Why, then, should the Government pour the vials of its wrath upon the heads of the Mormon offenders, and take no steps to punish an infinitely more numerous, and equally wicked, army of offenders living in the States and other Territories? The Mormons may well turn to us and say, "Physician, heal thyself." Or the Mormons, in the language of Him who spake as never man spoke, may turn and look us in the face, and may justly say, "Thou hypocrite, first cast out the beam out of thine own eye, then thou shalt see clearly to cast out the mote out of thy brother's eye."

Mr. President, these extraordinary measures for the punishment of the Mormon people in Utah are persistently pressed upon us by the able and distinguished Senators who represent in part that very remarkable section of the Union known as New England of which I have already spoken. The head and front of the Mormon agitation has had its origin in New England; but this proud little section, as I have shown, has its peculiarities, and while it has many very remarkable qualities which challenge the approbation of mankind it is not, as shown by its own authors and divines, free from some of the imperfections of our nature. It has frequently been styled the "land of 'isms'" by those who may not have judged impartially. I believe, however, it may truthfully and justly be said that no other section of the Union has been so prolific in the production of "isms." And it is a little remarkable, among the numerous "isms" which have sprung from the brain of the New England people, that Mormonism is not one of the least important. As already shown, Joseph Smith and Brigham Young, the prophets and founders of the Mormon sect, first drew the breath of life in the salubrious and bracing atmosphere of the highlands of Vermont. With the characteristic energy and restless ambition of that proud little State they conceived it to be their duty and felt inspired to found a new sect, which they termed the "Latter-day Saints." This sect also has its peculiarities. Its founders being native New Englanders, partook probably to some extent of the New England character on the social question.

Their prophet while viewing the dark visions that rolled before him thought he saw a bright millennial dawn, which cheered his heart and authorized him to proclaim to the world that permission was granted to each of the faithful to add to the family circle another help or other helps meet for him.

The vision was communicated to the faithful, and it was accepted as a revelation from the Most High, and the liberty it gave has been practiced to an extent that has excited the envy of some and the just indignation of many more of the population of other sections of the Union. This sect, persecuted as few sects have been, led by its prophet deep into the wilderness and exposed to hardships and sufferings that were almost intolerable, has by the aid of its persecutors sprung to its feet and risen and prospered to a remarkable degree. In their industry, their thrift, their attention to education, and their prosperity they greatly resemble the good people of New England from which they sprang.

But having sprung from New England stock, they must not forget that it has often been charged by those who felt that they had been the sufferers that the people of New England, who are very prosperous and attentive to their own business, are understood to claim as a sort of divinely given right, like the Mormons claim divinely given polygamy, that they should give some of their attention to other people's business, and that they should not be entirely inattentive to the regulation of other people's affairs. Some people seem to be of opinion that in the course of events, Southern affairs having been regulated, we had reached a period where for a time New England was out of a job, or unemployed in the regulation of other people's affairs; and it was thought that such a people with such a mission naturally grew restless and excitable when deprived of the comforts attending the execution of their inspired calling. And it has been said while looking around for a proper subject for the exercise of their peculiar prerogative, their eyes rested upon prosperous Mormonism, and they determined to regulate it before attending to other like pursuits.

The wrath of some of the representatives of New England at the sexual impurity of the Mormons was not appeased by the warnings given by some of the purest and best sons of that proud section of the Union that it might be shown in the contrast between the two sections that nothing appeared unfavorable to the Mormons, who were the descendants of New England stock, and carrying out under different names and in different modes the practices of the fatherland. These faithful warnings and the cry of "physician, heal thyself," addressed to New England, have only tended to increase her ire and intensify the indignation of some of her statesmen in the National Legislature, until we have reached the point where it burns with such intense heat that they are ready to "cry havoc and let slip the dogs of war" for the extermination of this hated sect if it does not at once surrender the tenets taught by its New England founders and modify its practices of the "tender passion" so as to conform to those which now predominate in the land of its birth. What right has Utah to practice any but the New England system? This burning indignation is not directed so much against the practices of Utah as it is against the manner of the practices and the name by which they call it.

And sooner than have the crusade fail and not have the misnomer corrected, we find able, zealous men who are ready if need be to disregard and trample under foot the constitutional restraints which lie at the very foundation of our Government, and to pass laws which no court can reconcile with fundamental law, and therefore no court can execute; to sweep away with the violence of a tempest the fundamental principles of republican government and the unbroken usages of half a century in order to blot out the Territorial government, crush out of existence the forms of our republican system, and undermine the very pillars upon which it rests, rather than fail by coercive means to compel *free love* in Utah to conform in its methods, its practices, and its nomenclature to *free love* in New England. To accomplish this great object the Territorial practices of half a century are to be blotted out, local self-government is to be destroyed, the church is to be plundered, and the prosperous region of Utah is to be subjected to the rule of satraps whose unlimited power will enable them to rob and pillage the people at pleasure. If this system is once inaugurated, bitter as was our experience in the South during the late reconstruction period when our affairs were being regulated, it was mildness itself compared with what is in store for Utah as long as the wealth accumulated by the Mormons is not exhausted.

Mr. President, I shall be a party to no such proceedings. Other sections of the Union have frequently run wild in keeping up with New England ideas and New England practices on issues of this character. I presume they will do so again, but I, for one, shall not be a party to the enactment or enforcement of unconstitutional, tyrannical, and oppressive legislation for the purpose of crushing the Mormons or any other sect for the gratification of New England or any other section. The precedents which we are making, when the persons and parties in the States who feel it their duty to regulate the affairs of others find themselves unemployed and the regulation of Mormonism no longer profitable, will be used against other sects. Whether the Baptists, or the Catholics, or the Quakers will be selected for the next victim does not yet appear. But he who supposes that this spirit of restless and illegal intermeddling with the affairs of other sections will be satiated or appeased by the sacrifice of the Mormons has read modern history to little advantage.

The Mormon sect is marked for the first victim. The Constitution and the practices of the Government are to be disregarded and if need be trampled down to gratify the ire of dominant intermeddling. When the reconstruction measures were under consideration in 1867 the great leader of the House of Representatives, Mr. Thaddeus Stevens, of Pennsylvania, frankly avowed that the measures were unconstitutional, but claimed the right in the then state of things to regulate the affairs of the South outside of the Constitution.

And such is the fanaticism now prevalent in reference to the Mormon sect that when it is clearly shown the regulation which they desire can not take place within the Constitution and laws, the restless regulators will doubtless be ready to follow the example of Mr. Stevens and regulate Mormonism outside of the Constitution. But why should Southern men become camp-followers in this crusade? While there is nothing in the test-oath prescribed by the Utah commissioners that condemns cohabitation with more than one woman in Utah, if it is done outside of the "marriage relation," there seems to be an unbending determination that, come life or come death, come war or come peace, the Mormons must be compelled to conform to the practice of New England and conduct their prostitution outside of the marriage relation, or they must suffer the penalties.

The Mormons may, however, be consoled by the reflection that their

privileges need not be curtailed if they are obedient, nor the present practice diminished, but they must change the name and no longer conduct the wicked practice in what they call the "marriage relation."

The Government considers this no great hardship, as it freely permits in the Mormons, if called by the right name, what it does not punish in other people. For, without violating the policy of the Government in so far as it has been proclaimed by its Utah Commission, if the Mormons will conform to its requirements as to the mode the practice of prostitution in Utah need not in the slightest degree be diminished. The clamor is not against the Mormon for having more than one woman, but for calling more than one his wife. And the Mormons will do well to remember that the policy of putting the whole population, men, women, and children, to the sword, and filling the whole land with wailing, blood, and carnage will not be wanting in advocates if a portion of them still continue each to cohabit with more than one woman in what they call "the marriage relation."

The Government and people of the United States have deliberately determined that they must call it by the proper name. Let the Mormon who has a plurality of women remember that he must conform to the practice elsewhere and call but one of them his wife.

This, Mr. President, is the point we have reached. This is the distinction we have drawn. This is our present policy and practice as applied to the Territory of Utah. What consummate statesmanship!

Others who feel it their duty upon such hollow pretexts to destroy a prosperous Territory by such unconstitutional and illegal means as are proposed will doubtless proceed with this unnatural warfare until they have seen the result of their folly.

Let those whose ambition prompts them to such deeds of daring take part in this tyrannical and illegal conquest over a helpless people, who, to gratify an insatiate fanaticism, are to be crushed without the morals of this country being in the slightest degree improved or illegal sexual intercourse in the least degree diminished, and let them enjoy the fruits of their triumph.

But as I have sworn to support the Constitution of the United States and can not therefore belong to the army of the conquerors, I shall have no right to claim any of the trophies of the victory. Nor when the slaughter comes shall I have upon my hands the stain of the blood of any of the victims. Nor shall I share in the responsibility when in future our present unconstitutional and unjustifiable legislation against the Mormons shall be used as a precedent for like legislation to crush some other sect or denomination who may chance, as the Mormons now do, to fall under the ban of popular fanaticism and indignation which will afford another pretext for New England interference and regulation.

Mr. HOAR. In the amendment to which I called the attention of the Senate a little while ago——

Mr. BROWN. I offered an amendment yesterday and asked that it be read for information and printed.

Mr. HOAR. The Senator will pardon me for a moment.

Mr. BROWN. Certainly.

Mr. HOAR. In the amendment to which I called the attention of the Senate when the bill was laid before the Senate this morning, there is a mistake, owing to the error of the transcriber, in the second subdivision. It was called to my attention by one of the gentlemen at the desk. The words "in this State" should be "in the Territory." The provision of the amendment was copied from a statute of the State of New York.

The PRESIDING OFFICER. The correction suggested by the Senator from Massachusetts will be made if there be no objection.

Mr. MCPHERSON. There are many gentlemen on this side of the Chamber who yet wish to speak on the bill. The hour is somewhat late, half-past 4. If it is not interfering with the Senator from Massachusetts, who I believe has charge of the bill, I will move that the Senate do now adjourn.

Mr. HOAR. It is not yet quite half past 4. I should certainly object to an adjournment at the present time. I had proposed to say a few words in reply to what has fallen from the Senator from Georgia [Mr. BROWN].

The PRESIDING OFFICER. Does the Senator from Georgia now propose the amendment submitted by him?

Mr. BROWN. I propose the amendment.

The PRESIDING OFFICER. The Secretary will read the amendment of the Senator from Georgia first before the Senator from Massachusetts proceeds.

Mr. VEST. I suggest to the Senator from Massachusetts to take up the bill by sections. It would facilitate the matter.

Mr. HOAR. I will agree to that. Let it be done by unanimous consent.

Mr. VEST. I beg pardon. I understand the Senator proposes to speak now.

Mr. HOAR. Let that be understood by unanimous consent.

The PRESIDING OFFICER. Such will be the understanding. The Secretary will now report the amendment offered by the Senator from Georgia [Mr. BROWN].

The CHIEF CLERK. It is proposed to add to the bill—

SEC. —. That the voluntary sexual intercourse of a married person with one of the opposite sex, not the husband or wife of such married person, shall be cause and the only cause of absolute divorce from the bond of marriage in the District of Columbia and in the Territories of the United States, and in other places subject to the exclusive jurisdiction of the United States; but the courts of the United Sates may, in proper cases, as at common law, grant divorces from bed and board in said District, Territories, and other places subject to the exclusive jurisdiction of the United States.

Mr. HOAR. Mr. President, I have heard a part of the speech of the Senator from Georgia, enough of it to make me quite sure that I comprehend its entire character. I am not sure that I comprehend its motive. It is impossible to believe that that Senator has devoted so much industry and labor in the preparation of a written, I believe a printed, document, which he has read, for the mere purpose of making a vicious and malignant attack upon the people of any section of his country. The character of an American Senator and the high character of that Senator is utterly inconsistent with the thought that such a motive could have found a lodgment in his mind, and I hasten to acquit him of that purpose.

The only other logical motive which can be attributed to his speech must be that Mormonism in his judgment is right, that polygamy works well, that it is not worth while to exercise our legislative power to suppress it, because it is a better practical rule, so far as the statistics to which that Senator's taste and inclination attracted him, than Christianity or the lawful connection of one husband with one wife.

Mr. BROWN. Mr. President——

The PRESIDING OFFICER. Does the Senator from Massachusetts yield to the Senator from Georgia?

Mr. HOAR. Certainly.

Mr. BROWN. The Senator, I know, does not intend to misrepresent me. He did not hear the first part of my speech or he would not make the statement he is making. I condemned in the strongest possible language polygamy in Utah or polygamy anywhere else; I undertook to show that it was our duty as far as we had jurisdiction to check illegal divorce, that I claim under the divine law amounts to polygamy, and said that while we are legislating for the Mormons we ought to legislate wherever else we have jurisdiction against the same evil.

Mr. HOAR. The Senator selected a bill which was supplementary to an act of Congress passed by a large majority in the Senate directed at the single offense of polygamy and intended to use the supreme power of this Government, so far as it is supreme over the Territories under the Constitution, to prevent founding a State with that for its corner-stone—he selected that occasion, and while we were intent on that measure, to make a speech in regard to the divorce laws under the guise of an amendment, which I do not suppose I am doing any injustice to that Senator in saying he could hardly expect to have adopted in the present state of opinion in this country.

Therefore, repeating that I absolutely acquit the Senator of the purpose of making a vicious or malignant attack upon any portion of the country, I can not see logically any other purpose of his speech. Certainly the logical result of his speech, if it has premises from which a logical result is to be derived, is that polygamy is better than the lawful marriage of one husband and one wife, and that Mormonism is better than Christianity as the practical governing rule of a State. That is the way it seems to me, and I can understand nothing else.

It is true that each community has its own dangers, its own faults, and its own vices, and that the evils which the Senator has described exist in portions of this country and elsewhere. The Senator has found them out, as I am proud to say of the section of the country where I dwell such things are usually found out, by the investigation and confession and endeavor at amendment of the people whom they concern. Whatever there is in the history of New England which is justly a reproach to her, is to be found written in the pages of New England historians. Whatever there is of vice or crime or poverty or wrong-doing or error in those communities, you find out from the humane statisticians belonging there who are giving their lives to their suppression and cure.

If I chose to follow the honorable Senator from Georgia in the spirit of his speech, there are topics enough which might easily be presented, which it would not even require an inquiry into statistics to suggest. I think the Senator has preferred for a great part of his life institutions lying at the foundation of Government which prohibited the institution of marriage altogether to a majority of the people of his State, and under which, highly moral, as I am happy to say of my countrymen, the large portion of the white people of that State are, the number and presence of mulattoes remains to be accounted for in some way. But I do not propose to enter upon that debate.

I should like to ask the honorable Senator from Georgia if he denies that under the Constitution we have the power of legislation over the Territories of the United States.

Mr. BROWN. I would have been saved, and the Senator would have saved himself, a good deal of trouble if he had kept up with my speeches on that question.

Mr. HOAR. I certainly had some trouble with what I did hear.

Mr. BROWN. I stated in my other speech here on the constitutional question that I admitted the right and power of Congress over the Territories, but I argued that under the circumstances Congress ought not to break down the legislation of fifty years for the purpose of illegally punishing any people on that subject.

Mr. HOAR. There being by the Senator's confession legislative au-

thority over the Territories, this bill, unless I have forgotten some provision (I think it is universally true, or if not, nearly so), contains no legislation for the Territory of Utah which is not in principle and substance the existing legislation in the State of Georgia.

Mr. BROWN. It is very different.

Mr. HOAR. I think it is not very different. It may be that there is a provision for arresting a witness and bringing him in, which is the English provision and the New York provision, which does not exist in Georgia, and one or two other slight things of that kind; but the substance of every provision of the bill and the act of which it is a supplement and addition is, varying in phraseology and form, now the law of the State of Georgia.

The first provision is that the husband or wife of the person accused shall be a competent witness in a case of bigamy or polygamy, bigamy and polygamy having been made a statute offense by the statute of the last Congress; and it is an offense punishable by three years in the penitentiary in the State of Georgia. We are doing for Utah and the Territories what Georgia does for herself.

Mr. BROWN. Georgia does not make the husband and wife witnesses against each other.

Mr. HOAR. I beg the Senator's pardon. Georgia does make a husband and wife witnesses, unless I am mistaken. I made the answer a little too emphatic against so learned a lawyer; but I think it will be found that Georgia does make a husband and wife witnesses against each other. If she does not she does in all analogous cases, and it is a mere omission that that is left out. I should not have contradicted the Senator. I did that in the earnestness of speech, but I understand that Georgia does. I got the statute from another Senator and looked. Now let us see:

No husband shall be competent or compellable to give evidence for or against his wife in any criminal proceeding—

This is the code of Georgia published in 1882—

nor shall any wife, in any criminal proceeding, be competent or compellable to give evidence for or against her husband. But the wife shall be competent but not compellable to testify against her husband upon his trial for any criminal offense committed or attempted to have been committed upon the person of the wife.

Section 3855 provides that—

Nothing contained in the preceding section shall apply to any action, suit, or proceeding or bill, in any court of law or equity, instituted in consequence of adultery.

Mr. BROWN. That does not apply to criminal prosecution, as the Senator sees.

Mr. HOAR. The wife is competent in any criminal proceeding for an offense against the person of the wife.

Mr. BROWN. But not compellable, and your bill is compellable.

Mr. HOAR. Then we have the Senator's argument, as far as that is concerned (let us do it full credit), that while Georgia permits the summoning of the wife but makes her not compellable in cases against her person, it expressly excepts in all suits for adultery the exemption from testifying of the wife in the preceding section. What earthly difference in principle is there? Can anybody doubt that if this precise offense of bigamy was raging in Georgia as it is in Utah the Legislature of Georgia would instantly supply any omission in the details of that statute and extend the principle which it contains to the whole subject?

Now, let us take the next section. This tyrannous bill, this subversion of all the safeguards of constitutional liberty, this meddling of one section of the country with the institutions of other people, which is the definition the Senator gives to the proposition of a bill in the American Congress to legislate for the Territories, depends, as far as its first section goes, for its liability to that reproach on the distinction between extending the right to compel the wife to testify from civil suits for adultery to criminal suits against the husband, and from the case where she is permissible but not compellable in criminal proceedings for injuries to her to making her compellable in all cases. That is the first section. The second section provides for the attachment of a witness, which is the law of the State of New York and I suppose of many other States to-day, though I have not looked, and it is the English law to-day.

Section 3 provides—

That any prosecution under any statute of the United States for bigamy, polygamy, or unlawful cohabitation may be commenced at any time within five years next after the commission of the offense.

Then, section 4 provides—

That every ceremony of marriage, or in the nature of a marriage ceremony, * * * shall be certified in writing by a certificate stating the fact and nature of such ceremony, the full names of each of the parties concerned, and the full name of every officer, priest, and person, and shall be immediately recorded, and the record shall be *prima facie* evidence of the facts stated therein.

That is the next atrocious piece of tyranny which this bill contains. Section 5 provides—

That every certificate, record, and entry of any kind concerning any ceremony of marriage, or in the nature of a marriage ceremony of any kind, made or kept by any officer, clergyman, priest, or person performing civil or ecclesiastical functions, whether lawful or not, in any Territory of the United States, and any record thereof in any office or place, shall be subject to inspection at all reasonable times by any judge, magistrate, or officer of justice appointed under the authority of the United States.

That is the next outrage. Think of it! The sixth section is:

That nothing in this act shall be held to prevent the proof of marriages, whether lawful or unlawful, by any evidence now legally admissible for that purpose.

Section 7 is tyrannical. I will join the Senator from Georgia and we will try to get that out. I admit here is one outrage:

SEC. 7. That it shall not be lawful for any female to vote at any election hereafter held in the Territory of Utah.

I think that is a violation of constitutional principles, but I am very sorry to say that it is a violation of constitutional principles which I am afraid has prevailed in the State of Georgia for some generations.

Section 8 provides—

That all laws of the Legislative Assembly of the Territory of Utah which provide for numbering or identifying the votes of the electors at any election in said Territory are hereby disapproved and annulled.

That is, that the particular voter shall not have a ballot distinguished so that secrecy can not be preserved. Then, excepting the law in reference to the estate of deceased persons and guardianship of infants, the jurisdiction of the probate court is confined by the ninth section to its proper object, and that matter is transferred from the probate courts, the judges of the Territory, to the higher district court. That is ecclesiastical law strictly; and the settlement of the estates of deceased persons is as in England, and as in most of the States of the Union, I suppose; and civil cases are remanded.

The tenth section provides that illegitimate children shall not inherit from their fathers, intending to strike that blow at the offense of polygamy. That is the law of my own State; it is the law I suppose of most of the States of the Union. Is it in Georgia? Will the honorable Senator inform me if in Georgia illegitimate children inherit from the father?

Mr. BROWN. Only from the mother.

Mr. HOAR. So we have taken Georgia as our model in section 10. Section 11 provides:

That all laws of the Legislative Assembly of the Territory of Utah which provide that prosecution for adultery can only be commenced on the complaint of the husband or wife are hereby disapproved and annulled; and all prosecutions for adultery may hereafter be instituted in the same way that prosecutions for other crimes are.

Will the Senator inform me whether that is the law in Georgia?

Mr. BROWN. I would prefer to answer the Senator's speech after he gets through, and not be interrogated on each point as he goes along. I have no objection to answering, however.

Mr. HOAR. The Senator will pardon me; I am not interrogating the Senator with a view of testing the strength of his memory. I am asking now for particular facts, which I have not time to detain the Senate by turning over the code to look up.

Mr. BROWN. What was your question?

Mr. HOAR. My question is whether it is not competent for any person other than husband or wife in Georgia to institute a prosecution for adultery?

Mr. BROWN. Oh, yes; it always has been.

Mr. HOAR. And everywhere else. But a provision of the law of Utah is intended to screen and promote and encourage this class of adultery, and the authority of the United States comes in and says that the law as it exists everywhere else in the country shall prevail there; in other words, no man can be punished for adultery without the consent of his wife in Utah; no woman can be punished for adultery without the consent of her husband in Utah; and section 11 of the bill says that any other person may make the complaint. Then comes section 12:

SEC. 12. That the acts of the Legislative Assembly of Utah incorporating, continuing, or providing for the corporation known as the Church of Jesus Christ of Latter-day Saints, and the ordinance of the so-called general assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-day Saints, so far as the same may now have legal force and validity, are hereby disapproved and annulled.

That is a corporation against public policy, a corporation established to promote, increase, and make proselytes for the institution of polygamy, and a fund is established which would not be held lawful in any civilized country on the globe or in any single American State to be applied to those uses. If a private trust, a trust by a grant, were made to trustees in the State of Georgia for that precise purpose to the Church of Latter-day Saints or any body of trustees, I think I hazard nothing in affirming without asking the honorable Senator from Georgia that it would be held *ipso facto* void by the courts of that State without any legislative interposition whatever. That section simply repeals a Territorial law which has created a corporation with a trust fund for an illegal and immoral purpose, and then leaving to be done with it what would be done with it without, except that instead of the severity which we might exercise and which would be exercised in very many communities and countries, it certainly would be in England, of forfeiting this altogether, we provide that the funds shall go for the education of the children of that people.

The thirteenth section is:

That it shall be the duty of the Attorney-General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of corporations obtained or held in violation of section 3 of the act of Congress approved the 1st day of July, 1862, entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other

places, and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah," or in violation of section 1890 of the Revised Statutes of the United States.

Now, this property is held in express violation of law, in express violation of a law which the Catholic barons of England, when she was a Catholic country and would have burned a Protestant at the stake, enacted to restrain the Catholic Church—that is, limiting the amount of property which should be held for church purposes, held in mortmain. We enacted in 1862 a statute of mortmain, founded on the ancient English principle, for our Territories, and this section simply declares that in the case of property now held in direct and unquestioned violation of the law of the land the Attorney-General of the United States shall proceed to take steps for the forfeiture.

I may as well say in this connection as any other that so careful of the rights of this people have been the committee that it is my purpose when that section is reached, a purpose adopted after consultation with the member of the committee who now occupies the chair of the Senate [Mr. GARLAND] and the chairman of the committee [Mr. EDMUNDS], to offer an amendment excluding from the operation of the law property held exclusively for the public worship of God, for a church, and remitting the penalty unless the limit of $100,000 has been passed—the present limit being $50,000—so as not to occasion the possible forfeiture of any lands which, having been originally acquired under the law, may have grown in value by the natural growth of values.

That is section 13. Then there is a provision for the courts compelling in those processes the production of books, records, and papers. Then section 15 annuls a corporation or association called the Perpetual Emigrating Fund Company, which is an association established, as was the other, for a purpose immoral and in direct violation of the laws of the United States. We propose to prohibit in every Territory in the United States the establishment and existence of corporations to hold and raise funds which shall be expended for the purpose of bringing men into those Territories to create a State of polygamous persons in violation of the law. That is the next outrage!

Then it is made the duty of the Attorney-General to take steps to dissolve that corporation. Then comes the seventeenth section of the bill which provides for the annihilation of the existing election districts, and requires the United States judges, governor, and secretary to redistrict the Territory, to apportion representation in a manner to provide for equal representation of all the people, and to make a record of their proceedings and of the new districts.

Then section 18 provides that the provisions of section 9 of the act of 1882 shall continue and remain operative until the provisions and laws under that section made and enacted by the Legislative Assembly of the Territory of Utah shall have been approved by Congress.

Then there is a provision for the punishment of adultery which does not now exist in that Territory; and there is a provision for the punishment of fornication which does not now exist in that Territory.

Then section 21 gives to the commissioners appointed by the supreme court and district courts in the Territory the common powers of a justice of the peace.

Section 22 gives to the marshal the ordinary powers of a sheriff in the arrest of offenders and imposes on him the ordinary duty of preserving the peace.

Then there is a provision for the appointment by the supreme court of the Territory of a Territorial superintendent of district schools, instead of the person who is now appointed and who always must be a Mormon, a believer in polygamy, by their practice, and a provision that this superintendent shall have power to prohibit the use in any district school of any book of a sectarian character.

That is the bill. Now, Mr. President, taking this bill I challenge the honorable Senator to find a single clause or provision in it which he will say is not either now the law of the State of Georgia or is not within the principle of the law of the State of Georgia, or would not be made by the Legislature of the State of Georgia the law for that State if there were any condition of things like that in Utah growing up there which made the people of that State deem it necessary.

The PRESIDING OFFICER (Mr. HARRIS in the chair.) The question is on the amendment proposed by the Senator from Georgia.

Mr. BROWN. Mr. President——

Mr. MCPHERSON. I move that the Senate adjourn.

The PRESIDING OFFICER. Does the Senator from Georgia yield to the Senator from New Jersey?

Mr. BROWN. Yes, sir; I yield to a motion to adjourn.

Mr. HOAR. I hope the Senate will continue. The session is growing late.

Mr. MCPHERSON. It is 5 o'clock.

Mr. HOAR. I see that there are some very industrious persons, not to be named here—when the Senator from Vermont is in the chair certainly not to be named—who promise that we may get away in a fortnight. [Laughter.]

The PRESIDING OFFICER. The Chair did not understand the object of the Senator from New Jersey.

Mr. MCPHERSON. I move that the Senate adjourn.

Mr. HOAR. I ask for the yeas and nays on that motion.

The yeas and nays were ordered and taken.

Mr. HARRISON (after having voted in the negative). I am paired with the Senator from Missouri [Mr. COCKRELL]. I see he is not in the Chamber. I announce the pair and withdraw my vote.

Mr. LAPHAM. On this question I am paired with the Senator from North Carolina [Mr. VANCE].

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

YEAS—27.

Bayard,	Colquitt,	Jonas,	Ransom,
Beck,	Farley,	Jones of Florida,	Saulsbury,
Brown,	Garland,	Lamar,	Vest,
Butler,	George,	McPherson,	Voorhees,
Call,	Gorman,	Morgan,	Walker,
Camden,	Harris,	Pendleton,	Williams.
Coke,	Jackson,	Pugh,	

NAYS—27.

Aldrich,	Hale,	Mahone,	Riddleberger,
Allison,	Hawley,	Manderson,	Sawyer,
Blair,	Hill,	Maxey,	Sewell,
Cameron of Wis.,	Hoar,	Morrill,	Sherman,
Conger,	Ingalls,	Palmer,	Van Wyck,
Cullom,	Logan,	Pike,	Wilson.
Edmunds,	McMillan,	Platt,	

ABSENT—22.

Anthony,	Fair,	Jones of Nevada,	Plumb,
Bowen,	Frye,	Kenna,	Sabin,
Cameron of Pa.,	Gibson,	Lapham,	Slater,
Cockrell,	Groome,	Miller of Cal.,	Vance.
Dawes,	Hampton,	Miller of N. Y.,	
Dolph,	Harrison,	Mitchell,	

So the Senate refused to adjourn.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from Georgia [Mr. BROWN].

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

The PRESIDING OFFICER. The Senator from Texas moves that the Senate do now proceed to the consideration of executive business.

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

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

Mr. LAPHAM (when his name was called). I am paired with the Senator from North Carolina [Mr. VANCE].

The roll-call was concluded.

Mr. MCMILLAN. My colleague [Mr. SABIN] is paired with the Senator from West Virginia [Mr. KENNA]. My colleague, if present, would vote "nay."

Mr. COCKRELL. I desire to say that I have been paired with the Senator from Indiana [Mr. HARRISON] and have been necessarily detained in the room of the Committee on Appropriations in a conference committee.

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

YEAS—29.

Bayard,	Colquitt,	Jones of Florida,	Saulsbury,
Beck,	Farley,	Lamar,	Vest,
Brown,	Garland,	McPherson,	Voorhees,
Butler,	George,	Maxey,	Walker,
Call,	Gorman,	Morgan,	Williams.
Camden,	Harris,	Pendleton,	
Cockrell,	Jackson,	Pugh,	
Coke,	Jonas,	Ransom,	

NAYS—29.

Aldrich,	Edmunds,	McMillan,	Riddleberger,
Allison,	Hale,	Manderson,	Sawyer,
Blair,	Harrison,	Miller of N. Y.,	Sherman,
Cameron of Pa.,	Hawley,	Morrill,	Van Wyck,
Cameron of Wis.,	Hill,	Palmer,	Wilson.
Conger,	Hoar,	Pike,	
Cullom,	Ingalls,	Platt,	
Dawes,	Logan,	Plumb,	

ABSENT—18.

Anthony,	Gibson,	Lapham,	Sewell,
Bowen,	Groome,	Mahone,	Slater,
Dolph,	Hampton,	Miller of Cal.,	Vance.
Fair,	Jones of Nevada,	Mitchell,	
Frye,	Kenna,	Sabin,	

So the motion was not agreed to.

Mr. HOAR. The Senator from Georgia will pardon me for a moment. I will not insist upon asking the Senate to stay against these two votes which manifest so near an equality of opinion. I am aware that a number of Senators have an engagement a little later in the evening. I wish to manifest my urgent desire to have the bill hurried forward as promptly as possible within the bounds of reasonable debate, and to state that I am myself obliged to leave town the latter part of the week, and to remind Senators on the other side that the condition of this bill would have been advanced by three or four days if it had not been for my yielding to their request to give priority to a measure in which they took great interest. I am sure that they will hereafter in dealing with the progress of this bill not forget that fact. I will, therefore, move that the Senate do now adjourn, or I will yield to the Senator from Delaware [Mr. BAYARD], as I see he rises.

Mr. VOORHEES. I should like to know whether the Senator will press the bill to-morrow. I wish to say frankly to the Senator that I

am in sympathy with the substance of this bill, but I do not believe that during this week or the next week (for I know the engagement on which he is to be away) much progress can be made; but I think after that we can make a great deal of progress and we shall all join in and assist him. The condition of business is such now that I should be glad, while not presuming to suggest, much less dictate, to intimate that this bill had better go over a little while. I am not speaking for myself; I am speaking for others who are deeply interested in the bill and upon the committee from which this bill comes.

Mr. HOAR. I feel bound to-morrow at 2 o'clock to press the consideration of the bill and to ask the Senate to sit several hours in the evening to complete its consideration.

Mr. VOORHEES. I shall then feel bound to-morrow at every opportunity to press the consideration of the Mexican veteran pension bill, and I shall do it under all the parliamentary privileges that I have. It has lost two days when it ought not to have lost one.

Mr. HOAR. Will the Senator from Indiana permit me to say to him that two days ago four or five Senators, including the Senator who reported that bill and had it in charge, came to me and asked me if I would consent that this bill be laid aside for two hours with an agreement (which of course does not bind the Senator except so far as he thinks it may bind him) that if at the end of two hours it was not completed, that bill should not antagonize the Utah bill, but they would take their luck in the morning hour. I made that statement, and neither the Senate nor anybody else dissented from it, and thereupon I gave way.

Now, the Senator from Indiana will decide all questions appealing to his sense of honor, in the most delicate manner. I would rely on his sense of an obligation of that kind as fully as on that of any man living. I merely state that for his consideration to do what he thinks best.

Mr. VOORHEES. If I felt at all hostile to the measure advocated by the Senator from Massachusetts, then I would shrink from the course that I think it is right to pursue; but here is a bill from the House that can be made a law and effective in a very few hours. I concede to the Senator from Massachusetts and not only concede, but I say with pleasure that his course was liberal and generous on the Mexican pension bill; and I would not if I was antagonizing his bill take the position I do, for I intend to assist the Senator from Massachusetts in the passage of the bill he has at heart. But this pension bill comes here as a House bill and we can pass it in one hour. I think a mistake has been made by the friends of the Mexican pension bill in talking on it. I have not talked; I do not think we ought to talk, although gentlemen on this side of the Chamber talked one or two hours, and I think we can pass the bill very soon. If I did not I would yield the right of way to the Senator from Massachusetts.

The Senator from Massachusetts has in charge a bill which if it passes the Senate during the present session, owing to the condition of business in the other House, I know can not pass there. I know the business of the House is in such a condition that as soon as they have passed the appropriation bills they will break away from the Capitol and leave the work to be finished up at the next session of Congress. I say I know that. Perhaps I ought not to say that. I know it in no other sense than from my judgment that that will be the course. There are two hundred bills from the Senate on the Speaker's desk to-day that can not be touched, and will not be until next winter.

While all my sympathies and my judgment are with the bill presented by the Senator from Massachusetts from the Committee on the Judiciary, yet it is a bill that can wait awhile far better than the bill for the Mexican veterans. This pension bill of the Mexican veterans has been talked of here, thought of, considered, reported upon, and what we are going to do we ought to do now, and let us do it; and if we are not going to pass it let us vote upon it and refer it back quickly. If we are going to pass it let us pass it at once in some shape. That is all I have to say.

Mr. HOAR. I move that the Senate adjourn.

Mr. WILLIAMS. May I be allowed a word?

Mr. HOAR. Very well. I withdraw the motion.

Mr. WILLIAMS. The Senator from Massachusetts withholds his motion for a moment. I did not understand the other day when that arrangement was made by the friends of the Mexican pension bill and my friend from Massachusetts that he was to have the right of way until his bill was disposed of.

Mr. HOAR. That that bill should not antagonize this.

Mr. WILLIAMS. I did not so understand it, because if I had I would have insisted on having the whole day; but the Senator only gave us two hours, and we agreed at the end of the two hours, if we had not disposed of it, we would yield. That was all.

Mr. HOAR. I move that the Senate adjourn.

The PRESIDING OFFICER. The present occupant of the chair desires to state, in justice to the Senator from Massachusetts, that he appealed to the Senator from Massachusetts, and did use the exact language that the Senator from Massachusetts has reported. The Senator from Massachusetts moves that the Senate do now adjourn.

The motion was agreed to; and (at 5 o'clock and 25 minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

TUESDAY, *May* 27, 1884.

The House met at 11 o'clock a. m. Prayer by the Chaplain, Rev. JOHN S. LINDSAY, D. D.

The Clerk proceeded to read the Journal of yesterday's proceedings.

Mr. BEACH. I ask unanimous consent to dispense with the reading of so much of the Journal as relates to the introduction of bills and joint resolutions.

There was no objection.

The Clerk read the remainder of the Journal, which as read was approved.

MATERIAL FOR FOLDING.

The SPEAKER, by unanimous consent, laid before the House a letter from the Clerk of the House in reference to an appropriation to supply deficiency in the appropriation for material for folding; which was referred to the Committee on Appropriations.

LEAVE OF ABSENCE.

Mr. JONES, of Arkansas, by unanimous consent, was granted leave of absence, on account of sickness.

AGRICULTURAL APPROPRIATION BILL.

Mr. DIBRELL moved that a conference be requested on the disagreeing votes of the two Houses on the agricultural appropriation bill.

The motion was agreed to.

The SPEAKER appointed as conferees on the disagreeing votes of the two Houses on the bill (H. R. 5261) making appropriations for the Agricultural Department for the fiscal year ending June 30, 1885, and for other purposes, Mr. DIBRELL, Mr. WILLIAMS, and Mr. WHITE of Minnesota.

RELIEF OF SUFFERERS BY OVERFLOW OF MISSISSIPPI RIVER.

Mr. ELLIS. I ask unanimous consent that the Committee of the Whole House on the state of the Union be discharged from the further consideration of the joint resolution (H. Res. 255) appropriating the further sum of $100,000 for sufferers by overflow of the Mississippi River and tributaries, in order that it may be brought up at the present time for consideration.

The SPEAKER. The joint resolution will be read subject to objection.

Mr. ELLIS. I will ask the House after the reading of the joint resolution to indulge me in a brief statement.

The joint resolution was read, as follows:

Resolved, &c., That the further sum of $100,000, or so much thereof as may be necessary, be, and the same is hereby, appropriated, out of any money in the Treasury not otherwise appropriated, to be expended under the direction of the Secretary of War for the relief of such destitute persons as may require assistance in the district overflowed by the Mississippi River and its tributaries, in the manner provided for in the joint resolution entitled "A joint resolution authorizing the Secretary of War to issue rations for the relief of destitute persons in the district overflowed by the Ohio River and its tributaries, and making an appropriation to relieve the sufferers by said overflow," approved February 12, 1884.

The SPEAKER. Is there objection?

Mr. COOK. I call for the regular order of business.

Mr. ELLIS. I ask the gentleman from Iowa to allow me to make a brief statement before he insists on his objection.

Mr. COOK. I withdraw my objection for that purpose.

The SPEAKER. If there be no objection the gentleman from Louisiana will be allowed to make a statement subject to objection. The Chair hears no objection.

Mr. ELLIS. Mr. Speaker, a few days ago, from the Committee on Appropriations, I reported this resolution. I did so with diffidence. I did so with hesitancy. I did hope the emergency would pass away. I did hope the receding waters would give those people a chance to see dry ground again. Since that time, Mr. Speaker, the waters have risen upon them again; since that time there have been rises upon the rivers above which have come down on these people. There have been unprecedented rains, and our information now is that the waters will remain for weeks longer. It has been four months since these people saw dry ground.

A few weeks ago, sir, when intelligence reached the House of the vast floods in the Ohio River there was a thrill of sympathy followed by the swiftest action on the part of this House. We voted $500,000 for the relief of these people, $375,000 of which was expended, expended justly, righteously, mercifully I say, and in accordance with the humane spirit of this country shown with regard to foreign people and with regard to this people.

Three hundred and seventy-five thousand dollars were expended for the relief of the Ohio sufferers. Yet, sir, those floods passed away within two weeks, and where the devouring waters were now fields and gardens are all a-bloom, and the people are in their homes. A very few days afterward those overflows reached the valley of the Mississippi River. Those people have no prosperous towns, no high back country to which they can flee. They are without telegraph facilities, or, sir, the very air would be burdened with the mournful plaints which come from that region. They have not seen the dry ground beneath them

for four months. Their hopes of making a crop are gone; the merchants who usually advanced them upon the faith of their crops can not and will not do so because there is no hope of a crop. From the most reputable people, from gentlemen for whose honor and integrity I vouch, there comes a startling statement that from twenty-five to forty thousand people are in an absolute state of starvation in Arkansas, Mississippi, and Louisiana. Under these circumstances I appeal to the humanity of this House; I appeal to the humanity of every member of this House to give this appropriation.

The Secretary of War has recommended it, the officers of the Commissary Department have recommended it, the relief commission have recommended it, and now there comes here every day some new intelligence of this widespread fearful suffering among the people which demands relief. I hope there will be no objection to the passage of the resolution.

Mr. DUNN. Will the gentleman from Louisiana permit me to ask him if it is not true that there has not been a dollar appropriated for these sufferers except the crumbs that fell from the Ohio River appropriation?

Mr. ELLIS. Not a dollar.

Mr. DUNN. And nothing has been given but the remainder of that unexpended appropriation?

Mr. ELLIS. Not a cent.

Mr. COSGROVE. Let me ask the gentleman how much of that was given?

Mr. DUNN. One hundred and twenty-five thousand dollars, where there were 500,000 people destitute.

Mr. COSGROVE. Let me ask the gentleman from Louisiana if this is a unanimous report of the Committee on Appropriations?

Mr. ELLIS. With one exception it is the unanimous report of the committee—a gentleman who is not present now. If he were here I am satisfied that he would unite with the committee in this recommendation.

The SPEAKER. Is there objection to the present consideration of the joint resolution?

Mr. PERKINS. Let me ask if the Legislature of the State of Louisiana has not been recently in session?

Mr. ELLIS. It has recently convened.

Mr. PERKINS. Did it make any appropriation for the sufferers by this overflow?

Mr. ELLIS. I will state to the gentleman that on account of its debts, on account of the inability to collect the taxes by reason of these overflows, the treasury of my State is empty, and relief is impossible on the part of the government of the State through its Legislature. Hence the necessity of this appeal to Congress.

I will state further to the gentleman that I would not stand here in the attitude of a mendicant in behalf of my people for five hundred times the amount needed to help them if it were not for the absolute impoverished condition in which this overflow finds them at this time and the inability of the State authorities to grant them any relief.

The SPEAKER. Is there objection to the present consideration of the joint resolution?

Mr. POST, of Pennsylvania. I object.

Mr. TURNER, of Georgia. I demand the regular order.

Mr. ELLIS. I must, then, Mr. Speaker, in obedience to the voice of suffering behind me from my people, ask this House to pause in its regular business and go with me into Committee of the Whole on the state of the Union until we can reach the consideration of this resolution. I ask that the House resolve itself into Committee of the Whole on the state of the Union.

The SPEAKER. The Chair will state to the gentleman from Louisiana that that motion would not be in order until after the morning hour has been exhausted or dispensed with.

Mr. POST, of Pennsylvania. I will withdraw the objection, at the solicitation of gentlemen around me.

The SPEAKER. Is there further objection to the request of the gentleman from Louisiana?

Mr. OATES. I wish to say, Mr. Speaker, that while I am unalterably opposed to this character of legislation for reasons heretofore given, I will not object to allowing the gentleman from Louisiana now to have consideration by the House of this resolution.

The SPEAKER. The question is upon ordering the resolution to be engrossed and read the third time.

The joint resolution was ordered to be engrossed and read the third time.

The question recurred upon the passage of the resolution.

Mr. POST, of Pennsylvania. Upon that I demand the yeas and nays.

The yeas and nays were ordered, 33 members voting in favor thereof.

The question was taken; and there were—yeas 120, nays 77, not voting 126; as follows:

YEAS—120.

Aiken,	Brewer, F. B.	Carleton,	Davidson,
Anderson,	Brewer, J. H.	Cassidy,	Davis, G. R.
Ballentine,	Broadhead,	Clardy,	Davis, R. T.
Barbour,	Burnes,	Cobb,	Dibrell,
Barksdale,	Cabell,	Collins,	Dockery,
Bayne,	Caldwell,	Covington,	Dorsheimer,
Blanchard.	Calkins,	Cox, S. S.	Dunn,
Bland,	Cannon,	Cullen,	Ellis,
Ermentrout,	James,	Neece,	Stephenson,
Follett,	Jeffords,	Nicholls,	Struble,
Foran,	Johnson,	Ochiltree,	Sumner, C. A.
Funston,	Jones, J. H.	O'Ferrall,	Taylor, E. B.
Fyan,	Kasson,	O'Hara,	Taylor, J. M.
Garrison,	Keifer,	Payson,	Thomas,
George,	Kelley,	Peel,	Thompson,
Glascock,	King,	Pierce,	Throckmorton,
Goff,	Kleiner,	Poland,	Townshend,
Graves,	Laird,	Pryor,	Valentine,
Greenleaf,	Lamb,	Pusey,	Vance,
Hancock,	Lewis,	Randall,	Van Eaton,
Hart,	Libbey,	Robinson, J. S.	Wakefield,
Hatch, W. H.	Lovering,	Robinson, W. E.	Washburn,
Henderson, D. B.	McCoid,	Rogers, J. H.	Wellborn,
Henley,	McKinley,	Rogers, W. F.	Weller,
Hiscock,	Matson,	Rowell,	White, Milo
Holman,	Maybury,	Ryan,	Williams,
Horr,	Miller, S. H.	Scales,	Wilson, James
Houseman,	Morey,	Shelley,	Wilson, W. L.
Howey,	Morrill,	Smith,	Wise, J. S.
Hunt,	Muldrow,	Steele,	Wolford.

NAYS—77.

Adams, J. J.	Eaton,	McAdoo,	Springer,
Alexander,	Eldredge,	Miller, J. F.	Stewart, Charles
Bagley,	Elliott,	Mitchell,	Strait,
Barr,	Ellwood,	Morgan,	Sumner, D. H.
Beach,	Everhart,	Morse,	Tillman,
Bennett,	Ferrell,	Murray,	Tucker,
Bisbee,	Fiedler,	Mutchler,	Turner, H. G.
Blount,	Geddes,	Nutting,	Turner, Oscar
Boyle,	Halsell,	Oates,	Van Alstyne,
Brown, W. W.	Hardeman,	Patton,	Warner, Richard
Buchanan,	Hemphill,	Post,	Weaver,
Buckner,	Hewitt, G. W.	Potter,	Wemple,
Campbell, Felix	Jones, B. W.	Price,	Winans, E. B.
Candler,	Lanham,	Ranney,	Woodward,
Clements,	Lawrence,	Reese,	Worthington,
Connolly,	Le Fevre,	Seymour,	Yaple,
Cosgrove,	Long,	Shaw,	York.
Cox, W. R.	Lore,	Slocum,	
Crisp,	Lowry,	Spooner,	
Culberson, D. B.	Lyman,	Spriggs,	

NOT VOTING—126.

Adams, G. E.	English,	Kean,	Robertson,
Arnot,	Evans, L. N.	Kellogg,	Rockwell,
Atkinson,	Evins, J. H.	Ketcham,	Rosecrans,
Belford,	Findlay,	Lacey,	Russell,
Belmont,	Finerty,	McComas,	Seney,
Bingham,	Forney,	McCormick,	Singleton,
Blackburn,	Gibson,	McMillin,	Skinner, C. R.
Boutelle,	Green,	Millard,	Skinner, T. G.
Bowen,	Guenther,	Milliken,	Smalls,
Brainerd,	Hammond,	Mills,	Snyder,
Breckinridge,	Hanback,	Money,	Stevens,
Breitung,	Hardy,	Morrison,	Stewart, J. W.
Browne, T. M.	Harmer,	Moulton,	Stockslager,
Brumm,	Hatch, H. H.	Muller,	Stone.
Budd,	Haynes,	Murphy,	Storm,
Burleigh,	Henderson, T. J.	Nelson,	Talbott,
Campbell, J. M.	Hepburn,	O'Neill, Charles	Taylor, J. D.
Chace,	Herbert,	O'Neill, J. J.	Tully,
Clay,	Hewitt, A. S.	Paige,	Wadsworth,
Converse,	Hill,	Parker,	Wait,
Cook,	Hitt,	Payne,	Ward,
Culbertson, W. W.	Hoblitzell,	Perkins,	Warner, A. J.
Curtin,	Holmes,	Peters,	White, J. D.
Cutcheon,	Holton,	Pettibone,	Whiting,
Dargan,	Hooper,	Phelps,	Wilkins,
Davis, L. H.	Hopkins,	Rankin,	Willis,
Deuster,	Houk,	Ray, G. W.	Winans, John
Dibble,	Hurd,	Ray, Ossian	Wise, G. D.
Dingley,	Hutchins,	Reagan,	Wood,
Dowd,	Jones, J. K.	Reed,	Young.
Duncan,	Jones, J. T.	Rice,	
Dunham,	Jordan,	Riggs,	

So the joint resolution was passed.

On motion of Mr. ELLIS, by unanimous consent, the reading of the names of members voting was dispensed with.

The following members were announced as paired on all political questions until further notice:

Mr. STORM with Mr. RUSSELL.

Mr. TALBOTT with Mr. BREITUNG.

Mr. EVINS, of South Carolina, with Mr. BOWEN.

Mr. ROSECRANS with Mr. PETTIBONE.

Mr. HARDY with Mr. MOREY.

Mr. DAVIS, of Missouri, with Mr. BELFORD.

Mr. DUNCAN with Mr. SMITH.

Mr. CLAY with Mr. RICE.

Mr. HILL with Mr. EVANS, of Pennsylvania.

Mr. JONES, of Arkansas, with Mr. HANBACK.

The following pairs were also announced:

Mr. FORNEY with Mr ATKINSON, until May 30.

Mr. O'NEILL, of Missouri, with Mr. HAYNES, until May 28.

Mr. HAMMOND with Mr. REED, until May 30.

Mr. WILKINS with Mr. BRAINERD, on this vote.

Mr. DOWD with Mr. HOUK, on this vote.

Mr. CONVERSE with Mr. SENEY, on this vote. Mr. CONVERSE would vote for the resolution and Mr. SENEY against it.

Mr. BELMONT with Mr. HARMER, for this day.

Mr. MULLER with Mr. RAY, of New Hampshire, for this day.

Mr. GEORGE D. WISE with Mr. KELLOGG, on this vote.

Mr. YOUNG with Mr. WHITING, for this day.

Mr. BUDD with Mr. COOK, on the pending resolution.

Mr. AIKEN. I did not hear any pair announced of my colleague from South Carolina [Mr. DARGAN]. I desire to state that he is confined to his room by sickness.

Mr. SMITH. I desire to say that I am paired on all political questions with Mr. DUNCAN; but not regarding this as a political question, I have voted.

The result of the vote was then announced as above stated.

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

The latter motion was agreed to.

Mr. ELLIS. I ask unanimous consent to have printed in the RECORD certain telegrams relating to this subject.

There was no objection.

The telegrams are as follows:

SAD TIDINGS.

[Special to the Republican.]

VICKSBURG, MISS., *May* 9.

The Anchor line steamer City of Vicksburg arrived from below this evening with about two hundred negroes, farm hands, from points in Tensas Parish. Captain Keith states that he was hailed at other points where there were numbers of colored people huddled together on points of levees waiting transportation to any point out of the overflowed section. It is estimated that at least 60 per cent. of Madison and and 75 per cent. of Tensas Parishes are yet under water. The larger portion of the planters in the parishes named have given up all hopes of making a crop this season. At many points in the overflowed sections mules and cattle are dying in great numbers. The stock at some places are dying from actual starvation, and at other points from the swarms of gnats that are now causing great destruction in the valley.

NATCHEZ, MISS., *May* 24, 1884.

Hon. E. JOHN ELLIS, *Washington:*

Appeals are becoming daily more urgent; destitution in many cases is becoming starvation, especially in the Black, Tensas, and Little River bottoms in parts of Tensas, Madison, and Carroll, and in Mississippi below Vicksburg to mouth Red River. Much of this country has been inundated for three to four months. River now stands 45 feet 1 inch, 5 feet above danger line, and has not changed for weeks. People have neither money nor credit and no means of getting away. Planters have exhausted their credit in many instances, as chances of making a crop grow less daily. The situation is already desperate, and relief must soon come or deaths from starvation and hardships will be recorded in a country with an overflowing Treasury.

T. S. SHIELDS, *Relief Commissioner.*

MONROE, LA., *May* 24, 1884.

Hon. E. JOHN ELLIS, *Washington D. C.:*

The condition of the people on Black River desperate. See my dispatch to General KING, and get relief as soon as possible.

C. J. BOATNER.

VIDALIA, LA., *May* 25, 1884.

Hon. E. JOHN ELLIS, M. C., *Washington D. C.:*

Laboring people on Texas River on the verge of starvation, and unless relieved speedily will starve. Land under water, and water stationary.

F. GRIFFIN.
T. E. CALVIN.

VIDALIA, LA., *May* 24, 1884.

Hon. E. JNO. ELLIS:

Have just made a trip from Troyville to this place in a skiff, nearly forty miles by water, and I must state suffering from the Catahoula Hills to the Mississippi Hills is very great. Planters can not help themselves, much less the freedmen. Merchants have refused to furnish further, and the outlook for the water to remain several weeks is rather gloomy. Can not something be done for these poor people in the back part of this and Catahoula Parish?

SAM'L BLOCK.

TROYVILLE, LA., *May* 24, 1884.

Hon. E. JNO. ELLIS:

Entire country still overflowed and destitution among people very great; white and black both suffering alike, as merchants have refused to furnish any relief. In fact, country is short of necessaries of life. Can not something be done, as from the present outlook water will remain considerable time yet.

R. B. WALTERS.

RODNEY, MISS., *May* 8, 1884.

Hon. E. BARKSDALE:

Need rations for fifteen hundred hands; overflowed.

J. F. GILLIAM,
A. A. COX,
D. P. MULLINS,
And others.

NATCHEZ, MISS., *May* 19, 1884.

Hon. H. S. VAN EATON, *Washington:*

Your constituents Deadman's Bend represent great suffering from overflow. Want to know what prospect for Government aid. Condition overflowed people more desperate now than heretofore. Answer.

JAS. W. LAMBERT.

WOODVILLE, MISS., *May* 16, 1884.

Hon. H. S. VAN EATON:

We are now overflowed, the second time, by late rise. All means for supply of laborers is exhausted. We ask in their behalf assistance from the Government. Will it be granted? Who shall we apply to? Answer immediately.

W. N. WHITE.
J. A. MCGILL, JR.
L. E. STUART.
B. C. STUART.
H. MONIS.
DR. R. T. LESSLIE.
P. J. STRICKER.
G. M. HERRICK.
RICHD. HARRISON.
JNO. H. BARKLEY.
E. S. KELLOG.
R. R. BROWN.
MAT. MALLER.
P. D. DALLEY.
W. H. SWAN.
JAS. A. V. FETUS.

CLAIMS ALLOWED.

The SPEAKER. The gentleman from Illinois [Mr. ROWELL] asks that the Clerk be directed to request the Senate to return to the House of Representatives the bill (H. R. 5377) for the allowance of certain claims reported by the accounting officers of the United States Treasury Department. The Chair is advised there was an error in the engrossed copy of this bill by which certain claims were duplicated.

There was no objection, and it was so ordered.

ORDER OF BUSINESS.

Mr. TURNER, of Georgia. I call for the regular order.

Mr. SCALES. I desire to make a privileged report. I ask the gentleman from Georgia to yield to me for that purpose.

Mr. TURNER, of Georgia. I can not yield further.

CONTESTED ELECTION—WALLACE VS. M'KINLEY.

The SPEAKER. The House resumes as the regular order of business the consideration of the report of the Committee on Elections in the contested-election case of Wallace *vs.* McKinley, eighteenth district of Ohio. The gentleman from Ohio [Mr. EZRA B. TAYLOR] is entitled to the floor. The gentleman has thirty minutes of his time remaining.

Mr. EZRA B. TAYLOR. Mr. Speaker, it will be remembered by those who were present and listened to me last evening that when the House adjourned I was proceeding to count up the votes which I thought ought to be counted for the two parties upon the basis of counting to the contestant all that was claimed for him specifically in the report of the committee. I had proceeded so far as to deduct from the apparent majority of 28 in favor of the contestant the 10 votes which I claimed to be an error in the footing in favor of the contestant in the county of Carroll. I will proceed now in the same line as briefly as I may, taking every vote that is and ought to be contested, and balancing the books so to speak upon every page as I go, that there may be no mistake when the outcome is arrived at.

Next there are the 4 votes called the "Kinley" vote, the "Orlando Brown" vote, the "Hune" vote, and the vote at Austintown, which are admitted by the contestant to be votes that ought to be counted for the contestee, but which were not counted for him. The "Kinley" vote is admitted by the counsel in the argument for the contestant, but it needs no admission, because the man who cast that vote identifies it as his vote and says he intended it for the contestee. The "Orlando Brown" vote is also conceded. The "Hune" vote and the "Austintown" vote are of this kind: Tickets were found in the box on which was printed the name of the contestant, and under it was written the name of William McKinley, jr., the printed name not being erased. In the argument of this case and in the action of the committee, there being cases of this kind on both sides, it has been agreed and understood, as it ought to be agreed and understood, that all such votes were intended to be cast and should be counted for the party whose name was written under the printed name. Those 2 votes, then, are admitted, and leave the apparent majority of the contestant upon the basis named at 14 votes.

Frederick Ott testifies that he was a foreigner; that he voted for Wallace; and that he was never naturalized; neither was his father. Thomas Black is admitted to have voted for Wallace and it is admitted that he was never naturalized and was a foreigner, coming into this country after age. Those 2 votes are deducted without objection, leaving 12 votes still in favor of contestant.

George W. Shrimp was sworn; he offered his vote at Minerva; had a McKinley ticket. He swears he was a resident, over age, and a voter in that precinct, but he was refused, being required to bring some other man to vouch for him and to swear for his vote, and that other man was residing three miles away. Ohio law allows no vouchers and no assisting affidavits. It turns out now that this man had an unquestioned right to vote, and he offered to vote for McKinley and was rejected. One more to be deducted, leaving a majority of 11.

In the sixth ward of Canton admittedly a vote was cast and not counted. The ballot had the name of Wallace printed on it, and that name was not erased, but underneath it there was written clearly and undisputedly the name of William McKinley, jr. Under the agreement and concession all around this vote is to be added to McKinley, reducing the apparent majority of Wallace to 10.

In the township of Butler, Columbiana County, this state of facts existed: On the morning of election day some one opposed to the election of Mr. McKinley obtained possession of all the Republican ballots at the polls and drew a pencil-mark through the name of McKinley upon each one of those ballots. Republican voters coming there to vote found no other tickets than those. They took a rubber eraser and rubbed off the pencil-mark until the printed name appeared clearly upon the ticket, and then voted those tickets. Those votes were not counted. There were 6 of them.

The men who cast those votes came in afterward during daylight, when the votes could be seen, and recognized their ballots and swore that they intended by that erasure to restore the name of McKinley on the ballot and to vote it for him. Those names should be added to the list of those voting for McKinley.

Mr. COOK. Will the gentleman permit me to ask him a question?

Mr. EZRA B. TAYLOR. Certainly.

Mr. COOK. Does the gentleman claim that under the law of contested elections it is competent to call the voter in order to show what he intended by his ballot, when the ballot will show for itself? Or are you not limited to the ballot itself and surrounding circumstances?

Mr. EZRA B. TAYLOR. I am disposed to try this case upon any ground that you and your people will take, if you will keep that ground all the way through. And for my purpose I will take your law.

Mr. ADAMS, of New York. Will the gentleman state how these voters identified their ballots?

Mr. EZRA B. TAYLOR. I do not mean to say that they identified these specific ballots, but they said that they voted that kind of ballots, and for the number of that kind of ballots which we find there are also voters found.

Mr. ADAMS, of New York. A number of those ballots were counted about which there was no dispute.

Mr. EZRA B. TAYLOR. This is a fact that the gentleman from New York [Mr. ADAMS] argued yesterday that these ballots should not be counted, not because the truth about them is not as I state, but because the judges of the election had decided upon them and rejected them, and their decision was final. Accepting the doctrine suggested by the gentleman from Iowa [Mr. COOK] the ballot itself on inspection shows that the history of it is as I have stated, and for that reason I hold that it should be counted.

One of the ballots of that kind was cast by a man of the name of Stanley. He was a man not of sound mind, that is, not of strong mind. He was a man who attended to his own business, was a man of some education and read a good deal. I am speaking now from the evidence in the case. He had mastered Ray's Arithmetic to quite an extent, contracted for himself, did business for himself, and yet not being as strong-minded a man as some, they say that his vote ought not to be counted. But I claim his vote under the law. With that vote the number of such ballots was 6.

I am going hastily necessarily over this list of names, but I have the testimony here in each case; I have the record before me, and if any gentleman wants the testimony concerning any special statement which I make I shall be glad to refer him to the evidence. It is the law and the evidence on which I stand; not general declarations nor opinions unsupported by the law or evidence. Counting those 6 votes for McKinley, there is at this point left an apparent majority for the contestant of 4 upon the basis I have so often stated.

In Salem Township, Columbiana County, there was another ballot with the name of Wallace in print and the name of McKinley under it clearly in writing. That was not counted, but should be counted for McKinley. That reduces the apparent majority to 3.

In the recount in Austintown, Mahoning County, there were found 2 ballots with McKinley's name which were not counted. That recount has not been impeached; it has all the conditions about it to make it a complete legal count. There were 2 of these tickets not counted for McKinley which ought to have been counted for him; and that is conceded by the gentleman from New York [Mr. ADAMS].

But there were 2 other votes there about which we need say nothing, because in regard to them both the majority and the minority of the committee are agreed—ballots upon each of which the name of one of the candidates was printed and the name of the other candidate was written underneath; but counting the 2 votes about which there is no dispute, that leaves at this point an apparent majority of 1 for the contestant.

There was a vote in Washington Township, Stark County, that had written on it, under the name of McKinley, the name of J. Wales. In the county of Stark there was a large and influential family by the name of Wales, one member of which had been a candidate for Congress. I speak now from the evidence. I say it is asking too much, without any explanatory circumstances showing the intent, to count a ballot with the name of J. Wales on it for Jonathan H. Wallace; yet it was so counted. That ballot should be deducted, and that will leave neither party at this point with a majority.

The two candidates at this point are now even in number of votes; still we have allowed the contestant every claim he makes; we conceded to him the law upon all points as he claims it to be; we have allowed him every count that he claims, and yet the contestant has no majority.

In Osnaburg, Stark County, there was a ticket with the name of Jonathan H. Walser on it, which was counted for Jonathan H. Wallace. There were many men in that county by the name of Walser. By what rule of law, by the force of what presumption, is this name of one individual claimed to indicate another? I have therefore deducted that vote from the contestant, though with more doubt than in any other case that is included in this whole volume of testimony.

Mr. DORSHEIMER. I would like to ask the gentleman whether there was any person there of that precise name?

Mr. EZRA B. TAYLOR. No person bearing the precise name "Jonathan H. Walser," but there were many of the name of "Walser."

Mr. McKINLEY. And there was a "J. H. Walser."

Mr. DORSHEIMER. Was there any person bearing the name of "J. H. Walser?"

Mr. EZRA B. TAYLOR. I do not remember the evidence on that point, but I am informed by my friend here [Mr. McKINLEY] that the evidence shows there was a "J. H. Walser."

Now, there was another ticket bearing the name "Jonathan H. Wallage." I count that vote for Wallace. I can give no reason for doing so except that I can do it safely, and I wish to be in the right at all hazards.

At the infirmary in Plain Township, Stark County, there were four inmates, one of whom voted in Louisville, Nimishiller Township, another in Washington Township, while two voted in Canton city, no one of those precincts being in Plain Township.

The supreme court of Ohio has recently, in the thirty-fourth volume of its decisions, decided what is the law in Ohio upon this subject. It decides that the inmates of an infirmary may be voters, but it fixes also that persons whose home is an infirmary, who have adopted it as their home, or have been put there under such circumstances that it is their home, are entitled to vote in the precinct in which the infirmary is situated, and that alone is their legal voting-place, for in Ohio a man can not have and never is entitled to have a choice of voting-places. Each one of these four men swears that he had adopted this place as his home. They voted honestly but mistakenly out of their precincts.

You may say these men ought to be allowed to vote. So they ought; but let me remind this House that in regard to voting there is only a legal right—never an equitable right as distinct from the legal right. The right to vote is purely and simply a legal right. In the State of Ohio these four men had no right to vote anywhere else than in the township of their legal residence, which was Plain Township, if the supreme court of Ohio understands the law of that State. Add, then, these 4 votes to the 1; and Mr. McKinley has a majority of 5.

There were 5 electors who voted in the city of Canton, legal voters, honest men, but they voted in the wrong ward. Their names are John Rigler, Frank Walters, M. Zilch, Daniel Winkleman, and Celestin Jourdain. Every one of these men swears that he voted out of his ward, having since learned in which ward he actually resided, and swears that he voted for Wallace, not for McKinley.

It is an unquestioned fact that these men voted out of their ward; but it is argued—not that they had a right to vote somewhere else, because I repeat my statement made a moment ago in relation to the infirmary voters—these men had no right to vote except where they were legal voters. They had no more right to vote in an adjoining ward than in an adjoining township, or an adjoining county, or an adjoining State. How dangerous it would be to adopt the rule that the residents of a city might vote according to their own choice in any ward of the city. What corruption might result. It is argued, I say, that those votes should not be deducted because of want of proof as to ward lines.

On page 389 of this record I find the testimony of a man whose name is printed John H. Holl. His proper name is Hole. He is the civil engineer of the city of Canton. In testifying he produces a map, upon which are drawn the outlines of the different wards. That map is not printed with the evidence, but it is admitted here.

He shows that map to these voters, and they admit that they voted outside of their wards. He swears that the map is a correct map of the wards of Canton. Besides, he goes on to give in language, which is here in the record, the exact boundaries of each ward by streets, showing that each of these men voted out of his precinct.

Yet we are told by the gentleman from New York [Mr. ADAMS] that there must be some other evidence of the boundaries of these divisions. Suppose a man is tried for murder; the venue is laid in Stark County; a witness who saw the deed committed is asked: "In what county was this done?" He answers, "In the county of Stark." My friend from New York, if he were conducting the defense in such a case, would say that was not competent evidence; that the statute of the State forming this county must be produced; that the survey made by some man who knew it was correct must be exhibited.

Mr. ADAMS, of New York. The court in a case of that kind would take judicial notice of the fact.

Mr. EZRA B. TAYLOR. Would take judicial notice of what?

Mr. ADAMS, of New York. Of the existence of the county.

Mr. EZRA B. TAYLOR. Does the judge of an election, or the citizen when he presents his vote, take judicial or other notice of it?

Mr. ADAMS, of New York. Precisely so.

Mr. EZRA B. TAYLOR. These men did that, and were bound by it.

Mr. ADAMS, of New York. The witness says he does not know whether the map is correct, but in his judgment it is so.

Mr. EZRA B. TAYLOR. He says that in his judgment the map is correct, and he says he knows the wards are so bounded.

But the gentleman from New York made another point, that the voter said he did not know until the day he gave his testimony, or the day before, that he had voted in the wrong ward. But it is no matter when he learned it. He knows when he testifies that the place where he voted the preceding fall was not in the ward in which he should have voted.

So I take those 5 votes out. Yes—if it makes any difference; in my judgment it does not—this engineer is a Democrat, and so testifies. That leaves 10 majority for McKinley.

A man by the name of Moriarty voted in the same way in the town of Alliance, in the wrong precinct, by his own testimony, and voted for Wallace.

Joseph Bittaker voted in Sugar Creek Township, Stark County, and lived in Tuscarawas, out of the district of McKinley. These 2 make 12 majority for McKinley.

Herschel Urmson voted in Knox Township, and was but a few days over 20 years old by his own testimony—13.

Lewis Little voted in Alliance; his family resided in Canton—14.

Ed. Marks voted in Canton; his family lived in Wooster. I know he says he did not reside with his family, but the evidence is overwhelming that he did; and his wife swears he continued to furnish her with provisions and support and that he visited her within a day or two of the election—15.

James Benson voted in Lawrence, while he lived in Youngstown.

E. Yaste was not a resident of Ohio at all.

William Ohl was not naturalized. Both voted for Wallace.

Mr. ADAMS, of New York. Does he not swear he lost his papers and voted twice on them?

Mr. EZRA B. TAYLOR. He told where he got them and they went to that court and found that he had falsified; that he did not get them there. He said he destroyed them at a certain time and place. And yet afterward he said he destroyed them at another time and place; he made still another contradictory declaration, and I put his testimony out of the way.

Mr. ADAMS, of New York. There were three witnesses who saw him vote and saw his papers.

Mr. EZRA B. TAYLOR. Yes; he did vote, and he had pretended papers, but he had no naturalization papers, as inquiry of the court where he claimed to have got them demonstrated, the name of the judge and the name of the court having been given, and the judge and the records of that court deny his claim.

D. Spring, a resident of Canton, voted in Bethlehem Township, some distance away.

E. W. Shafer voted in Bethlehem and lived in Sugar Creek Township. Undoubtedly in every case they swear they voted for Wallace.

Figley and George W. Orr lived formerly in Saint Clair Township, voted in Liverpool Township, and were residents of Pennsylvania, and had been for two years.

These make 22 majority for McKinley.

William Brown voted in Alliance for Wallace, and lived in Butler Township, Columbia County—23.

Harvey Sloan voted in Salineville, and lived in New Lisbon—24.

Peter J. Collins, a non-resident—25.

In the township of Liverpool, aside from Figley and George W. Orr, there voted 20 others—21, as is claimed, and it may be 21—some of whom lived in Wheeling, some in Steubenville, some in New Cumberland, W. Va., some in Trenton, N. J., but none of them in Liverpool. The testimony all shows they voted for Wallace, but not altogether by direct testimony. For instance, the New Cumberland man was sworn to have been a Democrat of the straightest school for ten years. Others were there peddling Wallace tickets. They came with Democrats; others said they voted for Wallace. Add the 20 and McKinley's majority becomes 45.

John Beiber voted in Bram Township, but was a resident of Pennsylvania—46.

Frank Lucas, a minor, voted in Alliance for Wallace. Forty-seven majority for the sitting member is thus demonstrated, granting everything the contestant demands.

I invite attention to some of these demands briefly, and claim to be ble to show that they are untenable.

The contestant claims that on a recount he is entitled to an addition of 11 votes in the township of Fairfield, and that addition has been allowed in the foregoing calculation. I inquire now whether the allowance is admissible?

The official count at this precinct shows that there were 638 votes cast and counted at the election, of which number McKinley had 271. Carpenter, a Democrat, was the minority judge of the election, and, as the law provides, became custodian of the key to the ballot-box. Augustine, the township clerk, a son-in-law of Carpenter, a Republican, but not a friend of McKinley, though he voted for him, was the custodian of the ballot-box itself. After the votes were counted the key was delivered to Carpenter and the box left that night in the room where the election had been held.

The next morning Augustine took the box to his place of business, where he left it in a public place entirely unprotected. Carpenter, at the request of Augustine, on Wednesday took the box from the shop and carried it to Augustine at his house, who took it and put it in an unlocked closet in one of his bed-rooms, where he testifies any person who had access to his house had access to it.

It is not certain whether it was on Wednesday or the following Friday that Carpenter had both the box and key, intending to (and he probably did) take them to the county seat. Carpenter boarded and lodged with Augustine till the time of the recount, some four months afterward. During all this period, commencing the day after election, much dispute and doubt existed as to which candidate was elected. On the recount only 633 tickets were found in the box, of which 270 were for McKinley, being 1 less than he received by the official count, while Foster, the Greenback candidate for Congress, had 4 votes more than by the official count; the whole number of votes being 5 less than the official count shows. Eleven ballots had the printed names of McKinley and Foster erased from them, and written in as follows: "Mager Wallace," 1; "Ma Wllac," 1; "Wolac," 1; "Mag Wolac," 1; "Wollac," 2; "Wallace," 2; "Woloc," 1; "Wolloc," 1; "Mage Wolac," 1.

Until this recount no one had observed any votes of this peculiar spelling among the ballots, although it is clearly proven that there were some uncounted ballots written in under erasures of the printed names of McKinley and Foster for Wallace, with various initials and with none, the number being indefinite in the minds of all the witnesses, one saying "3 or 4," another "from 7 to 13," and so on. In fact 8 such ballots were found in the box at the time of the recount, not including those of the peculiar spelling referred to. That number answers all the requirements of the testimony as to uncounted votes cast for Wallace. At the time of the official count every ballot was examined closely, and it is impossible that those of such peculiar orthography should pass without being seen, or having been observed should escape observation and comment, especially as one of the judges was a lawyer and presumably a man of education.

A recount is and can only be a count of the same ballots first counted. If there is even a reasonable suspicion that the ballots have been in any way changed or tampered with, a recount is not allowable. If ballots have been added or taken away, a recount is impossible; but there were 5 votes less in the box than at the official count, saying nothing of their changed character, therefore there was no recount. It follows from either view of the case, or from any that can be taken, that these 11 votes must be taken from the contestant's vote, which adds so many to contestee's majority and increases it to 58 absolutely and unquestionably unless it should be diminished by new proof said to be in the possession of the committee, not printed, and which I have not seen, but which I have just been told exists, which explains the supposed error in footing of the Carroll County vote as a misprint.

In that case the contestee's majority is at the very least 48, and not subject to any further possible deductions, and to what I am sure I could demonstrate that further additions should be made had I but a little time in which to do it, but my time is exhausted.

Mr. Speaker, I know not how this contest is to terminate. I can only judge for myself of its merits. I feel a deep interest in its result, and would fain continue the close companionship of my friend and colleague in this House. For three years and more he has been my nearest friend here. We have always stood shoulder to shoulder together in our public duties. I shall regret his absence, which I think I see approaching, but I shall regret it not the most for personal reasons relating to myself or to him. I would rejoice more for the honor a favorable determination of this case would bring to this House and to the country than on account of any personal gratification it would bring to him or to me. You can not injure him by any act of yours. You may without right send him away from here and to his people. Some of you may rejoice in so doing, but others of the majority and those not the least wise of your number will regret the act even though they assist in it.

At the bidding of this House my colleague will leave us with dignity and without repining, but be assured he will come again. Ohio exacts much of her sons who undertake her service, but she is also full of noble generosity to those of them who discharge their duty to her faithfully and well, and will not allow them to be stricken down.

If my friend is required to yield his seat in this House, which he has so long honored, I shall regard it as but a temporary absence, and as I take his hand at parting I shall say to him in the spirit of sure prophecy, with an abiding faith in his future, "Farewell and hail." [Applause.]

ADDENDA.

Mr. H. G. TURNER, from the Committee on Elections, submitted the following report:

The Committee on Elections have had under consideration the above-stated case and submit the following report:

This case grows out of the Congressional election held in the eighteenth district of Ohio on the 10th day of October, 1882. At that election William McKinley, jr., Jonathan H. Wallace, Lemuel T. Foster, and James A. Brush were the opposing candidates. The district was composed of Carroll, Columbiana, Mahoning, and Stark Counties. The result of the county returns certified to the State canvassing board is shown in the following statement:

	Carroll.	Columbiana.	Mahoning.	Stark.	Total.
Wm. McKinley, jr.	2,066	4,411	4,278	6,211	16,906
Jonathan H. Wallace	1,497	4,438	3,915	7,048	16,898
Lemuel T. Foster	63	470	256	187	976
James A. Brush		59	53	149	261
J. K. Burbeck		1			1
John H. Wallace	1	3			4
Major Wallace		1			1
Wallace		5			5
W. H. Wallace		2			2
W. W. Wallace		1			1
Jonathan Wallace		5			5
Maj. Wallace		3			3
J. H. Wallace		2			2
Scattering			1		1

The State canvassing board, consisting of the governor and secretary of state,

treated Jonathan H. Wallace, John H. Wallace, Major Wallace, Wallace, W. H. Wallace, W. W. Wallace, Jonathan Wallace, Maj. Wallace, and J. H. Wallace as distinct persons, and in that way awarded the certificate of election to the sitting member. Under this treatment of the returns the sitting member has a plurality over the contestant of 8 votes.

On the argument the concession was made that the votes certified for "Major Wallace," "Wallace," "Jonathan Wallace," "Major Wallace," and "J. H. Wallace," 16 in number, should be counted for contestant. Conforming the figures to this addition, the positions of the parties are reversed, and the contestant has a plurality over the sitting member of 8 votes on the face of the returns. In this state of the case the burden is cast upon the sitting member to contest the election of Mr. Wallace. Indeed, there can be no doubt that the certificate of election should have been issued to the contestant, and he should have been the occupant of the seat, with its honors and emoluments. Logically, we assign him *nunc pro tunc* his true position in the controversy, and the *onus* is shifted to his adversary.

The proof shows that the contestant was the only candidate at the election bearing the name of Wallace, and under the weight of authority we think that the ballots certified to have borne the names John H. Wallace, W. H. Wallace, and W. W. Wallace, 7 in all, in the absence of any other evidence, should be also counted for the contestant.

In Fairfield Township, Columbiana County, a number of ballots bearing the surname of the contestant, or some approximation to that name, though improperly spelled, were omitted from the count and were not included in the return. An effort was made to ascertain the number and character of these ballots by a re-examination of the box. Although the persons charged with the custody of the box and the key of the box deny on oath that they had tampered with the box or its contents, it appears that for a short time the box and the key were in the possession of the same person, contrary to the law of the State. An opportunity was thus afforded for casting suspicion upon the integrity of the box. It also seems that on a recount of the ballots, which had been counted and strung and placed in this box, a different result was reached from the result certified by the judges of election.

But from the testimony of the judges of election and others there can be no doubt that at this precinct ballots of the character described were voted at the election and excluded from the count. Carpenter, Democratic judge of the election, in his evidence states the number of these uncounted ballots to have been from 7 to 15. Hum, a Republican judge of the election, in his evidence estimates the number at from 2 to 13, and his impression seems to have favored the latter number. Shields, another Republican judge, in his testimony places the number at 5. Augustine, Republican clerk of the election, states that there were 13 or 14 of these uncounted ballots. And others testify on the subject with more or less variant results. In the box at the recount just mentioned were found 11 ballots for "Major Wallace," "Ma. W-llac," "Wolac," "Mag. Wolac," "Wollac," "Wallace," "Woloc," "Mage. Wolac," and "Wolloc." This species of ballots the judges say they rejected from the count. We adopt this number and think they ought to be counted for contestant.

In Washington Township, Stark County, the judges of election cast out a ballot on which the sitting member's printed name was erased, and the name "Walce" was written in pencil under the erased name. The reason given by one of the judges for the rejection of this vote was that "it lacked the Christian name or initials." We think it ought to be counted for contestant.

In Lee Township, Carroll County, a ballot for contestant was not counted by the judges because it had a name and some figures on the back of it. It is claimed by the sitting member that this ballot is obnoxious to the statute of Ohio which forbids any mark or device by which one ticket may be distinguished from another. The evidence shows that this ticket was voted in the condition described by accident or inadvertence. We do not think that it is within the mischief intended to be prevented by the statute, and count it for this contestant.

A recount was had at the instance of the sitting member in the sixth ward of Youngstown, in Mahoning County, and a gain of 1 vote for the contestant was there established. This gain we count for the contestant.

Again, a recount was also had in Austintown Township, Mahoning County, at the instance of the sitting member, and 2 ballots were found in the box which had not been counted by the judges of election. On one of these ballots the name of the contestant was written under the printed name of the sitting member, and on the other the name of the sitting member was written under the printed name of the contestant, and the printed name on each had not been erased. These ballots should, we think, have been counted according to the written names appearing on them; but as they set off each other no further notice will be taken of them.

In Madison Township, Columbiana County, a ballot having the name of contestant written under the printed name of the sitting member was excluded by the judges of election. We think that this vote should have been for very obvious reasons counted for the contestant. The only objection urged against this appropriation of this vote was that it was not distinctly itemized in the notice of contest. But we think that the eighteenth ground of contest is sufficient to justify the addition of this vote to the contestant's case.

By the votes hereinbefore allowed the contestant, he has a plurality of 30 votes to be overcome by his competitor.

To meet this exigency the sitting member took a large mass of testimony for the purpose of proving illegal votes cast for the contestant, and he specifies 55 individual votes which he insists should be deducted from the aggregate vote of the contestant. Three of these votes are challenged because they did not contain the precise name of the contestant, but contained instead the names "J. Wales," "Jonathan H. Walser," and "Jonathan H. Wallage," respectively. We have already cited the principle on which the question as to these votes should be decided. Besides, the judges of election counted these 3 votes for contestant, when the facts were well understood and the "tickets were fresh from the hands of the voters," and we will not reverse their judgment.

We append a list of the persons who are said to have cast the remaining 52 votes alleged to be illegal, chiefly on the ground of non-residence:

Charles Ducatry.	William H. Ohl.	Charles Huhn.
Michael Stimler.	David Spring.	William Ward.
Bartholomew Waldecker.	E. W. Shaffer.	Frederick Mayer.
Joseph Frickert.	Sam'l Thompson.	Enoch Bradshaw.
John Rigler.	Michael Higgins.	Owen Tigh.
Frank Walters.	William Brown.	Peter Helms.
Daniel Winkleman.	Harvey Sloan.	William Henry.
Celestine Jordan.	Peter J. Collins.	William Leibscher.
Martin Zilch.	John Bieber.	Henry Tasker.
John Moriarty.	Frank Allison.	John Rumberger.
Joseph Bittaker.	Joseph Hanlon.	J. P. Sterling.
Frederick Ott.	Oscar Bowles.	Robert Figley.
Herschel Urmson.	Hugh McCurran.	George W. Orr.
Lewis Little.	James McCurran.	Frank Lucas.
Ed. Marks.	Milton Heckathorn.	Harvey Shiltz.
James Benson.	John A. O'Neill.	Frank Kirby.
Edward Yaste.	James Sypher.	
Nicholas Dicks.	Thomas Black.	

Two questions arise as to each of these votes: 1st. Was the vote illegal? 2d. For whom was it cast?

The evidence on which the determination of these questions depends is too voluminous to be reviewed in a report. Each of the votes specified turns on peculiar facts and constitutes a distinct litigation. The testimony will be found in Miscellaneous Document No. 19 of the present session. No synopsis would do it justice.

After a somewhat diligent study, running through many weeks, we can not find sufficient evidence to justify the deduction of more than 8 of these challenged votes from the contestant's case. Indeed, even as to these 8 votes we can not say that they are removed from doubt. The rule in such cases, from the New Jersey case (2 Bartlett, page 25) down to the present time, is as follows:

"It is not sufficient that there should exist a doubt as to whether a vote is lawful or not; but conviction of its illegality should be reached to the exclusion of all reasonable doubt."

(We think that one of the votes assailed in this list, that of Frank Lucas, who is shown to have been a minor, was probably cast for the sitting member.)

In this list there are 5 votes alleged to have been cast for contestant in wards of the city of Canton in which the voters did not reside, and 2 votes said to have been cast for contestant in townships in which, it is claimed, the voters did not reside. In these cases a dispute arose as to the boundaries of these voting subdivisions, and if the highest evidence should be required on this question, the municipal ordinances or official action of the local authority having jurisdiction and establishing these boundaries, should have been produced. In the city of Canton it is alleged, and not denied, that a very recent change of ward limits had been made.

The sitting member insists that declarations of voters made long after the election, not under oath, are admissible to prove how they voted. Even if this evidence were competent, we could not under the rule just cited add more than 10 to the votes involved in doubt; in any view, therefore, the contestant's plurality can not be overcome. But we believe that these unsworn declarations of voters made after the election are hearsay and inadmissible for any purpose. It has been attempted to justify the admission of this species of evidence upon the pretext that the voters are parties to the case. They are not served with notice; they have no right to appear in the contest in their own right, either in person or by counsel; they can not of their own motion even present themselves as witnesses. They are as much strangers to the case as the men of the district who did not vote, or the women and children of the district, or the other people of the United States.

It is also urged that this is a public inquiry, and therefore a more liberal rule of evidence ought to prevail. But we fail to discover in this suggestion any good reason why a controversy involving the right to represent 150,000 people and to make laws for the entire Union should be adjudicated upon evidence which the courts have always rejected in other causes.

In the early cases of contested elections they originated in the House, and the witnesses were examined in the presence of the Committee on Elections, or of a subcommittee detailed for that purpose. Under this practice there was possibly more significance in this suggestion of "a public inquiry," many of the cases arising upon memorials of private citizens. It was during the prevalence of this practice that the celebrated New Jersey case arose. Cases in the English House of Commons were originated and conducted in a similar manner. But since Congress passed the act governing contested elections they are instituted upon regular pleadings like any other suit, the proofs taken by the parties before designated officers and all the proceedings are conformed to judicial precedents. We respectfully submit that it is greatly to be desired that these cases should be adjudicated upon the principles as well as the forms which prevail in the courts.

The vicious tendency of hearsay evidence in election cases needs no demonstration. An unlawful vote may be cast for one party and then upon the unsworn statement of the voter it may be deducted from the other party.

And we deny that the weight of authority is in favor of the admission of this class of testimony. On the contrary, we affirm that the overwhelming weight of authority supports the view which we have taken. For the sake of brevity here we reserve our review of the precedents, which we will present to the House in due time.

The presumption is that all votes cast are lawful. The benefit of all doubts as to their legality, by all the precedents, is given to the voters. If we had excluded a sufficient number of these 52 votes to elect the sitting member we would have been compelled to give him the benefit of all doubts, and in addition to take from the contestant votes about his right to which we have no doubt at all.

In conclusion we will add that there were 5 votes excluded by the judges of election which we think should be counted for the sitting member; but there were 5 illegal votes shown to have been cast for him which ought to be rejected.

We recommend the adoption of the following resolution:

Resolved, That William McKinley, jr., was not elected a member of the Forty-eighth Congress, and is not entitled to a seat in this House.

Resolved, That Jonathan H. Wallace was elected a member of the Forty-eighth Congress, and is entitled to a seat in this House.

Mr. A. A. RANNEY, by leave of the Committee on Elections, presents the following report in behalf of the minority in the case of Jonathan H. Wallace *vs.* William McKinley, jr.:

The learned chairman of the committee has prepared and shown to us the report which he proposes to make to the House in behalf of the six members who constituted the majority, voting in favor of the resolutions appended thereto, as against five other members voting otherwise. It is to be regretted that this case proceeded to a vote in committee during the necessary and enforced absence of four of its members. The minority feel it to be their duty not only to dissent from the majority report and its conclusions but to assail it as failing to present the case fully and properly for the determination of the House.

In our judgment the object of a report should be to set forth all of the controverted issues of law and fact, with the substance of the evidence on which they rest, and not simply the general decision of the majority, as though their conclusion was final and not subject to revision. We shall therefore not only combat the conclusion of the so-called majority, both upon the issues of law and fact involved, but endeavor, at the expense of brevity, to present more fully the issues and the evidence, so as to enable the House to form an intelligent judgment of their own. Both parties contesting and the public have a right to that judgment.

The sitting member was declared elected by the State canvassing board, consisting of the governor, the attorney-general (now a member of the supreme court commission), and the secretary of state, he being found, upon the returns made to them, to have been chosen by a plurality of 8 votes. They had but a ministerial duty to perform, and that was simply to sum up the figures from the returns, if made in conformity to law, from the several counties composing the district. These counties consisted of Stark, Carroll, Columbiana, and Mahoning. The returns from them, through certified copies furnished by the secretary of state, have been put in evidence by each party contesting, and are made a part of the printed record. Had the State board examined more carefully the returns from Carroll County, they would have seen, what is perfectly apparent, that there was an error of 10 votes in favor of contestant, in the footing of one column of figures giving the votes for him in the several townships composing that county. (Record, pages 44, 45, 46.)

The tabulated statement on page 46 is required by law and made a substantial and an essential part of the returns. Had they seen this manifest error it would have been their duty, and they would doubtless have corrected the same, and declared contestee's majority to have been 18 instead of 8. We have done that, and the examination starts with a majority of 18, as shown by the official county returns transmitted to the secretary of state.

It has been urged by contestant that the error in the returns from Carroll County consisted not in the footing but in the statement of the votes in the third item of the column of votes for contestant. Whatever may be the fact it is sufficient to say that there is no such error apparent, and no competent and sufficient evidence adduced to prove the assertion and contradict the copies of the returns contained in the record. We should regret the necessity of depriving the contestant of the benefit of these 10 votes if there was in fact a clerical error of the kind asserted. But we can only go by the record evidence before us. Contestant at the hearing proposed to get evidence to sustain his assertion, but he has furnished nothing which is adequate to that end, nor asked further time, which, if asked, would doubtless have been cheerfully accorded to him.

It is alleged, and the majority report seems to hold, that the State board ought to have found that the 23 other votes returned from Columbiana County as cast for other persons than the contestant were in fact cast and intended by the electors to be cast for him. The majority report goes so far as to say that the certificate of election ought to have been issued to the contestant on this account, and proceeds to treat him in advance as duly elected upon the final returns alone. Nothing, in our judgment, can be more clearly erroneous than this finding and statement. It is against every principle and rule of law and all precedent. It can not be justly denied that under the laws of Ohio the State board are merely ministerial officers invested with no power to meet the parties and hear evidence, and had they attempted to do it it would have been a clear violation of duty. The precinct officers (the judges of election) had presumably counted the votes in question as cast for different persons, and they had been so returned to the county canvassers, and by them in turn to the State board. The State board had no right or authority to assume that votes for John H. Wallace, Major Wallace, Wallace, W. H. Wallace, W. W. Wallace, Maj. Wallace, and returned as if for different persons, were in fact intended for Jonathan H. Wallace. The State board had no legal authority whatever to hear evidence and determine that issue of fact. If they had they should not have stopped there, but proceeded to hear other controverted issues of fact.

The board followed the rule uniformly laid down in the decided cases. (McCrary on Elections, sections 211, 81, 82, 83; 27 Barb., 77; 25 Illinois, 328; 4 Wisconsin, 779; 10 Iowa, 212; 22 Missouri, 224; Clark *vs.* Board, &c., 126 Massachusetts, 282; 64 Maine, 596; 71 Maine, 371; 59 Indiana, 152.)

No authority to the contrary can be found, except in cases where the statutes gave the board greater authority than do the statutes of Ohio. The House can go behind the returns and hear evidence, and get at the facts, which the State board had no power to do.

In this investigation, therefore, we are to assume that contestee rightfully obtained his certificate, and that he has a *prima facie* title to the seat, with all of the usual presumptions that attach to the same. It is incumbent upon the contestant to overthrow that title and right. If, in attempting to do so, he shows, or it appears otherwise, that contestee got more votes than were counted and returned for him, those must be overcome also. If the evidence nullifies any of the votes counted and returned for contestant, he can not have the benefit of them in maintaining his claim of a majority. It is erroneous to assume that the burden shifts from the contestant to the contestee, by proving one item of his claim, which alone considered might change the result.

We do not hesitate to say in advance, from a most careful and painstaking examination of all the case, that it is capable of demonstration, upon the evidence of witnesses apparently of an unquestionable character, the credibility of which has not been questioned by contestant, that contestee was duly chosen by a decided majority. And we shall proceed to show it in a way that will enable the House to verify or refute what we have to say, asking no member to take our mere assertion. The case, as presented to the committee on the record, and the briefs of counsel start with the concession on the part of the contestant, upon unmistakable evidence, that there were 4 votes cast for contestee which were not counted and returned for him, to wit, 1 ballot for "Kinley" proved to have been intended for him by the voter himself; 1 ballot by Orlando Brown; 1 called the Hune ballot, in Centre Township, and another in Austintown Township. (Contestant's brief, page 68.) Contestant also concedes in said brief, on same page, upon irrefragable proof, 2 votes which are to be deducted from his own vote, to wit, those of Frederick Ott and Thomas Black. To start with them contestee has, upon the record of the returns, 18 majority, the 4 votes proved and conceded making 22 majority, and this, increased to 24 by the conceded deduction of 2 votes from the official count for contestant.

The proofs established beyond all reasonable doubt that contestee is entitled to have counted for him 11 votes more than contestant concedes to him; and, if so, contestant must overcome these also before he can ask to have him unseated. The majority report seems to brush aside this claim with hardly a passing notice, or to ignore it altogether. We shall therefore set it forth with some detail of evidence and treatment.

The testimony as to George W. Shrimp clearly shows that he was a voter of Paris Township, Minerva precinct; that he offered to vote, but was challenged, then sworn, and by his testimony established his right to vote. His vote was refused. That he had a Republican ticket with McKinley's name, which he tendered and offered to vote. Afterward he was recalled by the judges, and told he must bring Yant, with whom he lived, to corroborate his own evidence. This the judges had no right to require of him. Yant had been to the polls and returned to his farm, two miles away. Shrimp had no power or means to bring him back. He had already shown his right to vote, and there was no testimony against it.

In Bell *vs.* Snyder, election cases, 1875, 1876, page 251, it was held that where a person clearly entitled to vote offers his ballot at the proper time and place and to the proper officer the same should be counted, although rejected by the election officers. (McCrary on Elections, second edition, section 530.) (George W. Shrimp, record, page 317; C. K. Yant, page 316; D. C. Chaddick, page 319; T. J. Perdue, page 321; T. J. Roach, page 321.)

In the sixth ward of Canton it appears that a ballot having Mr. Wallace's name printed on for Congress, with Mr. McKinley's name written under it, was not counted for either candidate for Congress. The contestee first undertook to open the box, but it had been kept in such manner that no reliance could be placed upon the identity of its contents. The great weight of the testimony shows that there was such a vote polled in said ward and not counted. Three witnesses, apparently of the highest character for integrity, swear positively that there was such a ballot at this poll. Rauch, a Democrat, admits that there was some such ballot, but thinks it was for some other office. Howenstine, also a Democrat, says there was a ticket so scratched, but whether for Congress he did not know.

The decided weight of the testimony is that there was such a ballot uncounted. (E. M. Grimes, rec., page 365; A. Howenstine, pages 370–467; G. Rex, page 390; J. Dine, page 392; J. W. Stimmel, page 394; J. P. Rauch, page 463.)

SIX VOTES CAST FOR CONTESTEE, BUT NOT COUNTED, IN BUTLER TOWNSHIP, COLUMBIANA COUNTY.

The ballot-box in Butler Township was opened and the ballots recounted; the ballots were identified fully, and are in evidence as exhibits, and the facts as to this township are clearly established, with no conflict whatever in the testimony.

The proof shows that on the morning of the election held October 10, 1882, there were no Republican tickets at the polls, or to be obtained by voters, except such as had been obliterated by scratching off the name of Mr. McKinley and writing in the name of Mr. Wallace; that this condition of affairs continued until about 10 o'clock, when a fresh supply of clean tickets was obtained. Meantime a number of voters came to the polls who desired to vote the Republican ticket straight, including Mr. McKinley for Congress, and many of these, being unable to wait until clean tickets could be obtained, undertook to erase the scratches on Mr. McKinley's name and the name of Mr. Wallace on these altered tickets with a rubber eraser, and voted them, intending to vote for Mr. McKinley.

The erasing of the scratches and of Mr. Wallace's name with the rubber left the tickets in some instances in a somewhat blurred condition, and the proof shows that these tickets, when at all blurred, were not counted for Mr. McKinley.

The recount, made in daylight, instead of by the imperfect light of indifferent lamps, as on the night of the election, when the original count was made, showed, very clearly, two more of the ballots in question than had been counted for Mr. McKinley were intended for him, the efforts to obliterate the pencil-marks being quite apparent, and the marks being so obliterated as to leave no possible question as to the intention of the voters to cast their ballots for him.

Four other ballots were found as to which there might be some question but for the testimony of the witnesses, who either identify them as the ballots which they voted, intending to vote for Mr. McKinley, or show that they voted ballots intended for him, which were at least as much defaced as the ballots in question.

There was returned for Mr. McKinley only 158 votes; the count shows 160 for him, besides the 4 identified ballots, making 6 votes which should be added to Mr. McKinley's poll.

There having been an excess of 1 ballot in the box over the number of votes shown by the poll-book, the last ballot taken from the box, which happened to be for Mr. Wallace, was not counted, under the provisions of the Ohio statute, which requires this. (Revised Statutes of Ohio, 1880, section 2957; 78 Ohio Laws, page 29.)

The integrity of the recount and the preservation of the box and contents according to law are not questioned.

(Hiram Burns, rec., page 129; Joseph Crew, page 130; Hiram Cameren, page 132; Abner Woolmon, page 134; Edwin Holloway, page 135; M. D. Butler, page 136; J. A. Graham, page 137; Phœbe Crew, page 180; Geo. Wolf, page 138; E. Warrington, page 143; Lindley Tomlinson, page 145; Albert Warrington, page 145; Ezra C. Galbreath, page 147; John Butler, jr., page 147; Robert Ellison, page 148; Murdock Jehu, page 137; T. B. Quin, page 447; B. F. Miller, page 448; L. Hoopes, page 453.)

A BALLOT WITH M'KINLEY WRITTEN, WALLACE NOT SCRATCHED.

The ballot shown to have been voted in Salem Township, Washingtonville precinct, and not counted, was a regular Democratic ticket, with Mr. McKinley's name written in full under the name of Mr. Wallace as a candidate for Congress, the name of Mr. Wallace not, however, being scratched. The writing should prevail, and the ticket not having been counted, should be added to Mr. McKinley's poll.

(W. W. Forney, rec., page 174; Henry Bixler, page 174; Lewis Herman, page 175; Z. Tetlow, jr., page 175.)

AUSTINTOWN TOWNSHIP RECOUNT.

A recount of the ballots shows that Mr. McKinley received 201 votes, instead of 199, as returned for him.

The ballot-box and key were properly kept. The recount was actually made, as appears by the testimony of Mr. Evans, by the counsel for both parties, acting with the officers of election. There can be no question as to its correctness. These two votes must be added to Mr. McKinley's return. It also appears that two tickets were in the box not counted at either the election or the recount. On one of them the name of Mr. McKinley appears written under the printed name of Mr. Wallace. Upon the other the name of Mr. Wallace appears in a like manner, written under the printed name of Mr. McKinley. Neither of the printed names is erased. These ballots should each be counted for the person having the written name, and do not affect the result.

It will be seen that the majority report recognizes the recount here as reliable, and finds 1 more vote in it for contestant and 1 more vote for contestee, being ballots last above referred to. It should have gone further and added the other 2 votes found in the box. The integrity of the recount is nowhere questioned. That these other 2 votes should be counted for contestee is nowhere controverted in the testimony. The confession of the majority that the recount is good for any purpose must render it good for all it discloses, and not a part only.

ALLEGED ILLEGAL VOTES FOR CONTESTEE.*

We now come to contestant's claim as to illegal votes having been cast for contestee, and which he insists upon having deducted from the vote of the latter. The notice of contest sets up any amount of grave charges of fraud, corruption, and illegal use of money, on the part of the contestee, to obtain illegal votes. We feel bound to say that the charges thus deliberately made are not only not proved, but the evidence leaves them absolutely without foundation. Contestant's counsel apparently abandoned these charges, and has presented no argument thereon. The contestee's counsel has, in the brief, very properly uttered what is justified from the record, and which we fully indorse after examining the same:

"The election in this district has been most thoroughly investigated. On behalf of contestant much time has been devoted, with all the appliances that the law affords, to the search for irregularities and illegalities on the part of the contestee, his friends, and supporters, and it is a conspicuous and most gratifying fact that after all the scrutiny, notwithstanding this wholesale charge of corruption, no taint or fraud has attached to a single ballot, no improper use in money has anywhere appeared, nor is there anything in all this record that in the slightest degree reflects upon the honor or integrity of contestee or any of his friends."

The only illegal votes claimed on the proofs to have been cast for contestee are 11 in number, given in contestant's brief (page 68). The learned chairman, in his report, has not done the House the favor, nor the contestee the justice, to specify a single one of them which he finds to be established in proof, saying generally that about as many of them are proved as are shown against contestant out of the 55 alleged against him. This we deem a partial if not a very unfair treatment of the subject. The report speaks of each individual vote turning on peculiar facts and constituting a distinct litigation. This being so, each one should be treated and the issue presented to the House, so that justice may be done. We do not propose to brush aside such cases and cover them with a general assertion and ask the House to adopt that assertion as conclusive. We invoke the attention of the House to the evidence and the facts:

CARROLL COUNTY.

Charles Hardesty: It is claimed that Charles Hardesty voted for Mr. McKinley in Centre Township; that he was a non-resident of the county at the time. There is some proof tending to show that Hardesty did not keep his family in Carroll County. He traveled about from place to place with a sawing-machine. There is no testimony to show how said Hardesty voted. He is not produced. No declaration of his is offered. It is not shown how or where he got his ticket. The testimony shows only that the witness "never heard him accused of being anything but a Republican." Upon this alone he is claimed to have voted for contestee.

(J. J. Bricker, rec., page 74; J. B. Hollar, rec., page 77.)

*Only 11 claimed.

CENTRE TOWNSHIP, COLUMBIANA COUNTY.

Mr. Stratton: As to Stratton, it is shown that he is an inmate of the infirmary, registered as insane. There is no evidence that he voted, except that his name appears upon the poll-book, and no evidence at all as to how he voted. Nothing showing with which party he usually voted.

(W. Monaghan, rec., page 70; C. D. Filson, pages 65-67; C. Miller, page 68.)

Thomas Burson: The testimony is equally uncertain as to Burson. There is no proof as to how he voted. We need therefore give his case no further consideration.

(C. D. Filson, rec., pages 65-67; W. Monaghan, page 70.)

Lewis H. Coulson: The only evidence as to how he voted is that the superintendent of the infirmary was a Republican. It appears that both parties sent to the infirmary and got inmates as voters, and it does not appear which party got those persons in question.

(C. D. Filson, rec., page 68; —— Miller, page 68.)

Rev. S. Collins: The testimony in relation to Rev. Samuel Collins, who voted for the contestee in Unity Township, East Palestine precinct, shows that the voter was a minister of the United Presbyterian Church and a resident of said precinct, having formerly been in charge of a congregation there, resigned, and went, temporarily, for the purpose of endeavoring to establish a mission of his church under the authority of the presbytery of Philadelphia, having jurisdiction over Washington City. He dissolved his connection with the presbytery of Cleveland and became connected with the presbytery of Philadelphia. This the testimony shows did not involve any change of residence, as the ministers of this church may live in one ecclesiastical jurisdiction and be a member of another in which his charge for the time being is situate. The testimony shows that his leaving East Palestine was temporary; that he regarded East Palestine as his home, and intended to return to it whenever absent therefrom. He was back and forth. He was clearly entitled to vote in East Palestine. (Rev. Stats. Ohio, sec. 2946; rec., page 194; Cyrus Rothwell, page 34; T. W. Winter, page 36; F. Goble, page 37; J. Britton, page 38.)

James C. Stanley: In the testimony taken on behalf of the contestee in Butler Township, Columbiana County, as will hereafter appear, it was shown that Stanley's vote was not counted for the contestee.

On cross-examination the counsel for contestant sought to show that said Stanley was under guardianship and incompetent to vote. The testimony, however, clearly shows that he is a competent voter. He had sufficient understanding to acquire a common-school education and engage in small business transactions for himself. He has always been recognized as a legal voter. He is neither an idiot nor a lunatic, and therefore not excluded from the right of suffrage by the laws of Ohio; and his vote should be counted for Mr. McKinley, as one of the four hereinbefore shown and added from the recount in Butler Township.

(A. Warrington, record, page 145; E. Warrington, record, page, 143; L. Tomlinson, record page, 145; R. Elyson, record, pages 148-150; E. C. Galbraeth, record page 147.)

Phillip Simon: As to the vote of Phillip Simon, in Canfield Township, the testimony shows that he had gone to an adjoining township, to the house of his son-in-law, for temporary purposes only. There can be no doubt he was a legal voter. (Record, page 79.)

The vote of Mark Green for contestee is assailed on the strength of a deposition of his own (rec., page 67). The evidence of Mr. Filson (rec., page 66), a director in the infirmary, shows that he was not an idiot, but an epileptic, with sufficient intelligence to entitle him to vote (rec., page 68). He was rather low in intelligence and capacity, but not so much so as to sustain the claim made. (McCrary, sec. 50.) He had been in the habit of voting right along each year.

Elias Medley: The evidence fails to invalidate his vote; is utterly insufficient. (Rec., 92, 93, 94.)

C. C. Douglas' vote is conceded conditionally by contestee in his brief, on the ground of residence, under a claim that if rejected several votes cast for contestant should be deducted on same ground. In the list of illegal votes cast for contestant there are at least two votes which should be rejected if his is.

CONTESTEE'S CLAIM AS TO ILLEGAL VOTES CAST FOR CONTESTANT.

We are surprised and amazed at the way in which the majority report has treated the list of 55 votes, claimed by contestee to have been illegally cast and counted for contestant. The policy seems to be to turn them aside without any special examination or treatment, giving the House no opportunity to test or verify the claims made. The report does not specify what ones, or how many, he allows as proved, or even give the names of the "seven or eight" allowed. If we knew what ones the seven or eight consist of, we might be spared the necessity of examining same, and the evidence which is adduced to substantiate them. The contestant in his brief distinctly admits two of them, to wit, Mr. Ott and Thomas Black, and deducts them. He admits 8 others as illegal, controverting only the proof as to how they voted. (Brief, 52, 56.)

We will incorporate first the list of this class of votes, and then proceed to set before the House in detail, to the end that our views may be tested and our conclusions in relation thereto verified.

Illegal and miscounted votes for contestant claimed as follows:

"J. Wales," Washington tp., Stark Co		1
Jonathan H. Walser, Osnaburg tp., Stark Co		1
Charles Ducatry	Stark Co. infirmary. Voted at wrong tp.	1
Michael Stimler		1
Bartholomew Waldecker		1
Joseph Frickert		1
John Rigler	Wrong wards, Canton, Stark County.	1
Frank Walters		1
Daniel Winkleman		1
Celestine Jordan		1
Martin Zilch		1
John Moriarity, Alliance, Stark Co		1
Joseph Bittaker, Sugar Creek tp., Stark Co		1
Frederick Ott, Canton, Stark Co. (admitted)		1
Herschel Urmson, Knox tp., Columbiana Co		1
Lewis Little, Alliance, Stark Co		1
Ed. Marks, Canton, Stark Co		1
James Benson, Lawrence tp., Stark Co		1
Edward Yaste, Massillon, Stark Co		1
Nicholas Dicks		1
William H. Ohl, Lake tp., Stark Co		1
David Spring, Bethlehem tp...do		1
E. W. Shaffer...do		1
Sam'l Thompson, Centre tp., Columbiana Co		1
Michael Higgins, Columbiana Co		1
William Brown, Alliance, Stark Co		1
Harvey Sloan, Salineville, Columbiana Co		1
Peter J. Collins...do...do		1
John Bieber, Beaver tp., Mahoning Co		1
Frank Allison, Liverpool tp., Columbiana Co		1
Joseph Hanlon...do		1
Oscar Bowles...do		1
Hugh McCurran...do		1
James McCurran...do		1
Milton Heckathorn...do		1
John A. O'Neill...do		1
James Sypher, Liverpool tp., Columbiana Co		1
Thomas Black...do		1
Charles Huhn...do		1
William Ward...do		1
Fred'k Mayer...do		1
Enoch Bradshaw...do		1
Owen Tigh...do		1
Peter Helms...do		1
William Henry...do		1
William Leibscher...do		1
Henry Tasker...do		1
John Rumberger...do		1
J. P. Sterling...do		1
Robert Figely, St. Clair tp...do		1
George W. Orr...do...do		1
Frank Lucas, Alliance, Stark County		1
—— Wallace, Beaver tp., Mahoning Co		1
Harvey Shiltz, Perry tp., Carroll Co		1
Frank Kirby...do...do		1

"J. WALES" BALLOT.

In Mount Union precinct, Washington Township, a ballot was cast for "J. Wales," which was counted and returned for Mr. Wallace. The name is not that of the contestant by any possible manner of spelling. It is a well-known name in Stark County, the proof showing that a gentleman of this surname was once a candidate for Congress in the district. To count the vote for him contradicts the ballot. We shall deal with this subject in another connection.

(T. Rakeshaw, record, page 372; S. D. Brosius, page 373; H. Antrim, page 377; J. Watson, page 375.)

This was an independent voter.

"WALSER" BALLOT.

In Osnaburgh precinct of Osnaburgh Township a ballot for Jonathan H. Walser was counted and returned for Mr. Wallace. The proof shows that there was a John Walser in Stark County, a prominent Democrat and candidate for office. In any event, the name Walser is not that of the contestant. If intended for him it was a mistake of the voter which can not be corrected.

(A. Smith, record, page 361; M. Miller, page 363; G. Holben, page 364; B. F. Sullivan, page 365.)

There is no evidence adduced from which the intention of the voter in the last two cases can be inferred, save the ballots themselves and the mere fact that contestant was one of the candidates.

STARK COUNTY INFIRMARY VOTES.

It appears in evidence that Charles Ducatry, M. Stimler, B. Waldecker, and Joseph Frickert were inmates of the Stark County infirmary, situate in Plain Township. Ducatry voted at Louisville, Nimishillen Township, Stimler voted in Washington Township, Waldecker and Frickert in Canton Township, and all voted for Mr. Wallace.

An inmate of a county infirmary who has adopted the township in which the infirmary is situated as his place of residence is a resident and voter in the township in which the infirmary is situated. (Sturgeon *vs.* Korte, 34 Ohio S., 525.)

Each of these persons states unequivocally that he regarded the poor-house as his home; had no other home, and never expected to leave the infirmary. They voted in the township to which they were taken to vote because they were told to do so. Frickert said he voted in Canton because he got his papers there. None of them, owing to poverty, great age, and infirmity, had any expectation of living elsewhere. They had a right to vote in Plain Township and nowhere else.

(C. Ducatry, record, page 411; M. Stimler, page 413; B. Waldecker, page 414; Joseph Frickert, page 415.)

VOTERS IN WRONG WARDS IN CANTON, STARK COUNTY.

John Rigler, Frank Walters, M. Zilch, Daniel Winkleman, Celestin Jourdain, are proved to have voted in the wrong wards in Canton. They each admit this, and say upon oath that they voted for Mr. Wallace.

(John Rigler, record, page 381; Frank Walters, page 382; M. Zilch, page 385; D. Winkleman, page 387; C. Jourdain, page 388; J. H. Holl, page 389.)

It is expressly provided by the constitution of the State of Ohio, article 5, section 1, that to be an elector requires residence in the State for one year and of the "county, township, or ward in which he resides such time as may be provided by law."

Section 2945, Revised Statutes of Ohio, 1880, provides that—

"No person shall be permitted to vote at any election unless he shall have been a resident of the State for one year, resident of the county for thirty days, and resident of the township, village, or ward of a city or village for twenty days next preceding the election at which he offers to vote, except where he is the head of a family and has resided in the State and in the county in which such township, village, or ward of a city or village is situate the length of time required to entitle a person to vote under the provisions of this title, and shall *bona fide* remove with his family from one ward to any other ward in such city or village, or from a ward of such city or village to a township or village in the same county, or from a township or village to a ward of a city or village in the same county, or from one township to another in the same county, in which cases such person shall have the right to vote in such township, village, or ward of a city or village without having resided therein the length of time above described to entitle a person to vote."

Moreover, it is made a crime by the laws of Ohio to vote in a ward or election precinct in which the voter has not actually resided for more than twenty days preceding the election. (Revised Statutes of Ohio, 1880, section 7047.)

This precise question was passed upon in the case of Vallandigham *vs.* Campbell, Contested-Election Cases, 1834-1865, 232:

"Of non-residents of the ward or township, 2 votes are disputed by the returned member and none by the contestant. It is not denied that both of these voters were legal electors of the county; but having voted (though not fraudulently, but by mistake) out of their proper wards, the undersigned find the votes illegal, and deduct them from the poll of the contestant." (Report Vallandigham *vs.* Campbell, *supra*. See also Cushing's Law and Pr. Leg. Assemb., 9th ed., section 24. Cook *vs.* Cutts, 47th Congress; Wigginton *vs.* Pacheco, Contested Elections, 1876.)

The same is true of John Moriarty, who voted in the wrong precinct in Alliance, Stark County. (Record, page 400; J. W. Coulter, page 401.)

Jos. Bittaker: He voted in Sugar Creek Township, for Mr. Wallace. The testimony shows that he resided with his father in Franklin Township, Tuscarawas County. He recognized the fact that he had no right to vote in Sugar Creek Township, and said he would offer to vote, and if challenged would go away.

The evidence is that he was a Democrat in politics. It is not denied by contestant in his brief that he was a Democrat, and no question is made apparently about his having voted the Democratic ticket.

(A. A. Hay, record, page 378; N. Bose, page 380; I. Welty, page 380; A. Hollenger, page 405; Mary Dorsey, page 407; L. McKinney, page 460.)

KNOX TOWNSHIP, COLUMBIANA COUNTY.

Herschel Urmson voted at the poll in Knox Township, voted the Democratic ticket, and for contestant for member of Congress. He was at the date of that

election only seven days over 20 years of age. This vote was illegal. The case is established by his own testimony. He says distinctly that he voted for Mr. Wallace, and the testimony established this.

(H. Urmson, record, page 338; Eliza Urmson, record, page 339. Vallandigham *vs.* Campbell, Elect. Cases, 1834–1865, page 233, and cases cited.)

Lewis Little: Little voted for Mr. Wallace, in Alliance. He had a family in Canton consisting of a wife and four children. Although he seems not to have been supporting his family, and his wife afterward obtained a divorce, neither his own nor any other testimony shows that he had acquired a residence at Alliance. He was temporarily working there. When he had finished his work at Alliance he went to Columbiana County.

(Jesse Dixon, record, page 398; T. C. Ripley, page 400; L. Little, page 457.)

Ed. Marks: He voted for Mr. Wallace in the fifth ward of Canton. He had a wife and child at Wooster, Wayne County. He frequently went to his home in Wooster. Lived with his wife there, and contributed to the support of wife and child. The Ohio statutes (Rev. Stats., Ohio, section 2946) provides:

"The place where the wife of a married man resides shall be considered and held to be his residence, except when they have separated."

There was no separation. He was a resident of Wooster, and he should have voted there.

(Maggie Marks, record, page 439; John Nichols, page 421; John J. Clark, page 421; Ed. Marks, page 462.)

James Benson: He voted for Mr. Wallace, in Lawrence Township. He had a family in Youngstown, Mahoning County. He told the witness Mossop that his home was in Youngstown; that he had a wife and two children there, and would go there when he returned from Colorado. He left Lawrence shortly after the election and has not returned. His legal residence was in Youngstown, and he should have voted there.

(John Johnson, record, page 428; John Pollock, page 429; John Mossop, page 408; Jas. Brown, page 415; Elizabeth Benson, page 344.)

E. Yaste: Was not a resident of Ohio for a year previous to the election. He had been away more than two years. His own testimony shows that where he worked he intended to stay, if his work proved agreeable and profitable. He had no property or family in Ohio. He stands in the precise position of laborers on the railroad whose votes were in dispute in Cessna *vs.* Myers, Contested-Election Cases, 1871–1876, pages 61–63. The committee unanimously reported that such persons had established a residence where they were at work.

"If a person has actually removed to another place, with an intention of remaining there for an indefinite time, and as a place of present domicile, it becomes his place of domicile, notwithstanding he has a floating intention to go back at some future period." (Cessna *vs.* Myers, *supra*, page 63.)

He voted for Mr. Wallace.

(E. Yaste, page 473; E. O. Mirwin, page 432; —— Hose, page 432.)

N. Dickes: It is claimed that Dickes was not a resident of Ohio for a year preceding the election. He returned to Ohio about September 1, 1882. He had been living in various cities for about three years, working at his trade. He evidently had located in these cities, and had his residence in them while living at such places. He had no property at Canton. (Record, page 344.)

Until he had been in Ohio for one year he was not a legal voter.

William Ohl, it is admitted, was an alien. He claims to have been naturalized at Akron, Summit County, Ohio, in the probate court, before Judge Marvin. A careful search shows no record of any such naturalization. He told the witnesses Shanafelt and Smith that he had burned his papers. He told Shanafelt that he got mad one Sunday and threw them in the stove. He swears the papers burned in Stripe's fire, near Greentown, in August, 1879. Brumbaugh claims to have seen them in the spring of 1880. At least papers were shown then that Ohl claimed were his naturalization papers. The proof shows that he was never naturalized. If he obtained any papers it was probably the certificate of his declaration of intention to become a citizen. If he ever had papers, they were burnt by him intentionally. The Ohio statute only dispenses with the production of the original certificate when it is shown that against the will of the voter it is lost or destroyed, or beyond his power to produce. (Sec. 2940, Rev. Stat. of Ohio, 1880.)

(N. W. Goodhue, record, page 410; L. E. Smith, page 416; O. P. Shanafelt, page 418; W. Ohl, page 464; John Gindling, page 478; Jesse Rinehart, page 467; H. Brumbaugh, page 478.)

D. Spring: The testimony shows that David Spring was a resident of Canton Township and voted for Mr. Wallace in Bethlehem Township. His family was in Canton. He had no residence in Bethlehem Township. On the morning of the election he was told to go home to Canton to vote. The judges were of opinion that he ought to vote in Canton, but allowed him to vote if he would "swear in" his ballot.

He was sworn at the election and said, "I make my home wherever I am."

(G. G. Barnett, record, page 352; A. Garver, page 355; F. Corl, page 357; L. Sauer, page 475.)

E. W. Shafer: The vote of E. W. Shafer was cast at Bethlehem Township for Mr. Wallace, while said Shafer's residence was in Beach City, Sugar Creek Township; at least he had acquired no residence in Bethlehem Township. If the testimony offered by the contestee left any doubt as to Shafer's non-residence in Bethlehem, it is clearly established by the testimony of Julius Hugg, called by contestant, who swears that he had come into the township merely to do a job of wood-carving for said Hugg. He was brought there for that purpose by Hugg. As soon as he finished this work he left the township and returned to Beach City, as it was understood he should when he was employed.

Shafer was at Massillon when the rebutting testimony was taken for the contestant. He was regularly subpœnaed, but was discharged by the contestant's counsel without testifying. This raises a strong presumption adverse to contestant.

(G. G. Barnett, record, page 352; A. Garver, page 355; F. Corl, page 357; A. Crites, page 380; C. W. Sprankle, page 381; J. Hugg, page 470.)

COLUMBIANA COUNTY, CENTRE TOWNSHIP—SAMUEL THOMPSON'S VOTE.

Samuel Thompson was a Democrat, and always voted that ticket; he voted at the election in this township, and unquestionably voted for Mr. Wallace. He is an inmate of the county infirmary, and registered there as an idiot, and if the proof shows that he is an idiot under the constitution of the State he is not a legal elector. (Constitution of Ohio, article 5, section 6.)

(Thomas H. White, record, page 163; Craig D. Filson, record, page 165; William Davidson, record, page 168; Horace P. Hessin, record, page 170; A. J. Cowan, record, page 443; James Brubeck, record, page 446.)

Michael Higgins voted at the election in Leetonia precinct. He was an insane person, under guardianship as such, and, his own declarations show, was not of sufficient intelligence to know how he voted. Although there is some conflict in the testimony we do not think there is sufficient evidence to overcome the presumption arising from the inquisition of lunacy and the appointment of the guardian, which is shown.

The only proof of the person for whom he voted is the testimony showing that he came to vote with his fellow railroad-track hands, who were Democrats, was living with his brother, who was a Democrat, and was understood to be a Democrat; but we think the evidence is sufficient on the authority of the case of Vallandigham *vs.* Campbell, *supra*, and the authorities there cited. (See pages 233, 234.)

(P. Higgins, record, page 176; J. L. Truesdale, page 178; John Quinly, page 451.)

COLUMBIANA COUNTY—SAINT CLAIR TOWNSHIP.

Figley and Orr: Robert Figley and George W. Orr voted for the contestant at the poll in Saint Clair Township. Neither of them had been residents of the State for the year preceding the election.

Both of them had resided in the township, and both had moved with their families into Pennsylvania, and resided there for some time, and their return to the State was less than one year before the election.

They sold out their homes and property in Ohio, and although they claim to have intended to return, their admissions, which are in evidence, show differently, and the cross-examination of Figley shows, as we think, that he formed the intention to return after the death of his wife in Pennsylvania.

(George W. Bannon, record, page 241; J. M. Mehaffie, page 242; Robert Erwin, page 243; Alexander H. McCoy, page 244; C. M. McCoy, page 245; Robert Figley, page 454; George W. Orr, page 468; H. R. Hill, page 215.)

William Brown: He voted at Alliance, in Lexington Township, for Mr. Wallace. He was not at the time a resident of Lexington Township, but resided in Butler Township, Columbiana County. He was on a visit at the time to his son, Joseph Brown, who resided at Alliance, and on his return home declared that he voted at Alliance for Mr. Wallace. He was a Democrat, and a housekeeper in Butler Township at the time of the election, and until November following, and his vote should be deducted from the poll of contestant.

(John S. Walker, record, page 139; Sarah E. Walker, page 141; B. F. Christ, page 142.)

Harvey Sloan voted in Washington Township for contestant. If he had any residence in Ohio it was New Lisbon, and not Salineville. (Record, pages 124, 125.)

The evidence as to how he voted is that he was always a Democrat and told how he voted.

Peter J. Collins stands on same ground. He was a Democrat in politics. (Record, pages 124 to 127.)

John Beiber: The claim as to him is allowed, he being an illegal voter. How he voted is shown by an admission made to two men of high character under an assurance that he should not be prosecuted for voting illegally. (Record, page 345.)

LIVERPOOL TOWNSHIP, COLUMBIANIA COUNTY.

In this township the bulk of the illegal voting seems to have been carried on, and we will treat the several cases in order.

As to Oscar Boles, Hugh McCurran, Frank Allison, James McCurran, and Joseph Hanlan, the following is a part of the testimony concerning them.

E. M. Pearson, on page 307, testifies:

"Q. Please state your name, age, residence, and occupation?

"A. My name is Edward M. Pearson; my age is 34 years; I reside at Wheeling, W. Va.; am a manufacturer of pottery; am the manager of the Wheeling Pottery Company.

"Q. Do you know Joseph Hanlan, Oscar Boles, Hugh McCurran, Frank Allison, Frank Queen, and James McCurran, or any of them?

"A. Yes; all of them.

"Q. Where did they reside, if you know, on the 10th day of October, 1882, and in whose employ were they?

"A. I presume that they all resided in Wheeling; I know that they worked for us at the pottery.

"(The foregoing answer objected to as incompetent.)

"Q. Do you know where they lived at that time?

"(Objected to as leading and incompetent.)

"A. I can't say the house where they lived, or anything of that kind; I know that they engaged with me to work for me. I am not watching the workmen to know where they lived.

"Q. State what you know as to where they have been since that time.

"(Objected to as incompetent.)

"A. They have been in Wheeling.

"Q. In whose employ?

"A. Of the Wheeling Pottery Company.

"Q. Do you know James Larkins?

"A. Yes, sir.

"Q. In whose employ was he on the 10th of October last?

"A. Of the Wheeling Pottery Company.

"Q. State, if you know, whether he was away from Wheeling on that day?

"A. He was in Wheeling on that day.

"Cross-examined by counsel for contestant:

"Q. The James Larkins you speak of is the gentleman who was on the witness stand this morning, is he not?

"A. Yes, sir.

"E. M. PEARSON."

James Larkins, on page 304, testifies:

"Q. Do you know Joseph Hanlan, Oscar Bates, Hugh McCurran, Frank Allison, Frank Green, and James McCurran?

"A. Yes, sir.

"Q. Where did they reside during the month of October, 1882?

"A. In Wheeling, I believe.

"(The foregoing question and answer objected to as leading and incompetent.)

"Q. Do you know the politics of said persons, or either of them, at said time?

"(Objected to as incompetent.)

"A. I believe they were all Democrats.

"Q. State what, if anything, you know as to said persons, or either of them, leaving Wheeling on or about the 10th of October, 1882, where they went to, if they left, and their purpose in going, if you know.

"(Objected to as incompetent.)

"A. They came to East Liverpool to vote on that day.

"Q. Do you know for whom they voted for member of Congress at said election?

"(Objected to as incompetent.)

"A. For Wallace.

"Q. Were you at the polls in Liverpool Township on election day last October?

"A. No, sir.

"Q. Then how do you know that the parties whom you have named in your examination-in-chief voted in Liverpool Township on that day, and that they voted for Wallace there?

"A. Because that was their politics, and that is what I heard them say—one of them especially—before they came up."

M. Heckathorn: He lived at the city of Steubenville, Jefferson County, until four or five days before the election; he had not been in the county of Columbiana for thirty days or Liverpool for twenty days before the election; he admitted that he voted for Mr. Wallace.

(W. H. Vodrey, rec., pages 292–296; Charles Gill, rec., page 246; H. H. Searles, rec., page 282; Alf Day, rec., page 291.)

John A. O'Neil: He had formerly been a resident of Liverpool, and removed to Trenton, N. J., December 10, 1881, with his family, declaring his intention to make that his residence; he returned to East Liverpool March 25, 1882, and voted October 10, 1882; at the election in the spring of 1882 he admitted that he had no vote; he voted for Mr. Wallace; having been less than a year in the State he voted illegally, and his vote must be taken from contestant.

He was a leading Democrat and was distributing Democratic tickets on election day.

(R. Bodon, rec., pages 234-5-6; G. Harrison, rec., page 259; W. L. Thompson, rec., page 260; C. F. Thompson, rec., page 262; W. L. Smith, rec., page 281; J. Hulm, rec., page 278; C. Stewart. rec., page 287; G. Peach, rec., page 305; H. N. Harker, rec., page 298.)

It is conceded by contestant in his brief (pages 52, 56-'7), as the evidence shows, that the following persons, viz, William Leibschuer, Henry Tasker, John Rumberger, J. P. Sterling, Charles Huhn, William Ward, and James Sypher, voted illegally. The proof that they voted for Wallace consists in evidence either that they said they voted the Democratic ticket, or that they were Democrats and said they so voted. William Ward is shown to be a Democrat (record, 250-'1). Thomas Black is conceded by contestant, and has already been allowed as such, as before stated.

Fred. Mayer: He voted for Mr. Wallace at this poll. He had not been in the State a year preceding the election. He came from Trenton, N. J., in April, 1882. After the election he ran away to avoid the consequences of illegal voting. (T. Clinton, record, page 201; C. Gill, record, page 256; G. Hamson, record, page 259; T. H. Arbuckle, record, page 211; H. N. Harker, record, page 298.)

E. Bradshaw: He was a wanderer; he came from Evansville, Ind., in June, 1882, for the purpose of being supported by the striking potters; he had no legal residence in Liverpool; his family was at Trenton, N. J.; he voted for Mr. Wallace illegally. (R. Barlow, rec., page 234; C. Shenkle, rec., page 258; G. Harrison, rec., page 259; J. Rhinehart, rec., page 273; T. Blower, rec., page 290.)

Owen Tigh: He came to the township in March, 1882; he had been there before, but moved to Pittsburgh and other places; his family was at Trenton, N. J.; he had not been in the State a year; his vote was illegally cast for Mr. Wallace; showed his ticket for Wallace, and said he voted it. (R. Bodon, rec., pages 234-'5-'6.)

Peter Helms, Wm. Henry, Wm. Ward: They lived at Steubenville, Jefferson County, Ohio; they came to Liverpool and voted at the election; they were fraudulent and illegal voters; they voted for Mr. Wallace. (Wm. Parks, rec., page 250; H. H. Searls, pages 282, 287.)

Charles Huhn: He lived in Wheeling, W. Va.: he came to East Liverpool on election day and voted there for Mr. Wallace; Huhn voted at Wheeling, W. Va., in January, 1883. In West Virginia the law requires a residence of one year in order to qualify a person to vote. (David Pugh, rec., page 252; R. Whitehead, page 302.)

Frank Lucas: The testimony introduced by the contestant clearly shows that Frank Lucas, voting at the Alliance precinct, was not of legal age, being under 21 years of age at the time of the election, and his vote should therefore be deducted from that of the person for whom it was cast. There is slight testimony indicating that he voted for Mr. McKinley; but, on the contrary, it appears from the testimony of Rachel Succors and G. Q. Freer that he voted for Mr. Wallace. Freer testifies that he took him to the polls, gave him a Republican ticket, and supposed he had voted it, but was informed by those working for Mr. Wallace at the election that he had voted for the contestant, and saw the Republican ticket in his hand after he had voted, and found the same on the floor of the carriage, folded as it was handed to Lucas. Rachel Succors, his mother, testified that immediately on his return from the polls Lucas declared he had voted the Democratic ticket, stating how and why. (Rachel Succors, record pages 82-86; H. Laughlin, record, page 83; H. Adams, record, page 83; G. L. Freer, record, pages 83-87.)

CARROLL COUNTY.

Harvey Shiltz: He voted in Perry Township, Carroll County; was a Democrat, and presumably voted for the contestant. He was the proprietor of a portable saw-mill, traveling around the country from place to place, wherever he could find work for his mill. Was a widower, with one child, who resided at Urichsville, Tuscarawas County, Ohio. He had no home "except his saw-mill," boarding in the neighborhood when it was at work. It does not appear that he ever had a residence in Perry township. (J. Morgan, record, page 324; J. M. Gladden, page 326.)

This concludes our examination of the list of 55 alleged illegal votes, and embraces all which we deem worthy of note.

It is to be observed the following votes depend upon declarations alone as to how the voter voted:

1. John Bieber, Beaver Township, Mahoning County, Ohio. (Record, page 345.)
2. William Leibscheur, Liverpool Township, Columbiana County, Ohio. (Record, pages 234 and 273.)
3. Henry Tasker, Liverpool Township, Columbiana County, Ohio. (Record, pages 205-6-7, 282, and 306.)
4. John Rumberger, Liverpool Township, Columbiana County, Ohio. (Record, pages 248-9, 257, and 274.)
5. Peter Helms, Liverpool Township, Columbiana County, Ohio. (Record, pages 250-1, 253-4, and 282.)
6. William Henry, Liverpool Township, Columbiana County, Ohio. (Record, pages 250-1, 253-4, and 282.)
7. J. P. Sterling, Liverpool Township, Columbiana County, Ohio. (Record, pages 239, 240, 283, and 306-7.)
8. Frank Lucas, Alliance, Stark County, Ohio, whose vote is assailed by contestant (record, pages 82, 86, 83, 83, 87), claimed by contestant to have voted for contestee. As to him there is also other evidence.

The majority report discusses at length, trying to destroy the rule in legislative bodies admitting admissions and declarations of the voters themselves, not on oath, as to how they voted. One might infer from the prominence given to it that the result of this case depended upon it, whereas that is not true.

The question has arisen somewhat frequently in legislative bodies and before the courts of Great Britain and this country, and we apprehend it will not be denied that the English cases and nearly all American cases favor the admissibility of such testimony. (3 McCord, S. C., 232, note; 1 Doug. Election Cases, 67; 6 Doug. Election Cases, 76; 3 Doug. Election Cases, 6; 3 Doug. Election Cases, 129-150; Vallandigham *vs.* Campbell, Dig. Contested Election Cases, 1834-1865, pages 223, 230, 231; S. C., 1 Bartlett, 231; Farlee *vs.* Runk, 1845, 6 Dig. Contested Election Cases, from 1834-1865, page 87; People *vs.* Pease, 27 N. Y., 45-52; 2 Phillips on Ev., Cowen & Hill's notes, page 322; Bell *vs.* Snyder, Dig. Contested Election Cases, 1871-1876, page 248; The New Jersey Case, 1 Bartlett, 19; State *vs.* Olin, 23 Wis., 319, 327; Wigginton *vs.* Pacheco, Dig. Election Cases, 1876-'80, pages 11, 13, 15, 17.)

The only case which we have been able to find intimating the contrary doctrine in the House of Representatives is Newland *vs.* Graham, 1 Bartlett, 5; S. C., Contested Election Cases, 1834-1865, 5. In this case it is true the committee say they deem this class of evidence inadmissible and decline to investigate the votes for the sitting member objected to upon such testimony, but as these votes would not have changed the result arrived at by the committee, the subject seems not to have been carefully considered, and the cases can hardly be entitled to much consideration as against the great weight of authority already cited. The case of Cessna *vs.* Myers, Contest. Elect., 1871-1876, page 60, has been supposed to be authority opposed to the admission of this class of testimony. While the report discusses the question, and it is stated that some of the committee think that such declarations are only admissible when part of the *res gestæ*, and all agree that such evidence should be received with caution, only to be acted on when declarations are clearly proved and in themselves satisfactory (page 65), the committee and the House did consider the testimony and act upon it in deciding the case. So, notwithstanding the discussion of the subject and the expression of the opinion of the member of the committee who framed the report, the case is an authority in favor of the admissibility of such testimony; holding "evidence of hearsay declarations of the voter can only be acted upon when the fact that he voted has been shown by evidence *aliunde*, and the declarations clearly proved and are themselves clear and satisfactory." (Page 67.)

Cook *vs.* Cutts, Forty-seventh Congress, ought to be mentioned, perhaps. What is said on the subject in the report of that case, as the writer of this report knows, was not the result of a decision by the committee. The question was not essential to the determination of the case, but that turned upon other grounds.

This subject was most elaborately discussed in the case of Vallandigham *vs.* Campbell, and the conclusion reached, sanctioned by the House, was that such declarations are admissible.

The report has distinguished names attached to it, such as Mr. LAMAR (now Senator from Mississippi), and ex-Governor J. W. Stevenson, of Kentucky.

This case is cited and approved in People *vs.* Pease, 27 N. Y., page 51.

The doctrine contended for is upheld in State *vs.* Oliver (23 Wis., 319, 327).

The person assailing the right of the voter and charging against him moral turpitude and crime in the unlawful excercise of the franchise should not be compelled to make this alleged dishonest adversary his own witness, thus giving validity to his testimony. The doctrine is well settled that it is not necessary in such cases to first call the voter:

"It was not done in any of the cases decided in the British Parliament. It is not necessary in settlement cases, where the declaration of the parishioner may be given in evidence, and the Supreme Court of the United States has expressly decided that where a witness can not be compelled to answer he need not be called." (1 Greenleaf on Evidence, sec. 175; 6 Peters, 352-367; Vallandigham *vs.* Campbell, *supra.*)

Wigginton *vs.* Pacheco, cases 1876, page 10.

The common-law rule as to hearsay evidence can not be made to apply. If so, it would apply and exclude the evidence just as much after the voter had been called and refused to testify as before.

The suggestion of the chairman of the committee that the rule of admitting the declaration of voters as to how they voted originated in the House in the early cases of contest, when witnesses were summoned and testified personally before the Committee on Elections, in no sense destroys the force or reason for the rule. If competent in one case it must be clearly competent in the other. He fails to state, what is the fact, that the rule has been followed since Congress passed the act governing contested elections; notably in the case of Vallandigham *vs.* Campbell in 1858, and in the very recent case of Wigginton *vs.* Pacheco in 1877, and in other cases. The fact that election cases are tried upon pleadings now instead of upon a memorial can not be justly held to change the rule in question. This does not make the contest any more a proceeding *inter partes* than it was before. The public has the same interest and rights in the contest as they ever had.

The conclusion is that 53 of the list of votes given and alleged to have been illegally cast for contestant should be deducted from his returned vote. If the admissions of the voters themselves as to how they voted are not competent or sufficient evidence, then there remain 47 which are otherwise proved.

The House will please observe that the evidence adduced by contestee, and the substance of which has been given or referred to in his report in support of his claim as to the said list of 55 alleged illegal voters for contestant, stands substantially without contradiction or conflict. Evidence in rebuttal was introduced by contestant only in a very few instances, and none at all as to the votes in Liverpool Township. In the few cases where evidence in rebuttal was taken it served only to confirm the evidence in chief. If the evidence was not true contestant had the means and an ample opportunity to refute it and show how the facts were. When the legality of votes is assailed, upon notice and answer, and the issue is formed, that issue is to be fairly heard and tried upon evidence. When one party adduces apparently credible evidence sufficient of itself to maintain the issue, the opposite party is called upon to meet it; and if he does not do it with the means at hand, there can be but one reasonable conclusion, and that is that there was no answer to it. The committee adopted such a rule in the case of Manzanares *vs.* Luna, decided at the present session.

We feel bound to notice one other claim: Contestant claims that the evidence being incompetent to prove how the voters voted, and contestee not having called the voters themselves as witnesses, the voters should be presumed to have voted for him and the votes deducted. Claim is disallowed. The more reasonable inference would be, that, after the evidence was adduced as to the illegality of the votes and how the electors voted, and contestant did not call the voters to rebut the same, what was testified to and claimed was true. Contestant makes one other claim, to wit: that 17 illegal votes were cast by unknown persons, and that they should be deducted *pro rata*. Contestee's contention on this subject upon the evidence may be stated as follows in substance, namely:

"In addition to the persons named above, all of whose names appear upon the poll-book as having voted at the election, the poll-book also shows voters at the election, to wit: James Arbuckle, James Fortune, Basil Britt, E. J. Ortman, William Parks, Philip O'Brien, R. W. Raley, George Speight, W. R. Warrick, Henry Prichard, Robert Tie, Frank Carnahan, Walter Elsworth, R. E. Banks, James Larkins, James Nixon, John Trainor, none of whom were residents of Liverpool Township at the time of the election, and most of them never were. James Larkins is shown by his own oath to have resided at Wheeling, and William Parks at Steubenville. They each swear they did not vote at all, so that some other persons must have voted in their names. Banks is also shown to be a resident of Steubenville. If it be claimed that these persons, or some of them, may have been residents of Liverpool Township, we have to answer that diligent inquiry is shown to have been made on the part of the contestee with a view to finding them, advertisements put into local papers calling for information concerning them, without success. The large number of witnesses whose business and acquaintance are such that they would probably know them, who testify that they know of no such persons, seem sufficient to establish that there are no such electors in the township.

"The school enumerator, postmaster, and others well qualified to know, who were residents and electors in said township, were called, and all say they do not know such persons as residents of the township, and never heard of any of them. On the other hand, the contestant offers nothing whatever in reply to this testimony. The town is not large, having not to exceed 6,000 inhabitants, and if said persons were residents it could be easily shown. It is claimed that the names mentioned do not represent voters of the township, especially as a number of them are shown not to be residents of the township, but live at Steubenville or Wheeling.

"It is also noticeable that the evidence tends to show that a number of residents of Steubenville and Wheeling came to Liverpool on the day of election for the purpose of voting for contestant, and did vote for him.

"It further appears in the testimony that on the day of this election the polls in this township were in the hands of the contestant's friends. His supporters were active and in force at the polls. Although contestee's friends represented at least one-half of the population, they were only represented at the polls in the proportion of 1 to 4 of the opposition. If this was all that appeared in the testimony as to this township, it would seem a fair inference that the fraudulent voting was in the interest of the contestant; but this is not all. It clearly appears from the testimony that at the preceding elections the Republican party had been strong in its majority in this township, and that contestee at the primary election previous to this received 634 Republican votes for the nomination

as against 48 in opposition, while at the election in question the majority in the township against him was 67, and he actually received 30 votes less at the election than at the primary election in the spring of the same year.

"The testimony shows that on the part of the friends of contestant there was an organized effort at fraud in this township; that some voters were imported from Steubenville and Wheeling who voted for contestant is, under the proof, beyond question; and the testimony shows that some of the persons named were at the time of the election residents of one or the other of these places, and there is such evidence of frauds practiced by contestant's friends as to justify deducting all of the illegal votes proved from the poll of contestant."

We do not deem it necessary to pass upon this question, as no account is made of it in the majority report, and it is not deemed necessary to the result. We do not feel certain that all of the voters counted as unknown are sufficiently proved to be illegal; some of them doubtless were. If so found, we should be more inclined, upon the evidence referred to, to draw unfavorable inferences as against contestant's vote. From the facts shown it appears that the scratching was mainly in the name of the contestee, and there is other evidence in the record, which we do not care to deal with in detail, that tends to prove the fraud to have been on the part of contestant's friends. The claim on the part of contestant that they should be deducted pro rata is disallowed. Contestee does not contend that the evidence is such as to warrant a deduction from contestant's vote on account of same.

(Wm. H. Vodrey, record, page 292; H. H. Searls, record, page 282; R. Barlow, record, page 234; J. Wyman, record, page 293; S. J. Richards, record, page 295.)

AS TO THE CLAIM THAT ADDITIONAL VOTES SHOULD BE ALLOWED CONTESTANT.

Contestant claims an addition of certain votes not counted for him, and the majority report seems to adopt about every claim made by him in this regard. So far as can be seen, it does not even adopt the concessions of votes made by him, and to which allusions have already been made.

The majority report allows a ballot which was rejected by the judges of election in Lee Township, Carroll County (R., page 177). It was not counted because on the back of it was written in ink: "H.—W. J. McCausland," and then two columes of figures under the letters R. and D., respectively. The ballot was clearly in violation of the statute supplement to Revised Statutes, section 31. It provides:

"That all ballots voted at any election held in pursuance of law shall be written on plain white paper, or printed with black ink on plain white news printing-paper, without any device or mark of any description to distinguish one ticket from another, or by which one ticket may be known from another by its appearance, except the words at the head of the ticket, and that it shall be unlawful for any person to print for distribution at the polls, or distribute to any elector, or vote any ballot, printed or written, contrary to the provisions of this act: *Provided*, That nothing herein contained shall be construed to prohibit the erasure, correction, or insertion of any name, by pencil mark or otherwise, upon the face of the printed ballot."

The ballot had clearly on the back of it what made it a mark, which served to distinguish it from other ballots. (McCrary, sec. 403; Hirk *vs.* Rhoades, 46 Cal., 398.) We do not think the ballot should be allowed contestant.

The chairman, in his report, seems here to forget his purpose to allow all reasonable presumptions in favor of the action of the judges of elections, as availed of in the instances of J. Wales and J. H. Walser.

FAIRFIELD TOWNSHIP, ELEVEN VOTES.

The majority report allows contestant 11 votes not counted in Fairfield township. We can not concur in this finding. Annexed are the references and a statement of the facts, which the references sustain as proved.

The contestant undertook to open the ballot-box of this township and to recount the ballots; it is claimed that on this recount Mr. McKinley had only 270 ballots instead of 271, as returned for him.

(R. H. Carpenter, record, page 10; J. G. Augustine, record, page 14; William R. Hum, record, page 29; E. S. Holloway, record, page 102; S. M. Beatty, record, page 113; F. Diemer, record, page 115; A. C. Shields, record, page 117; I. B. Crook, record, page 119; D. Bushong, record, page 121; J. W. Weaver, record, page 121; J. B. Mellinger, record, page 122; George Lowe, record, page 453.)

It is claimed that 11 votes were cast, intended for the contestant, which were not counted. It appears, first, that the ballot-box and key were not kept as provided by the statute, and the circumstances of the case are such that no reliance can be placed upon the recount of the ballots. The Ohio statute has been carefully framed with a view to prevent any tampering with the ballot-box. To this end it is provided that of the three judges one shall be from the minority party of the township, and he shall keep the key of the box; the box itself to be retained in the possession of the township clerk, who is, presumably, of the opposite party—the purpose evidently being to keep the box and key in separate hands, representing the opposite political parties, thus securing the ballots from any fraudulent interference. (Rev. Stats. Ohio, 1880, sections 2932-2957.) The proof shows that in this township, after the box was locked, the key was delivered to the minority judge, and the box left that night in the room in which the election was held, instead of being taken possession of by the clerk. The next morning the clerk took the box to his shop or place of business, where he left it in a public place, entirely unprotected.

The minority judge and the clerk testify that the next morning the minority judge, at the request of the clerk, went to the shop, obtained the box, carried it to the clerk, who took it to his house, and there placed it in an unlocked closet in one of the bed-rooms, where, as the clerk testifies, any person who had access to the house had access to it. The clerk testifies that he is a Republican, and voted for Mr. McKinley. On the other hand, it is clearly shown by the uncontradicted testimony of Frank Diemer, Stephen Beatty, J. B. Mellinger, that the clerk was not friendly to McKinley at the primary election and declared he would not vote for him.

It is evident that before Carpenter had possession of the box some controversy had arisen as to who was elected.

He appears soon to have begun to inquire of witnesses about number of ballots not counted. Augustine says he sent him for it, because he could not go for it himself "just then." It is not certain that it was not on the next morning after the election, but on the following Friday, that Carpenter had the box on the street. He intended to take it to the county seat, and probably did take it there. In any event, it is certain, by all the testimony, that Carpenter, the minority judge, a warm partisan of the contestant, had the key and box both in his possession either the Wednesday or Friday after the election.

From that time until the count by contestant it is apparent that the box as well as the key continued to be within Carpenter's reach. He was the father-in-law of Augustine, boarded and lodged in the same house at which the box was kept, without any precaution to prevent access to it.

This is not such securing of the integrity of the box as is contemplated in the statute referred to, and neither its letter nor spirit was complied with.

The temptation to tamper with and change the ballots after an election is so great, especially when the election is close, and a slight change will elect the one and defeat the other candidate, that courts and the House have uniformly required the party offering the ballots to overcome the official count made at the time of the election to show that the ballots have been kept strictly as required by law. Upon the person offering the ballots is cast the burden of showing that the ballots offered for recount are the identical ones cast at the election, and have been in no way tampered with or changed. (Butler *vs.* Lehman, 1 Bartlett, 354; Kline *vs.* Verree, 1 Bartlett, 381; McCrary on Elections, 2 ed., secs. 96, 277, 278, 555; Gooding *vs.* Wilson, Contested Elect. Cases, 1871-1876, page 79.)

"When it was alleged that there was a mistake in the original count, and upon reopening the boxes the allegation was apparently substantiated, as the boxes had been for three months in an insecure position, where they might have been tampered with, it was held that the recount should not overturn the original sworn returns." (Kline *vs.* Verree, *supra*.)

In this case four months elapsed after the election before the reopening of the ballot-boxes for the purpose of a recount.

Besides this, there is clear proof that the ballots recounted were not the original ballots. The official count gives 638 ballots, while the recount gives only 633. Their names appear on the poll-book. The evidence of ballots missing is so strong that contestant, on page 12 of his brief, says:

"On this recount only 633 ballots were found in the box (record, page 16), while the official abstract of the secretary of state shows that 638 ballots were actually cast at said election, so that on the recount 5 less ballots were found than were cast at said election."

What became of the five we do not know. The evidence does not disclose. But it appears that there was a less number of ballots in the box at the time of the recount than at the time of the official count. That conceded fact in and of itself is absolutely destructive of this pretended recount.

In addition to this we find that while by the official count Lemuel T. Foster, the Greenback candidate for Congress, had 53 votes, by this pretended recount he had 57 votes; and we also further find from the record in this case that there was in that box, at the time of the official count, one ballot having on it the names of both of these candidates, contestant and contestee (rec., page 11, q. 28; page 110, q. 51), which ballot was not found in the box at the time of the pretended recount (page 15).

There can be no recount unless you have the identical ballots that had been cast and were counted when the official count was made.

Without stopping to give all the evidence, we have only to say that it is perfectly manifest that somebody had tampered with the box and contents.

It is manifest from all the testimony that there were some irregular ballots not counted, which would not be applied to contestant. They are not described adequately. The majority report virtually abandons the claim as based upon the recount, and appears to find that the evidence establishes, independently of the recount, that 11 more votes were cast for him than were counted. A careful examination shows that the evidence falls far short of proving this. The mixing up of the recount, when it is discredited, with what evidence is furnished by witnesses orally, is most remarkable. The oral evidence alone is not enough to prove distinctly the claim, either as to the number of the ballots not counted, or to give an intelligible description of them.

As to the ballots for "Walae," "Ma. Wilac," "Mag. Wolac," "Waloc," "Mage Woloc," and "Waloe," and others (if proved), they neither indicate the proper name of contestant, nor any name by which he was ever known.

The oral testimony describes no such ballots.

The judges of election made no return of such, as scattering or otherwise; whereas if it was true that there were so many such irregular votes as is now pretended they would have been returned, as was done at other places in the county of Columbiana, and as the statute absolutely required. It is more probable that they are mistaken now than that they were guilty of any such misconduct. A witness who stood by and kept a tally of all the votes, and kept a memorandum, and who now contradicts Mr. Carpenter, is entitled to more weight.

The evidence of the farmer (Hum), one of the judges of election, was of the strong impression that there were from 2 to 8, and would not exceed 4, regular votes until the recount was had four months afterward. He seems to be staggered then at the alleged and apparent contents of the box. He was unwilling to believe that the men who had the box were dishonest, and a labored attempt was made in the examination to work his memory up to higher numbers. It is unnecessary to prove that Carpenter or Augustine changed the ballots, and it did not occur to the witness that other persons had means of access to the box and did the nefarious work without their knowledge or connivance. It is not enough to prove that these particular men did not tamper with the box, but it is enough that it appears that others had an opportunity to do it and that it was done in fact.

An inspection of the ballots shows that all which was needed to be done in order to make the alterations was to write the name of contestant in pencil under the name of contestee, which could be quickly and easily done. What serves to discredit somewhat the integrity of these ballots is the fact that contestant and his counsel, after the box was opened and the ballots put in evidence, denied contestee and his counsel all reasonable opportunity to have other witnesses examine the same and testify about them. A reasonable request in writing was made for this purpose, and the opportunity denied. (Rec. 183, 184.)

Contestant and his counsel did the same as to the ballot in Washington Township. (Rec., page 98.)

To count them in any event for the contestant involves a contradiction of the ballots, they having been cast for names different from any by which the contestant has ever been known.

It seems perfectly well settled that no evidence can be received to contradict a ballot; it must be sufficiently certain upon its face that when read in the light of the surrounding circumstances it appears to be manifestly for the candidate claiming it.

The rule is thus stated by Judge Cooley (Constitutional Limitations, 2d ed., 611):

"Upon the question how far extrinsic evidence is admissible by way of helping out any imperfections in the ballot no rule can be laid down which can be said to have a preponderating weight of authority in its support. We think evidence of such facts as may be called the circumstances surrounding the election—such as who were the candidates brought forward by the nominating conventions; whether other persons of the same names resided in the district from which the officer was to be chosen; and, if so, whether they were eligible or had been named for the office; if a ballot was printed imperfectly, how it came to be so printed, and the like—is admissible for the purpose of showing that an imperfect ballot was meant for a particular candidate, unless the name is so different that thus to apply it would be to contradict the ballot itself or unless the ballot is so defective that it fails to show any intention whatever, in which cases it is not admissible." (McCrary on Elections, 2d ed., sections 395, 396, 397, 407, 408; Cushing's Law and Practice of Legislative Assemblies, 9th ed., sections 110, 112, 113.)

It is the duty of an elector to clearly indicate for whom he intends to vote, at least to the extent that surrounding circumstances free his ballot from all ambiguity without contradicting the same.

"The name on a ballot, being an essential part of it, should be so written or printed as to designate the person intended beyond any reasonable doubt." (Cushing's Law and Pr. Leg. Assemb., 9th ed., section 110.)

It being the policy of the law to require the choice of the elector to be expressed by written or printed ballot, one who has failed to avail himself of this privilege can not complain if his own carelessness has failed to express his intention in such manner that it may be certainly known for whom he intended to vote.

It can never be shown that a mistake has been made in casting a ballot as to the person intended to be voted for.

"Where the name is not only different, but unlike, no question can arise as to the intention, because it clearly amounts to a mistake on the part of the voter as to the name of the person for whom he intends to vote, which, as has already

been stated, can not be corrected." (Cushing's Law and Pr. Leg. Assemb., 9 ed., sec. 113.)

COLUMBIANA COUNTY—TWENTY-THREE VOTES AS RETURNED.

We now come to the 23 names returned from Columbiana County, which contestant claims, and which the majority report finds. Upon the evidence that he was the candidate, and was known and went by the name of Major Wallace and Jonathan Wallace, contestee very liberally concedes him 16 of the votes, and we need not discuss that matter.

As to 7 ballots, reading—

W. H. Wallace	2
John H. Wallace	4
W. W. Wallace	1
	7

there is no ambiguity, and the names designate other persons. There is no evidence to show the intention of the voter, as in case of the ballot for "Kinley." It is not safe to go into the region of guess, surmise, or conjecture. The intention can be got only from the ballots themselves. There were other Wallaces in the district eligible to the office. There was a John Wallace. There was a good deal of scratching and independent voting, by Republicans especially. When this is done, third persons, not regular candidates, are often voted for. There were in fact some four different candidates at least, and numerous scattering votes, the names not being given.

We can not allow these ballots as proved to have been cast for contestant.

MOUNT UNION PRECINCT, STARK COUNTY.

The majority report allows contestant 1 vote not counted at Mount Union. It allows it on the evidence of Rakestraw alone (page 96), the chairman evidently not having seen, or at least he takes no notice of, the evidence of Brosius (R., page 373), Antram (page 377), Watson (page 375). The ballot is in evidence, marked Ex. A.—A. L. Jones. An inspection of the same shows that it is impossible to read more than the first three letters, which are probably W-a-l. Beyond this it is impossible to decipher any letters. It is printed in the record "Walce." It is written in pencil under name of contestee erased in pencil. (R., page 97.)

The judges, including Rakestraw, Democratic judge, were unanimously of the opinion at the time that the name could not be deciphered, and rejected the ballot at the time of the count. In his evidence he now pretends that it was because the initials were wanting. But the evidence of the other witnesses (entirely ignored by the chairman in his report) completely refutes this pretense now. We find that this should not be allowed for contestant with all the presumptions against it and upon the evidence.

An opportunity to examine the same further and call witnesses about this ballot was denied contestee and his counsel as already hereinbefore stated (R., page 98).

This would have been a good occasion for the chairman to have applied the principle, which he enunciates, as to the force which is to be given to the action of the election officers, and on this case "refuse to reverse their judgment."

SIXTH WARD OF YOUNGSTOWN, MAHONING COUNTY.

The majority report finds one vote for contestant here. It was found on a recount, and is claimed not to have been counted originally. We do not allow it, because it appears that the box had not been kept according to law, but the same had been opened subsequent to the election and before the recount (Record, page 348). The law is very strict in that regard, as already shown. A recount under such circumstances should not be allowed to discredit the official count. Then, again, no notice was given of such a claim in the notice of contest.

We summarize our conclusions, as follows:

Official vote for contestee		16,906
Add the following in Stark County:		
Ballot "Kinley," (admitted)	1	
Sixth ward, Canton	1	
G. W. Shrimp, Minerva precinct	1	
Columbiana County:		
Orlando Brown (admitted)	1	
Centre Township, Hune ballot (admitted)	1	
Washingtonville precinct, Salem Township	1	
Butler Township	6	
Mahoning County:		
Austintown Township (recount)	2	
Austintown Township, ballot with McKinley under Wallace, printed (admitted)	1	
		15
Total		16,921
Deduct vote of C. C. Douglass, making total vote for contestee (having deducted some votes for contestant on same ground) 16,920.		
Official vote as returned for contestant		16,898
Add votes cast for him by various names heretofore conceded in the brief		16
Add Austintown Township		1
Add Madison Township vote		1
		16,916
Deduct illegal votes cast for contestant, of the list of 55 set out herein before, and as found		53
Balance		16,863

From which is to be deducted 10 votes (there being no adequate proof to the contrary for the manifest error in the footing in the returns from Carroll County. Deducting these leaves contestant's total net vote 16,853.

Contestee's total net vote	16,920
Contestant's total net vote	16,853
Contestee's majority	67

The closest scanning of the other votes in question, and of which we have hereinbefore treated in detail, can not, as it seems to us, materially affect this majority. There may be found doubt enough about 5 of the votes deducted from contestant's returns to require that they should be retained. They do not exceed that, in our judgment, after the most painstaking study of the record. We can come to no different conclusion, unless we disregard the evidence of witnesses, whose character, integrity, and means of knowledge of the facts to which they testify are not assailed, and ignore what we deem to be sound rules of law and well-considered precedents.

It will be seen that if the House do not deduct 10 votes on account of the error in the voting of the return from Carroll County, and do allow contestant the whole of the 23 votes appearing in the official returns from Columbiana County, and even the 11 in Fairfield Township (the extreme claim of contestant in that respect), contestee will have even then a majority of 39.

We recommend the passage of the following resolutions:

Resolved, That Jonathan H. Wallace was not elected as a Representative to the Forty-eighth Congress from the eighteenth Congressional district of Ohio.

Resolved, That William McKinley, jr., was duly elected, and is entitled to retain his seat.

A. A. RANNEY.
WM. P. HEPBURN.
AUGUSTUS H. PETTIBONE.
S. H. MILLER.
EDWARD K. VALENTINE.
ALPHONSO HART.

I concur in the resolutions contained in the above report.

THOMAS A. ROBERTSON.

Mr. COOK. Mr. Speaker, it can not be expected of course that every member of the House shall examine in detail the records or evidence in every contested-election case. It can not be expected that members of this House can examine the record in this case. It is therefore of the highest consequence that a report made here by one side or the other of a committee upon which the committee is divided should fairly set forth the true facts and the law for the guidance of the House. What I complain of in the very outset of this case as against the minority of the committee in their report is that it neither states the law accurately nor the facts correctly. I took pains last night to examine the report of the minority more in detail than I had heretofore done.

I have taken up in several instances the votes of men who were charged to be illegal voters. Reference is made in the minority report to the testimony of witnesses, and the page of the record is given in each instance which it is claimed shows the illegality of the vote in question. I took one of the first cases here mentioned, appended to which are the names of some four or five witnesses whose testimony it is claimed would go to show that the man's vote was illegal. These witnesses in no instance made any reference to it at all. We have in their testimony nothing as to the qualifications of the voter nor as to whom he voted for. They were not even asked concerning those points, and I invite your attention to the record in support of what I have said. I repeat, you give the names here of five witnesses whose evidence you say shows this man was not a qualified voter, when four of these witnesses are not even asked concerning the voter nor his vote. There is not even the slightest reference to the matter in all their evidence, and the remaining witness only refers to it incidentally.

Mr. RANNEY. To what case does the gentleman refer?

Mr. COOK. To the first cases given here from Jefferson County, the Heckathorn vote. There are other cases of the same kind. It is to be expected that these reports deal accurately with the facts, and when a man states in a report that a witness testifies to a fact there should be at least a reference to the fact in the evidence.

But, sir, it is not my purpose to take up in detail the votes that are questioned here by either side as being illegal. I leave that to be considered by other gentlemen who have examined that portion of the case more in detail than I have.

In the report of the minority it is claimed that an error of ten votes is shown in the return of the votes for the contestant. We have here in the record a tabulated statement of the vote of Carroll County. We have then the certified return, in which we have an abstract of all of these votes.

It is said, as I understand the minority in their report, that the law of Ohio makes this tabulated statement the official return and the other not. I sent this morning for the statute of Ohio, and I find that there is no such thing in it. The statute that I refer to simply requires the clerk, aided by two justices of the peace, to make an abstract of the votes, not a tabulated statement of the votes; not a statement in detail of the votes as is given here where it is claimed the error occurs, but an abstract of the votes as is given here on this page of the record where it is written out in full. The law of Ohio is not as claimed by the minority. It does not require a tabulated statement. It requires an abstract of the vote which is contained here in the certificate where the vote is given in full.

Now, Mr. Speaker, there is a discrepancy between the tabulated statement and the abstract of the votes as given in the return certified to the secretary of state. In the case of Manning *vs.* Chalmers in the beginning of this Congress it was insisted that the return proper and not the tabulated statement should govern. Here it is claimed that the tabulated statement should govern, and not the return. The report of the minority relies upon this tabulated statement. They seek to deduct from Mr. Wallace 10 votes because in this tabulated statement, taken by itself, it would appear that an error was made, although in the footings the number is given correctly.

I claim that under the law of Ohio the return made to the secretary of state by the county canvassers governs, and not the tabulated statement. But, passing that, I hold in my hand here a certified copy, certified by the clerk of the court of Carroll County and the two justices of the peace who assisted in making the canvass of this county, and he gives the vote in detail of every township in that county for Mr. Wallace, just as does the official report to the secretary of state. It gives the votes for Mr. Wallace as they were counted for him by the State canvassing board. Here it is, and any member of the House may inspect it for himself. It gives the vote in detail of every township. It was on file before the Committee on Elections, but I have failed to discover in the ingenious report of the minority any reference to it.

Now, if there be any question made by the sitting member and his friends that there was an error here, if it is claimed that Wallace should have deducted 10 votes from the number given him by the canvassing board, why do you not go down to Carroll County, in your own district, and ascertain from the poll-books and the records in the office of the county clerk, where the original returns are, what the actual facts are. Here is a certified transcript, and, I repeat, it shows Wallace is entitled to the 10 votes you seek now to deduct from him, notwithstanding the State canvassing board and the county canvassing board gave them to him.

I come now to the point I wish mainly to discuss. Underlying all questions in this case, I may say, is the one of competency of testimony, reliability of testimony. It is insisted by the minority that the merest hearsay evidence, the declaration of a voter made long after the election in casual conversation to a man who was hired by one side to hunt up evidence—that those declarations shall be sufficient to deduct a vote from Mr. Wallace. That is the question in this case in which I mainly feel an interest, because from my experience and observation in contested elections I believe it is essential that in this House we should have fixed rules to govern us; that we should require, before we find a fact in an election contest, such a degree and quality of evidence as to make it reliable before we take the fact as proved. My objection to all cases where they have been decided by the House contrary to my views and in accordance with the views of what happened to be the political majority at the time arises from the fact that they have departed from fixed rules in regard to reliable testimony, and gone out into the field of speculation, there to hunt up what they want for their side.

It was said yesterday by the gentleman from Kentucky [Mr. ROBERTSON] that the law in this case was well settled by Democratic precedents; that hearsay evidence was competent; that the declarations or statements of voters in casual conversation long after the election were competent not only, if I understood him, to show the vote illegal but competent to show for whom the man voted.

Mr. ROBERTSON. I never stated any such thing.

Mr. COOK. Well, the record will, I think, bear me out on the question of what was said in reference to that proposition. And so the position is assumed in the minority report that it is competent to prove whom a man voted for by his declaration after the election was over for months; and the gentleman from Kentucky [Mr. ROBERTSON] surely will not so soon go back upon it.

Now, Mr. Speaker, what I want to show is that that has not been the rule in this House in the last fifteen years; that it never was the settled rule; that so far as it was adopted partially in the Vallandigham-Campbell case it has not only never been followed, but has been expressly and repeatedly overruled. In the first place, Mr. Speaker, the report of the minority, in referring to the Vallandigham-Campbell case, makes a peculiar little statement.

He says that the report was signed by eminent gentlemen, such men as Mr. LAMAR, of Mississippi, and Mr. Stevenson, of Kentucky. One would think from the language of the report that they were given only as examples, and that there were dozens of others who also signed the report. The fact is that that report was signed by those two gentlemen only of a committee of five; and instead of their being "such men as Mr. LAMAR and Mr. Stevenson," they were Mr. LAMAR and Mr. Stevenson themselves, and only them.

That report came into this House. It is true that Mr. Vallandigham was seated. As I look back to that case I find in it the same facts that I find here. Mr. Vallandigham was a prominent man; if I remember aright he was the sitting member; he was an influential member upon the floor of this House. It seems that he had a majority in his favor on the final vote. But the House never committed itself directly to the rule announced by Mr. LAMAR, of the minority of the committee. It did then what it has done in many cases, simply voted in a general way to seat a certain man, the man who happened to be sustained by the report of the committee.

Now, I want to show first that the rule in the case of Vallandigham against Campbell was adopted upon a false assumption. It was claimed to be based upon the rule in England. I have here the report of the debate in that case upon the floor of this House. Mr. Harris, of Illinois, in his speech on that occasion showed that that rule never was adopted in England, and that none of the cases referred to by Mr. LAMAR sustained him in his position. I will send to the Clerk's desk and have read for the information of the House a paragraph which I have marked in the speech of Mr. Harris.

Before that is done, however, I will say that it must be remembered that in England the vote is *viva voce;* they have there no vote by ballot. The elective franchise there is a valuable one and prized by the voter, or it was at that time regarded as a valuable right by the limited number who possessed it. But the admissions of voters never were received there to show for whom they voted. Their admissions were sometimes received to show their disqualification, upon the ground that the admission of a man against his own interest might be received as testimony.

But it is claimed in this case, and it was sought to be claimed in the Vallandigham case, that that rule should be extended so as to receive admissions by the voter as to whom he voted for. Such a rule never was adopted in England, and yet Mr. LAMAR claimed to found his report upon the rule practiced in England.

The Clerk read as follows:

This statement of the law of evidence as applied to contested elections must be shown to be correct, or the conclusion to which that portion of the committee have arrived is erroneous. Is the statement correct; and, if so, does it show the establishment of a rule applicable to this case? Nearly all the cases referred to in the contested elections in England refer to the qualifications of the voters alone. The votes there are given *viva voce;* and the register-lists and poll-books show the names and residences of the voters and the names of those for whom the votes are cast, leaving the question of qualification as the only one that can ordinarily arise in contests for seats in the house of commons.

Those who are entitled to vote in the counties in England are "freeholders having lands or tenements to the value of 40*s.* a year above all charges, &c. Copyholders, or of any other tenure than freehold, whether of inheritance or for life, to the value of £10 above rents and charges, &c. Lessees or assignees for a term originally created for sixty years or more, value £10; for twenty years or more, value £50 above rents and charges," &c. In the boroughs, including cities and towns, the qualifications are different; but in all the possession of certain property interests are requisite; and in questions that have arisen in England as to the qualifications of voters, in most cases it has directly related to their existing interest in property. And proceeding upon the presumption that a man will not make a confession or declaration against his pecuniary interest, it is true that many cases are reported in the English books where the statements of the voter against his interest have been received to exclude his vote.

Mr. COOK. The difficulty with the report of Mr. LAMAR in that case was the same as is the difficulty with the report of the minority of the committee in this case. It assumes that tribunals and legislative bodies have decided what they have not decided. The admission by a voter in England against his right to vote under the circumstances rests upon a well-known principle of law—that it is to be presumed a man will not make a statement falsely contrary to his own right.

Now, I want to ask every lawyer in this House what there is of interest in the matter of electing a Representative in Congress to the man who has voted which would lead him to admit falsely that he voted when such an admission would be against his own interest? Every interest of the voter would prompt him to do the reverse. If I am an illegal voter and voted for my friend from Iowa here [Mr. KASSON] or for any person for an office, and the election was contested, my interest would be to retain him in office because he was my favorite. Therefore, so far as selfishness is concerned, I would be prompted, if I was an illegal voter, to say that I had voted for the other man. My interest would not be to do anything which would injure the man for whom I voted. Whatever selfish interest there would be would prompt the voter to give the name of the man he did not vote for as being the one he did vote for.

Mr. KASSON. Allow me to inquire, how many voters does the question which the gentleman is now discussing apply to? I ask because I understand there were only 7 to whom it would apply.

Mr. COOK. My colleague [Mr. KASSON] is in error. As I have gone through this record I think that question relates to some 30 or more of the voters; some of them are sustained by a little pretense of testimony that is not worthy of the name of evidence. It applies exclusively to a number of them, and applies with slight evidence to a larger number of them.

Mr. MCKINLEY. Will the gentleman please name the 30 voters to whom it applies?

Mr. KASSON. I find only 7 voters where the question rests on that point.

Mr. RANNEY. There are only 7 that depend upon that.

Mr. COOK. Well, now, Mr. Speaker, if I am making this speech I want to make it myself. I stated in the outset that I left the examination of these votes in detail to gentlemen who are more familiar with them than I am, and that I would address myself to the propositions of law which were presented in the committee as being decisive in this case.

The gentleman from Kentucky [Mr. ROBERTSON] stated yesterday that the Democratic side of the House had uniformly decided that this kind of testimony was competent; and he read from the case of Wigginton *vs.* Pacheco, in the Forty-sixth Congress. I want to read from that case to show to this House that they are upon the threshold of committing the same error that, in my opinion, was at the bottom of any incorrect decisions of questions of law in the Vallandigham case.

He quotes the case of Pacheco in the Forty-sixth Congress as holding that hearsay evidence is admissible. I say it does no such thing. I read from that report. The witness testified he voted for Pacheco, and that—

Gilbert always told me he was a Republican. He asked me which were the Republican tickets. He took one, folded it up, and to my honest belief put it in. I only showed him a Republican ticket with Pacheco's name on it. He took it, folded it up, and to my honest belief voted it.

Now, Mr. Speaker, no man pretends to-day that this is not competent evidence. But it is not hearsay. The true rule upon this question was stated by a unanimous committee in the case of Cessna *vs.* Myers, the report in that case, one of the ablest reports ever made in this House, written by Hon. GEORGE F. HOAR, now Senator. The true rule is that the ballot itself, if it can be identified, is of course the best evidence to show whom the man voted for. But in general this is not attainable, because no man can identify his ballot unless the ballots are numbered. Then all other evidence becomes secondary. If you call the voter him-

self, and he swears whom he voted for, that is secondary evidence. If you prove by circumstances whom he voted for, that is secondary evidence. It is not, however, incompetent testimony. The rule is not claimed by us to be that these admissions are secondary evidence. We say they are incompetent and unreliable evidence, evidence which would be spurned in any court upon any question involving 2 cents, and it ought to be spurned in a case before the House of Representatives involving the right to a seat upon this floor.

We do not claim (although the position has been taken by some) that the voter himself must first be called. I hold that it is immaterial whether you call the voter or not. You may prove in the first instance whom he voted for by circumstances, just as the committee held had properly been done in the Pacheco case. This witness testifies that the voter told him he was a Republican; that on the election day and at the polls the voter came to him and asked for a Republican ticket, and he gave him a Republican ticket; that the voter folded it up and as he believed put it in the box. That is not hearsay evidence; that is not secondary evidence. That is primary evidence. This evidence in the Pacheco case was competent, for it was not evidence showing what the voter had said after he had voted. What the voter says at the time he votes may properly be admitted as part of the *res gestæ*. It is a part of the act of voting. Whoever can testify how a man voted from having seen him vote, whoever can say where the voter obtained his ticket, what kind of a ticket he obtained, and what kind of a ticket he had put in the box, has the right to testify.

But there is a great difference between that kind of testimony and the testimony of a man who goes around among thirty-seven men two months after the election, saying to a man: "Did you vote?" "Yes." "For whom did you vote?" "For Wallace." "All right." Then he goes to another man, puts similar questions, and gets similar answers; and having gone around among the voters in that way he comes forward to testify how they said they voted, and upon that testimony you propose to deduct the votes from Mr. Wallace!

The objection to this class of testimony was pointed out in the case of Cessna *vs.* Myers, and was pointed out so forcibly and clearly by Senator HOAR, then a member of this House, that it seems to me his statement is unanswerable. He shows that the danger of accepting that class of testimony lies in this: A man may be an illegal voter and may have voted for A. When the contest is inaugurated he tells another man that he voted for B; and this man comes forward and testifies to what this illegal voter told him; and you deduct a vote from the man for whom it is stated to have been cast. Thus you make the illegal voter's vote count two instead of one; and you do so without any man having committed perjury.

It does seem to me, Mr. Speaker, that the House ought to hesitate before it goes back to a rule which was only partially adopted in the case of Vallandigham *vs.* Campbell—a rule which has not been followed in this House in a single case since that time.

The minority report in this case cites decisions of courts to the effect that it is not necessary in the first instance to call the voter, because the voter may decline to testify. It is true, Mr. Speaker, I concede, that a legal voter may decline to disclose the secrecy of his ballot, but the well-settled rule of universal application is that an illegal voter is not excused from disclosing for whom he voted. He may under his constitutional privilege decline to testify that he voted at all, because to admit that he voted at all might tend to criminate him. But these decisions simply go so far as to say that inasmuch as you can not compel the voter to testify, therefore you are not obliged to call him in the first instance, but may enter at once upon your secondary or circumstantial evidence. There is no difficulty on that point. I concede that a man is not obliged to call the voter under such circumstances; but that does not admit incompetent testimony; that does not excuse you from bringing testimony which may be regarded as reliable. You might excuse yourselves from calling these voters as witnesses, but when you undertake to show for whom they voted you are still limited to the same class of testimony that was received by the committee in the Pacheco case.

Now, if there has been in this Congress a case since the Vallandigham and Campbell case in which the rule partially adopted in that case has been recognized, I have not with the most diligent examination been able to find it.

Mr. MCKINLEY. Does the gentleman claim that the case of Cessna *vs.* Myers is not authority for that doctrine?

Mr. COOK. I most emphatically do.

Mr. MCKINLEY. Will the gentleman cause that authority to be read?

Mr. COOK. I will. At the gentleman's request I will send it to the Clerk's desk—that is, what McCrary says and what he quotes from it.

Mr. RANNEY. He does not quote all of it.

Mr. COOK. You can get the original case.

Mr. RANNEY. They admitted the evidence in that case.

Mr. COOK. In that case both parties took this hearsay evidence, and both parties asked it to be considered. They both proceeded on the theory that this testimony was competent, and they argued the case on the theory that the law permitted it. And notwithstanding that fact, this report criticises it and says that kind of testimony should not be received. The committee says inasmuch as the parties tried the case on the theory that it was admissible, they therefore admitted it.

Mr. MCKINLEY. If the gentleman will permit me, the conclusion of the decision by Judge HOAR, of Massachusetts, who I believe made the majority report, is almost in these words: that where the qualification or disqualification of the voter is shown by the evidence *aliunde*, then declarations of voters as to how they voted are admissible when clear and satisfactory.

Mr. COOK. I will send the case to the desk and have it read, and that will settle the question between the gentleman and myself.

The Clerk read as follows:

It often appears in the course of the trial of a case of contested election that votes have been cast by persons not qualified to vote, and in such cases it becomes very important to ascertain for whom such votes were cast. A question of much importance has arisen as to whether the declarations of illegal voters made not under oath should be received to show the fact that they voted, or that they were not legally qualified to vote. The English authorities, though not entirely uniform, are generally in favor of admitting such declarations, and perhaps the weight of authority in this country is the same way, though it can not be denied that the tendency in the more recent and we think also the better considered cases is to exclude this evidence as hearsay.

The soundness of the rule which admits this species of evidence is seriously questioned in the late case of Cessna *vs.* Myers, Forty-second Congress. The report in that case presents the following objections to the rule:

"The general doctrine is usually put upon the ground that the voter is a party to the proceeding, and his declarations against the validity of his vote are to be admitted against him as such. If this were true, it would be quite clear that his declarations ought not to be received until he is first sworn, *aliunde*, not only to have voted, but to have voted for the party against whom he is called. Otherwise it would be in the power of an illegal voter to neutralize wrongfully two of the votes cast for a political opponent: First, by voting for his own candidate; second, by asserting to some witness afterward that he voted the other way, and so having his vote deducted from the party against whom it was cast.

"But is it not true that a voter is a party in any such sense as that his declarations are admissible on that ground. He is not a party to the record. His interest is not legal or personal. It is frequently of the slightest possible nature. If he were a party, then his admissions should be competent as to the whole case—as to the votes of others, the conduct of the election officers, &c., which it is well settled they are not. Another reason given is, that the inquiry is of a public nature, and that it should not be limited to the technical rules of evidence established for private causes. This is doubtless true. It is an inquiry of a public nature, and an inquiry of the highest interest and consequence to the public. Some rules of evidence applicable to such an inquiry must be established. It is nowhere, so far as we know, claimed that in any other particular the ordinary rules of evidence should be relaxed in the determination of election cases. The sitting member is a party deeply interested in the establishment of his right to an honorable office. The people of the district especially, and the people of the whole country, are interested in the question, who shall have a voice in framing the laws. The votes are received by election officers, who see the voter in person, who act publicly in the presence of the people, who may administer an oath to the person offering to vote, and who are themselves sworn to the performance of their duties. The judgment of these officers ought not to be reversed and the grave interests of the people imperiled by the admissions of person not under oath and admitting their own misconduct.

"The practice of admitting this kind of evidence originated in England. So far as it has been adopted in this country it has been without much discussion of the reasons on which it was founded. In England, as has been said, the vote was *viva voce*. The fact that the party voted, and for whom, was susceptible of easy and indisputable proof by the record. The privilege of voting for members of Parliament was a franchise of considerable dignity, enjoyed by few. It commonly depended on the ownership of a freehold, the title to which did not, as with us, appear on public registries, but would be seriously endangered by admissions of the freeholder which disparaged it. An admission by the voter of his own want of qualification was therefore ordinarily an admission against his right to a special and rare franchise, and an admission which seriously imperiled his title to his real estate. An admission so strongly against the interest of the party making it would seldom be made unless it were true. It furnishes no analogy for a people who regard voting, not as a privilege of a few, but as the right of all, where the vote, instead of being *viva voce*, is studiously protected from publicity, and where such admissions, instead of having every probability in favor of their truth, may so easily be made the means of accomplishing great injustice and fraud, without fear either of detection or punishment.

"It may be said that the principle of the secret ballot protects the voter from disclosing how he voted, and in the absence of power to compel him to testify and furnish the best evidence, renders the resort to other evidence necessary.

"The committee are not prepared to admit that the policy which shields the vote of the citizen from being made known without his consent is of more importance than an inquiry into the purity and result of the election itself. If it is, it can not protect the illegal voter from disclosing how he voted. If it is, it would be quite doubtful whether the same policy should not prevent the use of the machinery of the law to discover and make public the fact in whatever way it may be proved. It is the publicity of the vote, not the interrogation of the voter in regard to it, that the secret ballot is designed to prevent. There would seem to be no need to resort to hearsay evidence on this ground unless the voter has first been called, and, being interrogated, asserts his privilege and refuses to answer. Even in that case a still more conclusive objection to hearsay testimony of the character is this: It is not at all likely to be either true or trustworthy.

"The rule that admits secondary evidence when the best can not be had only admits evidence which can be relied on to prove the fact, as sworn copies when an original is lost, or the testimony of a witness to the contents of a lost instrument. Hearsay evidence is not admitted in such cases, and is only admitted in cases where hearsay evidence is in the ordinary experience of mankind found to be generally correct, as in matters of pedigree and the like. But a man who is so anxious to conceal how he voted as to refuse to disclose it on oath, even when the disclosure is demanded in the interest of public justice, and who is presumed to have voted fraudulently—for otherwise, in most cases, the inquiry is of no consequence—would be quite as likely to have made false statements on the subject if he had made any. To permit such statements to be received to overcome the judgment of the election officers, who admit the vote publicly, in the face of a challenge and with the right to scrutinize the voter would seem to be exceedingly dangerous.

"In Newland *vs.* Graham, the declaration of voters made after the election of their having voted for the sitting member were held inadmissible and were excluded, although it was shown that by the statute of North Carolina, where the election took place, voters were not compellable to give evidence for whom they voted. The committee did not in their report state the ground of their decision, but we may fairly presume that it was held that an illegal voter could

not refuse to answer for whom he cast his vote, and shield himself under the statute made to preserve the secrecy of an honest ballot, and that, therefore, since all such persons can be compelled to state for whom they voted, they should be called as witnesses and their declarations not under oath should not be received."

Mr. COOK. Now, sir, I want to go a little further, and then I am through with this subject. I repeat what I said a while ago, and I challenge contradiction, that in no case that has ever been tried in this House, except possibly to some extent in the Vallandigham case, has this character of evidence been accepted as sufficient to show for whom a man voted, and if it is to be received as competent to show for whom a man voted, why not also receive it to show that the vote was illegal? If the testimony is good for one it is good for the other. Yes; there is even stronger ground for claiming the latter as a proper condition than the former. But let us see what we have in connection with this subject from the gentleman from Massachusetts himself.

In the last Congress the Committee on Elections was unanimous upon the proposition, and in a report made here in a pending case it was expressly stated that this class of testimony was incompetent and insufficient. The gentleman from Massachusetts [Mr. RANNEY] in his report says it was not directly involved in that case. I know that it was; and I further know that some men then held to the doctrine with reference to the subject that they do not maintain to-day. I want to read something from the debates in the last Congress upon this point, and I take it from the remarks of the gentleman who is the author of this minority report. In that question a controversy arose as to whether the sworn declarations of the voters themselves were sufficient, when the voter himself was on the stand and under oath and subject to cross-examination and interrogatory. And he, in a spirit of abundant caution, insisted that it was unreliable. Here is what he says:

I state this, too, as a proposition which will not be denied: One man comes afterward and swears that he was an illegal voter, and voted for contestee illegally. He is presumed to know the law, and knew if he did what he says he did that he had violated it by voting when he had no right to vote. Now, I ask if you will rely upon that man's uncorroborated evidence?

Ah! it is singular, to say the least, that in the last Congress the sworn declarations of a voter needed corroboration when he was against you before you deduct a vote from that side, although to-day you are willing to deduct them from the other side upon the uncorroborated declarations of a man not under oath, on a declaration made merely in a casual conversation, where he was not on the stand and not subject to cross-examination. But I call attention to the gentleman's language again:

I ask if you will take and rely upon that man's uncorroborated evidence, alleging as he does his own turpitude and violation of the law? I state this as a fair proposition—

A fair proposition!—

of law, that if a man shows by his own evidence that he violated the law and committed a criminal offense he is not to be credited, as a general rule.

How remarkable, Mr. Speaker, that only one year ago, according to the gentleman from Massachusetts, a man's oath would not be taken; you would not accept the declaration of a witness, he himself having a full knowledge of the fact, under the solemnity of an oath, when subject to cross-examination, upon the question, and to-day you are willing to take an unsworn statement! No; you would not take his testimony to show for whom he voted; you must bring evidence to corroborate his testimony. To-day, however, a single postmaster, perhaps anybody, can go out in the employ of one man or the other, in the interest of either side of a controversy, and can go to Tom, Dick, and Harry—and perhaps after another has posted him ask the question—"Who did you vote for?" and the man says: "Wallace." And because of that declaration of the voter, not under oath nor subject to cross-examination, we are to understand that the gentleman regards it as sufficient testimony, reliable and competent, to authorize us to deduct these votes from Mr. Wallace.

I trust that this House will not take a backward step in this case. I am anxious to see rules adopted here that shall be precedents reliable for all time to come. I insist that no fact shall be taken as proved until it is shown by testimony which clearly and fairly proves that fact, and when you come to this and will stand on this doctrine in this class of questions in this House its decisions will receive the approbation and have the confidence of the country more than they do now or more than they have had for the last twenty years.

But it was said here a while ago in the House during this discussion that this class of testimony only affects 7 votes, I believe, of the number claimed. According to my examination of it it affects a much larger number, and, as I always understood the matter in the committee, both sides conceded this question was decisive of the case, at least it so came to us from the subcommittee. For a moment I will turn to the minority report to show to the House on what kind of testimony they propose to hold these votes illegal. Here I give the testimony which it is claimed bears upon a number of these votes. I suppose the strongest testimony is given, because it is the strongest testimony ordinarily which men give to show their case, and not the weakest. I will read it with the indulgence of the House. After the witness has stated his name and that he resides in Wheeling, his testimony proceeds:

Q. Do you know Joseph Hanlan, Oscar Boles, Hugh McCurran, Frank Allison, Frank Green, and James McCurran, or any of them?
A. Yes; all of them.

Q. Where did they reside, if you know, on the 10th day of October, 1882, and in whose employ were they?
A. I presume that they all resided in Wheeling—

Mark the testimony—

I presume that they all resided in Wheeling.

Is it for the witness to say where he presumes they resided? He should testify to facts that show these men were not qualified voters, and not to his assumption merely or his belief.

A. I know that they worked for us at the pottery.
Q. Do you know where they lived at that time?
A. I can't say the house where they lived, or anything of that kind; I know that they engaged with me to work for me. I am not watching the workmen to know where they lived.

Now, is it not possible these men may have worked in the potteries at Wheeling for a short time, as the fact is, and never have resided at Wheeling? It does not matter where a man works, where a man labors; the question is, where does he reside, where is his residence in fact?

Q. State what you know as to where they have been since that time.
A. They have been in Wheeling.
Q. In whose employ?
A. Of the Wheeling Pottery Company.

That is all there is given by that witness on that subject. There is another witness, who I understand testifies as to his belief that they lived in Wheeling at the time. And upon that class of testimony half a dozen votes are to be deducted here by one stroke of the pen from Mr. Wallace. The true rule is that when a man's vote has been received the presumption of law is that it is legal and you must overcome that presumption by clear and satisfactory evidence. That is the rule as it has been stated time and again in these election contests. You must find that a man has committed a crime before you can say his vote is illegal. And the rule at common law and the rule in every court in this land and the rule in this House that has been uniformly applied is that you must overcome that presumption by clear and satisfactory evidence. It is universally the case that where votes are attacked as illegal you find a large number attacked on both sides; and if you take the pains to examine the reports of committees you will find not one in ten to have been proved illegal.

There is one fact that stands out in bold relief in this case, and that is the conceded fact that Mr. Wallace had a majority of the votes as cast in the district; that he had a majority of the votes as returned to the State canvassing board. But by some legerdemain or by some peculiar decision that no man in this day ought to attempt to justify the certificate was taken from Mr. Wallace and awarded to the sitting member. Certainly it is true that the contestant thus far has been deprived of the privileges of his seat upon the floor of this House. It is certainly true that the State canvassers of Ohio wrongfully certified that the sitting member was elected to this Congress from that district.

The burden of showing to the contrary rests on the sitting member, and I insist that no vote should be deducted from the votes cast for the contestant until it is clearly and satisfactorily shown that those votes were cast by men who were not legal voters and that they were cast for the contestant. I reserve the remainder of my time.

The SPEAKER. The gentleman from Iowa has ten minutes of his time remaining.

Mr. HURD. Mr. Speaker, this case in some of its features is peculiar. While I admit that the sitting member is not under the law of the State of Ohio entitled to his seat on this floor, I yet believe that he was elected. It appears that in the returns which were made by the officers of the different counties constituting this Congressional district in Ohio, the eighteenth, there were included several votes cast for persons bearing names in some respects similar to that of the Democratic nominee. His name was Jonathan H. Wallace. There were 4 votes returned for John H. Wallace, 1 vote for Major Wallace, 5 votes for Wallace, 2 votes for W. H. Wallace, 1 vote for W. W. Wallace, 5 votes for Jonathan Wallace, 3 votes for Maj. Wallace, and 2 votes for J. H. Wallace; 23 in all. The canvassing board of the State refused to regard these votes as having been cast for the contestant, and issued the certificate of election to the sitting member, the returns as they canvassed them showing a plurality of 8 for him.

I believe that the canvassing board erred in their judgment. I am the more strengthened in that opinion by the decision made by the supreme court of Ohio since that time in the case of Morey against Campbell. There it was held that the canvassing board was not bound merely to the exercise of ministerial duties, but that it had the right to take into consideration facts of general notoriety from which the intention of the voter might be inferred when the name on his ballot was not the same as that of any of the regularly nominated candidates. If the doctrine here laid down had been followed in this case, the 23 votes above specified should have been counted for Jonathan H. Wallace. Then he would have received the certificate of election and would have been the sitting member instead of Mr. McKinley. If the canvassing board had done its duty, as I understand it, while it would not have changed the result of a contest of the election, it would have reversed the position of the parties to it. The present sitting member would then have been the contestant, and the now contestant would have been the contestee.

If there were nothing more in this case than these returns upon which

the canvassing board rendered its decision I would have no hesitation in voting that the contestant was entitled to the seat. But that is not the situation. The contest having been begun, the question as to the entire election was opened up, and every vote that was cast in that Congressional district became the subject of investigation and of scrutiny. Now, what was the result of that election as disclosed by this scrutiny?

I take the report of the majority of the committee in favor of the contestant, and I accept in the main all that it states as to matters of fact. I differ from the majority of the committee chiefly in its conclusions of law. Now, let us see what the report of the majority makes out for the contestant.

In the first place, there are the 23 votes which were cast for the persons I have named and which ought to have been counted for Jonathan H. Wallace. Second, there are 11 votes in Fairfield Township, one of the election precincts in Columbiana County. At that election a number of votes were cast for "Walser," "Wales," "Wals," "Walce," and others by individuals who evidently intended to vote for Jonathan H. Wallace. The judges of election refused to count them for him. A recount under the laws of the State of Ohio was had, and upon that recount it was found that there were 11 such votes which ought to have been counted for contestant. The majority of the committee so report, and I concur with them in that opinion. I think that the voters, having intended to vote for Jonathan H. Wallace, ought not to be disappointed in their choice simply because they did not spell his name correctly.

Then there is one vote from Washington Township, Stark County, for "Walce," which was not counted for contestant and which the majority of the committee think should have been counted for him. In that I concur with them. Then there was one ballot for contestant in Lee Township, Carroll County, which had upon its back some figures and marks. The law of Ohio prohibits the marking of ballots, in order to prevent the exposure of votes. These figures and marks were evidently put on that ballot inadvertently and with no intention of violating the statute. The majority of the committee think that ballot does not come within the spirit of the prohibition of the statute, and that therefore it ought to be counted for contestant. I also concur with them in that opinion.

Then there is 1 vote for contestant from the sixth ward of Youngstown, found on a recount, which I agree with the majority should be counted for contestant. There is also a vote in Madison Township, where the name of "McKinley" was printed in the ticket, and the name of "Wallace" was written underneath it. Under the rule that the written name shall prevail, that vote should be counted for contestant as the majority report. That makes 38 votes as reported by the majority of the committee which should be counted for contestant which were not counted for him by the judges of the election. The majority also report 5 votes which were illegally cast for contestee which should be deducted from his vote. There is 1 vote also on a recount in Austintown Township which should be counted for contestant.

The aggregate addition which the committee report to contestant's vote is 39 votes, with a deduction of 5 from the vote of the contestee, making a change from the returns of the election of 44 votes in favor of Jonathan H. Wallace.

That is the case which is presented to this House by the majority of the committee in favor of contestant. I agree to everything they have reported; I concede that they are correct in all their statements of fact, and that a change of 44 votes, all that is claimed in his behalf, shall be made in his favor.

What does the sitting member say in answer to this case of contestant? From this aggregate of 44 votes there must be deducted first the 8 votes which are reported by the canvassing board as the plurality of the contestee. Then there must be deducted 8 illegal votes for the contestant, which are admitted by the majority report to be illegal. Then there are 8 votes more to be deducted which judges of election refused to count for contestee which ought to have been counted for him, as admitted by the gentleman from New York [Mr. ADAMS] in his speech of yesterday, being three more than admitted by the report of the majority. Upon a careful examination I am satisfied that the gentleman from New York [Mr. ADAMS] was correct; that there are 8 votes which were not counted for Mr. McKinley which should have been counted for him. So it will be seen that by the admissions of the majority of the committee there are 24 votes to be taken from these 44, leaving 20 votes as the plurality for contestee upon the statements and claims of the majority. These are from admissions in the majority report as presented to the House and by the admission of the gentleman from New York [Mr. ADAMS].

Mr. TURNER, of Georgia. Will the gentleman pardon an inquiry?

Mr. HURD. Yes, sir.

Mr. TURNER, of Georgia. From what portion of the report of the majority does the gentleman obtain his information?

Mr. HURD. I can read it to you. On page 4 of the report of the majority will be found this:

After a somewhat diligent study, running through many weeks, we can not find sufficient evidence to justify the deduction of more than 8 votes of these challenged votes from the contestant's case.

I suppose that to be an indirect way of stating that there are 8 votes to be deducted from the contestant's case. Then, on page 5 of the report of the majority I find this:

In conclusion we will add that there were 5 votes excluded by the judges of election which we think should be counted for the sitting member.

The gentleman from New York [Mr. ADAMS] admitted in his statement yesterday that there were 3 more, making 8 instead of 5, and the 8 of the plurality which Mr. McKinley was entitled to, under the decision of the canvassing board, nobody will dispute.

Mr. TURNER, of Georgia. But the gentleman from Ohio certainly does not understand that statement as referring to any in the list of illegal votes to which he has just referred?

Mr. HURD. I certainly do not. I understand it to refer to the 5 votes which were excluded by the judges of election, but which ought to have been counted for the contestant; just what the words of the majority report expressly state.

So, upon the admission of the majority, there are 20 votes of a plurality left for contestant. From these 20 votes I insist that 4 which have not been allowed by the committee to the sitting member must be taken. Those 4 votes were cast in Butler Township, Columbiana County, under these circumstances: On the morning of the election there were no straight Republican tickets at the polls. The Republican ticket had contestee's name scratched off and contestant's written in. Some Republicans came to the polls without tickets, and, desiring to vote their straight party ticket, rubbed out with a piece of rubber the erasure and then scratched out the name of contestant, intending this as a vote for contestee. On the night of the election, in the insufficient light of the room where the votes were counted up, the judges of the election were unable to determine exactly the intention of the voters who had voted these tickets, and refused to count them for contestant. Those 4 votes which were not allowed by the majority of the committee are, I understand, here, and are open to the inspection of members of the House who may desire to examine them.

Mr. RANNEY. I have them.

Mr. HURD. I have no doubt that this matter stands just exactly as claimed by the sitting member. His claim is re-enforced by the sworn statement of the men who cast these ballots, who swear that in changing the scratched Republican tickets as they did they intended to vote for the contestee.

Under these circumstances, I think there can be no doubt that these 4 votes should be counted for the sitting member. There is another undisputed ballot for contestee found upon a recount in Austintown Township. These reduced the plurality of contestant to 15.

To overcome this, contestee claims that the vote of one Shrimp, a legal voter, which the judges refused to receive, should be counted for him, Shrimp having sworn that the name of the sitting member was upon the ticket which he offered, and which the judges rejected.

Upon the principle that the result of an election should not be disturbed by votes not actually cast, I decline to count this ballot for contestee.

It is also claimed that 9 votes cast for contestant in wrong precincts and wards should be deducted from his vote. While technically these voters had no right to vote where they did, and while in doing so they made themselves liable to criminal prosecution under the laws of Ohio, I shall not deduct their ballots from contestant's vote. They lived in the eighteenth Congressional district and had a right to vote there, and I shall not insist that their votes shall be lost because they happened to cast them in the wrong place.

Contestee further claims that there were 52 illegal ballots counted for contestant which should be deducted from his vote. From these 52 the 8 must be deducted which were allowed to contestee in the majority report and which I have already counted for the sitting member. Then there are 20 more as to which there is a conflict of testimony as to whether they were illegal or not. The preponderance of the evidence establishes conclusively to my mind the fact of their illegality. Nevertheless, as there is a dispute about them, I shall not take them from contestant's vote. This leaves 24 votes as to the illegality of which there is no controversy. The contestant has offered no evidence to contradict the proof of illegality presented by the sitting member. It is practically conceded in the case that there were 24 illegal votes cast at the election in this Congressional district. The sole remaining question is, "For whom were these votes cast?" If they were cast for contestant they should be deducted from his vote, and the sitting member would be elected by 9 plurality.

In my judgment no man can rise from the perusal of the testimony in this case without being satisfied that every one of these 24 votes was cast for the contestant. In most of the cases the proof is found in the declarations of the voters themselves that they had voted for him. In many of the cases the statements of the voters are corroborated by other circumstances; as, for example, the understood and known party affiliations of the persons who cast the votes, the people with whom they were associated on the day of election, the persons who accompanied them to the poll, &c.

But to my mind the statements of the voters themselves, made voluntarily and without inducement and without motive to misrepresent, that they voted for contestant is conclusive evidence upon this point,

and more especially when contestant failed to contradict or impeach their statements when he had full opportunity to do so.

Mr. COOK. Had not Mr. McKinley the same privilege and opportunity of calling those witnesses and proving by their testimony how they had voted as the contestant had?

Mr. MOULTON. And if the votes were impeached the burden was upon Mr. McKinley.

Mr. HURD. If this evidence of declarations of the voter were competent, and there was nothing in their statements or in the circumstances under which they were made to discredit them, then these, together with the other circumstances developed in the proof, made out a *prima facie* case for contestee, which it became the duty of contestant to overcome. The contestee claims that these 24 illegal votes were cast for contestant. He proves it by the declaration of the voters themselves, unimpeached and credible men so far as the testimony shows, and by other circumstances corroborating them, if the declaration of those voters, made after the election, as to how they voted are admissible in evidence.

This presents the question, Are the declarations of a voter made after the election as to the person for whom he voted, competent in an election contest? The ground on which the majority of the committee would exclude this proof is that it is hearsay.

I can not understand how any man can read the authorities, English and American, on this subject and have any doubt upon this point. I refer to the cases decided by the courts. The line of precedents in England is unbroken to the effect that such declarations are admissible. There is not a case to be found to the contrary. It is as well established as any other part of the English law relative to elections that the declarations of an illegal voter as to how he has voted, and in some cases even as to the nature of the illegality, are competent evidence and are not to be excluded because they are hearsay. This doctrine has been approved in this country. It is laid down in Cowen and Hill's Notes to Phillips on Evidence. It is there expressly stated as one of the exceptions to the rule which prohibits hearsay evidence that the declarations of the illegal voter may be received. Any gentleman desiring to pursue this inquiry will find much information upon the subject in a learned note in 3 McCord, in which the twenty-second exception to the rule prohibiting the introduction of hearsay evidence is stated to be the declaration of an illegal voter as to the manner in which he had voted.

In the courts of the United States the English rule has been uniformly followed. It has been expressly approved in New York, Wisconsin, Michigan, and Massachusetts, and followed everywhere in the courts in proceedings in *quo warranto* where the title to office is involved.

A MEMBER. In the courts in this country?

Mr. HURD. Yes, sir It has also been followed in contested-election cases in this House. The first case in which it was elaborately discussed was the celebrated case of Vallandigham *vs.* Campbell, and there the doctrine was laid down as I claim it.

The report was written by a Representative from Mississippi, now Senator from that State [Mr. LAMAR], who in his argument displayed that profound knowledge of the law and that acumen, clearness, and force for which he has always been so justly distinguished.

There has not been any attempt to shake the authority of this case except in the report of Cessna *vs.* Myers, a case reported a few Congresses ago (I have forgotten the number of the Congress), in which I believe Cessna was seated.

Mr. RANNEY. In 1867?

Mr. HURD. In 1867. The majority report in this case discussed the doctrine as to the admissibility of these declarations and the competency of this proof. It proceeds, in order to establish the position it maintains, to attack the English decisions. It declares that they are not applicable in this country because in England they vote *viva voce*, while in this country they vote secretly by ballot. The majority in that case maintained that the situation where voting is *viva voce* is so different from where it is by ballot that the rule of evidence which would admit the declarations of voters in one case is totally inapplicable in the other. But I find a ready answer to all that is said in that report upon this point in what has transpired in England since that time. In 1872 England abolished voting *viva voce* and adopted the secret ballot substantially as we have it here. How has this change affected the rule as to the admissibility of the declarations of illegal voters? It remains precisely the same since as before the adoption of the secret ballot. I refer to Cunningham on Elections, a book published in 1880 in England, in which the doctrine is laid down that these declarations are as competent there now with the secret ballot as they were before. That of itself answers completely the argument upon this point made in the report in the Cessna and Myers case and overthrows the proposition on which they relied to break the force of the English decision.

The reasons for the admission of these declarations govern in the one case as well as in the other, and with more strength, it seems to me, in the case where the ballot is secret than where the voting is *viva voce*. One of the principal reasons, where the ballot is a secret one, urged for the admission of these declarations is that it is the best or highest evidence of which the case is capable. If the voter has deposited a folded ballot in the box what must be the best evidence of the contents of that ballot? Neither the judge nor the bystanders can testify as to what the ballot contains, for they have not seen it. Upon the hypothesis that a secret ballot has been deposited there are no declarations of the voter at the time of voting to be proved as part of the *res gestæ*. Some maintain that the voter himself can be placed on the stand, and that statements then made will be the best evidence, and that if he declines to make a statement then declarations may be proved as secondary evidence. It is admitted on all sides that he can not be compelled to state how he voted. This immunity is considered by the majority in the present case as a privilege of which the voter may avail himself when he is asked on the witness-stand as to his ballot. It is not that only; it is more. It is not merely a privilege to the voter; it is a protection to the vote. When a man is asked how he voted he is not obliged to say, "The law gives me the privilege of declining to answer your question, and I avail myself of that privilege and decline to answer;" but he can say, "I deny your right to ask me any such question; it is an incompetent one." I maintain that no tribunal will permit a voter to be interrogated as to his ballot where it is a secret one. It is absurd, therefore, to say that that is the highest evidence, which the law will not permit to be given.

If while the voter should be a witness he should state how he voted, it is nothing but a voluntary declaration on his part, and stands upon no better ground as to admissibility than other declarations made by him at other times and under other circumstances. There is no one who knows how he voted but himself. There can be no proof as to how he voted except his own declarations. There necessarily, therefore, can be no higher proof than such declarations. I admit they are not conclusive. The question of credibility is another thing. I only maintain that proof of this kind is competent. If the proof be not impeached or contradicted; if, so far as the record goes, the voter is a credible man and there appears no motive to make a misstatement, then I maintain that the declarations of the voter, of the only man who knows what his ballot was, must be accepted as the best evidence of which the case is capable.

Mr. OATES. What authorities have you for that position?

Mr. ADAMS, of New York. Let me ask the gentleman how do you get clear of section 103 of the Revised Statutes?

Mr. HURD. I understand very well the statute to which the gentleman alludes. That, however, relates to immunity from prosecution——

Mr. ADAMS, of New York. Oh, no; that is section 859.

Mr. HURD. I have been talking about the question of the privilege of the secrecy of the ballot under laws such as we have in the State of Ohio. But I come now to the question suggested by the gentleman from New York, namely, how far this immunity extends to the illegal voter. Some persons maintain, and this was pressed ably by my friend from Iowa, that this protection of secrecy applies only in cases where a voter is a legal one, but where you have made out the fact that a man has voted illegally he may be compelled to answer as to how he voted.

The weight of authority undoubtedly is that the protection of secrecy of the ballot does not extend to the illegal voter. But before any voter can be deprived of this protection he must himself have admitted in the investigation that he is an illegal voter or he must have been convicted in due course of law of illegal voting. When the question of illegality depends, as in this contest, upon the preponderance of testimony only, without confession on the part of the voter or conviction, there is no stage in the proceedings where he can be put on the stand and compelled to disclose for whom he voted. Until by admission or conviction by due process of law he has been declared an illegal voter he must have all the presumption of innocence known to the law so far as his personal rights are concerned, and the protection of the secrecy of the ballot will be thrown around his vote as around that of any other voter.

But there is another ground on which the English authorities base the doctrine of the admissibility of this testimony. It is this: that in an election case it is not a contest so much between the contestant and the sitting member as it is between the person attacking a particular vote and the man who cast that vote. The man, therefore, whose vote is attacked is in substance a party to the proceedings, so that his declarations may be taken and his admissions received upon the subject under the same rules which govern in ordinary action in admitting declarations of the party to the record.

It would be a singular thing indeed if there were no way of proving the declaration of parties who may have voted unlawfully, thereby often depriving the man who has been wronged by that very vote of all opportunity of asserting his right to the office, to which but for that vote he might have been elected. This view just suggested considers the illegal voter a party to the extent of making his declaration admissible as in case of parties in other proceedings. The doctrine is stated as follows in Cunningham on Elections, page 294:

> Another peculiar feature of the law of evidence in election petitions is presented in dealing with hearsay. The general rule is that hearsay is inadmissible. To this rule there are the exceptions as in civil proceedings. * * * Secondly, that statements made by the parties, or persons proved or admitted to be their agents, are admissible against such parties but not in their favor. * * * Under the principle involved in this latter exception it has been held that in scruti-

nies, in which every voter whose vote is questioned is considered a party to the investigation relative to his vote, any declaration or statement by such voter adversely affecting his vote is admissible whether it has been made before, during, or after the election.

This doctrine has been followed in all the American cases where the question has arisen and, as I have stated, in the case of Vallandigham against Campbell.

I have seen a third reason suggested for the admissibility of this testimony. The member of the House is a trustee and is holding his office in trust for his constituents. These are the *cestuis qui trust*, and so long as the trust continues, that is during his Congressional term, declarations of any of the *cestuis qui trust* are competent as to the methods by which the trust was created.

Without expressing any opinion as to the soundness of this view, I will say that the reasons already given are those on which the best considered authorities rest their conclusions upon the subject, and on which also the ablest judges and the most eminent jurists both in this country and in England have based their decision. I call to mind particularly Mr. Justice Denio, in New York, and Lord Chelmsford, for some time the lord chancellor of England. An unbroken line of authorities both at law and in legislative bodies may be shown in support of the position I maintain, with the single exception of the case of Cessna against Myers, whose force has been weakened by the change in the methods of holding elections in England without change in the rule of evidence on this point, as already shown. I think it will be safer to follow these authorities than to pursue the contrary course. If we do follow them, the declarations of the 24 illegal voters in the case are competent to show how they voted. They have all declared that they voted for contestant. There is nothing to show that they are not credible persons. Their statements are not attempted to be contradicted or impeached. In nearly every case there are some other corroborating circumstances. I read the testimony impartially, with a bias in favor of contestant if I had any at all. There was no resisting the conclusion that these illegal votes were cast for contestant. These votes, therefore, must be deducted from him. This will leave 9 plurality for the sitting membes—1 more than given him by the canvassing board.

Mr. Speaker, I regard this question as to the admissibility of the declaration of voters as one of the most important likely to arise in contested elections. It is one which in some form or other must arise in every election case where illegal votes are charged to have been cast. I do not believe that this House can afford to lay down now any rule to which in the future it will be expected to adhere as a precedent that is contrary to the best settled principles established by the authorities in this country and in England. I am sure that if this House approve the majority report on this point it will introduce into our election system a doctrine that will prove disastrous; one that will place obstacles in the way of the ascertainment of the truth, and give to the recipient of dishonest votes a great advantage over those who have been injured by them.

Mr. WHITE, of Kentucky. Will the gentleman allow me a question?

Mr. HURD. Certainly.

Mr. WHITE, of Kentucky. Do I understand the gentleman to say that it would be necessary for the voter to identify his ballot before the testimony would be admissible?

Mr. HURD. There is no possible way in which he can identify his ballot under the laws of Ohio. The law expressly provides for the secrecy of the ballots.

Mr. WHITE, of Kentucky. Does not the gentleman see that that would leave the result in a close election to the mere declarations of a few floaters who might make untrue assertions as to the way they voted, unless the ballots could be produced?

Mr. HURD. Does the gentleman from Kentucky appreciate the difference between the competency of testimony and the credibility of a witness?

Mr. WHITE, of Kentucky. I do not understand the gentleman has made that to appear.

Mr. HURD. I have been arguing that the declarations of voters were competent testimony to prove how they voted. Whether they shall be believed or not is a question of how much credit their statements should receive. This is to be determined by the same rules which govern in ascertaining the credibility of testimony in other cases. I have said, and now repeat, that after a careful examination of the testimony I believe that these 24 illegal voters told the truth when they said they voted for contestant, and that therefore these votes should be deducted from him, which will give the seat to the sitting member.

Mr. FOLLETT. I confess, Mr. Speaker, that wonders never cease. But after a careful examination of the testimony in this case I am astonished that my distinguished colleague from Ohio [Mr. HURD] should in the first place claim that there were the number of illegal ballots which he admits it is necessary should be found to have been cast for Mr. Wallace to overcome the admitted majority that he has and was entitled to, and further that upon this proof he or any man can claim that those votes should be rejected.

Mr. Speaker, it is proper for us to consider the surroundings of this case. The ballots that were cast for the two candidates who are contesting for this seat, and the ballots that are contested now in determining the rights of these two candidates, were ballots cast in townships and voting precincts where the Republican party had a majority of the officers having charge of that election and of those ballots. There is in every voting precinct where there is a controversy in this case evidence clear and conclusive that everything was done that could be done to prevent the contestant from having the rights that are now accorded to him even by the minority upon this contest. Further than that, it is now conceded that had the contestant had the rights to which he was entitled he would be here to-day sitting upon this floor and the contestee would be on the outside. If the 16 votes that the minority find he was entitled to had been given to him by the Republican returning board in Ohio he would be here the contestee, the sitting member, and the man who is now occupying the seat would be the contestant.

And there is another fact disclosed by this record—that when it was necessary to seat a Republican in this House that returning board applied to him the rule which they denied in this case. And yet my distinguished colleague from Ohio [Mr. HURD] has suddenly discovered Republican purity and Republican simplicity and honesty in the count and treatment of men who are contestants for office.

The principal contention in this case arises in two townships in Columbiana County. One of them was Liverpool Township and the other was Fairfield Township, in that county, both of them, as I said before, having a majority of the judges Republicans; in one, at least, and I think in both, both clerks were Republicans. And we are gravely asked by the minority, who have adopted the exact language of counsel for contestee, who have incorporated in their report the argument of contestee's counsel, and who have taken their schedule—we are asked by them to find that in one of those townships there were some 20 or 25 illegal votes cast; and that is the township of Liverpool.

Liverpool was not a very large place. You need not tell me that in a voting precinct no larger than that, or in the two precincts where there were Republican judges and Republican electioneering campaign committees to look after the purity of the ballot, Republican challenging committees, that there were that number of fraudulent Democratic votes got into the box and no fraudulent Republican votes. And the proof shows nothing of the kind. There is not a single man called who is alleged to be an illegal voter to prove his residence. A large number of them were young men, who had resided there and in that immediate vicinity for years, who were known to everybody there; their every act, their every movement, all that they had done, was known; and they voted unchallenged, because their residence was known to be in that precinct and that they were entitled to vote. But how do they attempt to prove these illegal votes? Some man said he had seen some of these young men working at Wheeling or Steubenville or somewhere else; they had to work for a living, and occasionally went from home to work. But their homes were there.

Under the law of Ohio intention governs with reference to a man's residence, with reference to his home, with reference to his habitation; and the fact that he may have gone away from home and been gone a year or more is of no consequence when he has gone simply for temporary purposes with the expectation and intention of returning to his home. His home is the place from which he has gone, his residence is there, and he has a right to vote there.

Mr. GEDDES. All the Department clerks go home and vote.

Mr. FOLLETT. I was about to allude to that. At every election held in Ohio there are men who come from Washington who have lived here for years. Their residence has been here for years; their families have been here for years. These men come home to Ohio to vote and do vote. And they vote unquestioned, just as those boys, who had been away from home perhaps for a time to work, voted in Liverpool Township, in Columbiana County.

Now, sir, here is an illustration of the claim made by the contestant in this case. A preacher who came to Washington, brought his family here, took charge of a church here, and went back to Ohio shortly before the election, voted. They say he was a qualified voter; but the boys that worked for a living are not to be judged in the same way or by the same law or by the same methods as the preacher who does not work for a living as they do! In the first place, that is the general character of this testimony with reference to these alleged illegal votes. There are not 10 of them that were not legal votes upon the testimony as it stands in this record—not 10 of them.

Scan it by any rule you please, when you apply it to the well-known rule that intention is what governs with reference to a man's residence and as to where he has the right to vote, the conclusion of the minority of the committee will be found incorrect.

Now what more? This minority report undertakes to subtract from the total vote for the contestant 10 votes. On what grounds? Because there was an error in the return from one precinct by writing 2 instead of 3, making it 124 instead of 134. Now, they say that you should foot it over, although the judges of the election, although those who returned the vote, returned it as it was, at 134. They say that 10 should be subtracted, and they base their argument on that idea.

In addition to that we have the returns of the State returning board as well as the certificate of the judges and clerks of election who footed

up these figures. Upon the very votes of that return, taking the votes cast for Congressman and comparing them with the votes cast for other candidates in that same township, it shows conclusively that 3 instead of 2 was the figure that belonged in that column. Yet upon that sort of testimony they ask that 10 votes should be deducted from the contestant, and that the contestee should have the benefit of that deduction.

Now a little further. There is one vote here which it struck me was a vote giving a remarkable characteristic of this whole case on the part of the minority of the committee. There was a colored boy, 20 years of age, who was not a qualified voter. Nobody claims that he was a qualified voter, and the minority of the committee claim that that vote should be deducted from the vote for the contestant.

Now, what are the facts about that boy? A Republican campaign committeeman went after that boy at his home; and instead of permitting him to go to the polls on foot, as most of us do, walking there and depositing our ballots, this committeeman took a carriage for him. On the way to the polls with him the committeeman handed the boy a Republican ticket and watched him until that ticket was put into the box; so he testifies.

Now, that committeeman had been out all day hunting up voters in that same way. Yet he says that at night he found the Republican ticket on the seat of that carriage, and because he found that ticket there he thinks this darkey must have exchanged it for a Democratic ticket. And the majority of the committee gravely ask you to take that vote from the vote of the contestant. That man's name is Frank Lucas; you will find it near the bottom of the column, page 3, of the report of the minority.

Mr. RANNEY. Has the gentleman noticed the evidence of the mother of that boy?

Mr. FOLLETT. I have, and I am going to allude to that a little further along.

Mr. RANNEY. I understood you to say that that was all the evidence.

Mr. FOLLETT. Oh, no; I said that was the evidence of the campaign committeeman. When the colored boy came up to vote, some one seeing a colored man going to the polls—and it is only recently that we have seen them going to the polls and voting the Democratic ticket, but they are doing it now quite commonly—it was such a novelty to see a colored man going to the polls to vote, that some Democrat jocularly remarked, "There comes a Democratic ticket." Now, this committeeman marched this boy up to the polls and watched him until he put his ticket in, and because of that jocular remark that was made my friend from Massachusetts [Mr. RANNEY], who writes the report of the minority, says that that vote should be taken from the vote for Mr. Wallace.

More than that; they say that the old lady, the mother of this colored boy, said that after he came home that night he told her that he had met a lot of boys, had got on a spree with them, and had voted the Democratic ticket. The Republican committeeman who took him to the polls says that is not so; he says that he took him straight from the carriage to the polls.

Mr. RANNEY. He did not say that boy was not on a spree.

Mr. FOLLETT. The boy says that he got to drinking with some of the boys. That, I say, is characteristic of some of this testimony. There is a little more of it I want to call attention to, for it is upon such testimony as this that my distinguished friend from Ohio [Mr. HURD] has the virtue to rise above party and vote to retain in his seat the contestee in this case.

Now, I ask you who is it that testifies as to declarations made of how these men voted? First, the postmaster at Liverpool, who said he had been working for the contestee for two months; and secondly, a man by the name of Evans, employed by the contestee as his counsel. They were the persons who do the swearing. In no instance do they bring to the stand the man who voted.

Mr. COSGROVE. And did not offer to, either.

Mr. FOLLETT. And did not offer to do so. They sent out an agent and employed attorneys to have him obtain declarations, and then we are asked to take his statement of those declarations as testimony. Why, my friends of the minority of the committee and of the other side of the House, there is a little thing in a report which you made in a case somewhat noted last week, the case of English against Peelle, somewhat in point and significant. I want to call your attention to what you said in that report:

> But there is another reason still stronger why no reliance whatever can be placed upon his action in this matter.
>
> You refer to Mr. Austin H. Brown and his recount.
>
> He was the hired agent and employé of William H. English, a party interested in disturbing the count and making a ground of contest. He would naturally, almost inevitably, be inclined to take such action and make such a report of his proceedings as would favor the purpose had in view by Mr. English, his employer.

How is it about Mr. Evans and the postmaster at Liverpool? You ask us to retain a man in his seat upon their statements as to declarations which had been made to them. Now let me call your attention to what they say about how they obtained those declarations. I read from page 345 of the record. The minority of the committee admit that they held out inducements to some men to make declarations.

But here is a sample brick:

> Q. You may state the exact conversation you had with Mr. Beiber from beginning to end.
>
> A. I drove up to his house in company with Mr. Anderson, and called him to the buggy from his yard. The conversation which followed was partly carried on by Mr. Anderson as well as myself. Mr. Anderson first introduced himself and then introduced me to Mr. Beiber. I said to Mr. Beiber that we were looking up the Congressional contest matter for Mr. McKinley—

Evans notified him at the very outset that he was there in the interest of McKinley—"looking up the Congressional contest matter for Mr. McKinley"—

> that we were informed that he had voted at the Congressional election held the October previous, and that we would like to know for whom he voted for member of Congress.

If Mr. Beiber could be found by Mr. McKinley's attorney on this occasion he certainly could have been found to be put on the stand as a witness.

> Some conversation then took place between Mr. Anderson and Mr. Beiber, about as follows: Mr. Anderson said to Mr. Beiber that this contest was something that did not then affect him directly, and that his voting, if he had no right to vote the fall previous, would not be used against him in any way; that his brother-in-law had told us that he, Beiber, was a reliable man, and that he would doubtless tell us for whom he voted if we asked him, and that we would like to have him tell us for whom he voted. After some hesitation Mr. Beiber said he had voted the straight Democratic ticket. I think I then asked him if he had voted for Jonathan H. Wallace, and he said he had voted a clean Democratic ticket. I then asked him if the ticket was in any way scratched, and he said it was not, and I think he added that it was a clean Democratic ticket. We had some further conversation about crops, and farming, and the new house he was working at, and no other conversation about his voting was had. We then thanked him, and drove away.

They go to a man and say to him in the first place, "You have violated the law." If a man votes where he has no right to vote, if he votes in a county where he has not resided a sufficient length of time, or if he votes without a sufficient residence in the State to entitle him to vote, it is under the law of Ohio an offense for which he can be convicted and sent to the penitentiary for a period not less than one year nor more than five years. I have the statute here. Upon their theory this man was an illegal voter. I say the theory is false, for Beiber was entitled to vote, as the testimony shows. The question of his residence was simply a question of intent, so far as he was concerned. The proof shows that his intent was to make his home just where he was then living, and nobody has undertaken to show any other intent, except simply these agents of the contestee, who testified that the man had not been there all the time, which, as I have said, is not necessary under the law of Ohio.

But these men go to this man and say, "You have violated the law." He, poor ignorant man, did not know whether he had violated the law or not. They say to him, "We will not use the fact against you; but we are here in the interest of McKinley, who has a contest on hand, and we want to get testimony for him." Then they say this poor old fellow made these statements. I do not know whether he did or not; I would not believe it any the sooner because agents employed for this purpose have undertaken to detail a conversation. * Where is the lawyer within the sound of my voice who does not know that the most unreliable and uncertain testimony in the world is an attempt to narrate a conversation? A remark may have been made jocularly; but this does not appear in the narration. It is not so much what a man says as his manner of saying it that conveys the intent, the purpose, the idea he has in expressing any opinion or stating any fact. Here, for instance, is an illustration in the circumstance I mentioned a moment ago. When this young negro Frank Lucas went to the polls to vote some Democrats standing near said jocularly, "There goes a Democratic ticket." And now you are asked by the minority of this committee to take that declaration and charge Wallace with that ticket.

So in this case how do we know how this language was used, what were the exact expressions, or what was the purpose in using them? One thing we know from the admission of these men is that they held out inducements to this man to tell just such a story as he knew they wanted him to tell for the purpose of accomplishing what they were seeking to accomplish by getting a statement from him.

I now come to the other point which the distinguished gentleman from Ohio says is settled upon this question. Before coming to that, however, let me repeat that there is no competent proof here of the illegality of one-half the number of votes required to overcome the admitted majority of the contestant in this case.

The gentleman from Ohio brings in here, he says, an English authority upon election cases. We have a tolerably reliable American authority upon the same subject—McCrary on Elections. The gentleman says that the work to which he refers was written in 1880. That is exactly the date of this work of McCrary. Now let us see what McCrary states as the analysis and digest of the decisions in the United States on this subject. I read from section 302:

> While a mere irregularity which does not affect the result will not vitiate the return, yet where the provisions of the election law have been entirely disregarded by the officers and their conduct has been such as to render their returns utterly unworthy of credit, the entire poll must be rejected.

Before passing further let me say that this word "irregularity" applies to exactly such votes as were cast in the city of Canton, admitting for the sake of argument that there is proof, as I say there is not, as to the boundary lines of the wards in the city of Canton. The men who

voted are admitted to have been legal voters; to have resided there for years. They voted exactly where they had been accustomed to vote for years. Nobody questioned their right to vote. If there had been such a thing as a redivision of the city into wards, they never had heard of it. The most that can be claimed is that there was simply a deposit of a ballot in the box in one ward instead of a deposit of exactly the same ballot in the box in another ward. Under the rules of law in Ohio or anywhere else that is simply an irregularity—not an illegal vote.

In such a case the returns prove nothing. But it does not follow that legal votes cast at such poll must be lost. They may be proven by secondary evidence (the return being until impeached the primary evidence) and when thus proven may be counted.

That is true upon that branch of the case, but I want to read another passage:

It is very clear that the rule which upon grounds of public policy protects the legal voter against being compelled to disclose for whom he voted does not protect a person who has voted illegally from making such disclosure. To give to that rule this wide scope would be to make it shield alike the right and the wrong, the honest and dishonest. It was intended to protect the inviolable secrecy of an honest ballot, and thus the purity of the ballot-box. It was not intended to be used in aid of the schemes of corrupt men to defeat the will of the people. It follows that having proven that A voted at the election in question and that he was not a legal voter, he may be required to testify as to the person or persons for whom he voted.

That is the American law distinctly stated; it can not be mistaken, and it is the only sound and sensible rule of law to apply to a case of this kind.

Now, then, after the able argument of my friend from Iowa [Mr. COOK] it does not seem necessary there should be a repetition of the reasons which conclusively show it would be the most dangerous thing in the world to adopt any other rule.

Take this case as an illustration: After election you claim a number of votes have been illegally cast. Start out your attorney, start out your postmaster, start out men especial friends of yours, hunt up these men, tell them you are there in the interest of Mr. McKinley. Mr. McKinley wants to hold his seat; he has received from the Republican returning board that which he never was entitled to, the *prima facie* case. He wants to hold it; help him to hold it. How did you vote? If you will help us accomplish our object we will not prosecute you. You violated the law. You do not know anything about the law; but I am a lawyer; I tell you as a lawyer you shall not be prosecuted, you shall not be punished.

Mr. COSGROVE. Will the gentleman let me ask him a question right there?

Mr. FOLLETT. Yes, sir.

Mr. COSGROVE. Have any of these men alleged to have been illegal voters ever been arrested or prosecuted?

Mr. FOLLETT. No, sir; not one of them, and they are in a Republican township, where this postmaster has spent two months in the interest of the contestee. Notwithstanding that, not a man has been prosecuted, nor indeed has there been any attempt to prosecute one of them. Why? They knew they could not convict a man. They did not dare attempt it.

A MEMBER. Was the public prosecutor a Republican?

Mr. FOLLETT. Of course a Republican prosecutor, as the county was Republican, although my friend Wallace carried the county by a small majority. Nevertheless the Republican ticket generally had about 1,200 majority.

Mr. EZRA B. TAYLOR. Do you say those men remained in Liverpool?

Mr. FOLLETT. Yes; a large number not only remained there, but have been there ever since.

Mr. EZRA B. TAYLOR. They went away immediately.

Mr. FOLLETT. Who went away?

Mr. EZRA B. TAYLOR. I do not remember. [Laughter.]

Mr. FOLLETT. No, I do not think you do.

Mr. EZRA B. TAYLOR. But who staid?

Mr. FOLLETT. The majority or nearly all of them were there and are there now, with the exception of 4 or 5.

Mr. EZRA B. TAYLOR. Who did stay?

Mr. FOLLETT. Now, these were men who came from another part of the State of Ohio and were operating in the glass-works which were there and at the time of the election in full blast.

Now, they bring men to testify they did not know such men. If they did not know them, what does that argue? Sometimes it is true to say you do not know a man may be to write yourself unknown.

These men came from different parts of the State to work in the glass-works. These glass-works were in operation at that time, and when they closed down, as they did soon after the election, some of them went away. With the exception of those few men who were at the glass-works and went away when it closed down, every man of them could have been found and prosecuted any time up to the present day.

A MEMBER. Indicted anywhere?

Mr. FOLLETT. Yes, they could have been indicted if they had gone away.

Mr. CONVERSE. Let me ask my colleague a question.

Mr. FOLLETT. Certainly.

Mr. CONVERSE. Let me ask whether these admissions or pretended admissions made to Mr. McKinley's attorneys were not made months after the election?

Mr. FOLLETT. Yes; every one of them after they prepared to get up the testimony in this case, and there is not a case where the admission was made when the man went to the polls and deposited a ballot; not a case where it is a part of the *res gestæ*. It was all done afterward as an inducement to help the contestee to hold his seat in this House.

My attention is called to the fact that the case to which my distinguished colleague from Ohio [Mr. HURD] referred was a case decided in 1785, and was a case in which the question was raised as to the party's right to vote, and not as to how he voted.

Another thing further I desire to call attention to. In this township of Liverpool, where the books and papers and all appliances relating to the election were in the hands of the Republicans, they have not produced the poll-book, or offered to produce it, or attempted to produce it, to show anything about who they claim cast these illegal votes. They have claimed that certain of these votes in that township were illegal votes; but they have not shown or attempted to show it by the best testimony; they have not produced the record testimony that could have been produced upon that subject. They do not produce the only competent evidence that ought to be permitted to be produced, the poll-books themselves. Why? Simply because these poll-books had not been returned as the law of Ohio required them to be returned, nor had they been kept as the law of Ohio required them to be kept. And you ask now, as against the expressed will of the people of the eighteenth district of Ohio, to retain in his seat a man admittedly not entitled to it up to this hour, for if he ever have a title to a seat it must commence after a vote is taken upon this case. You are asked to retain him here upon what grounds? They introduce this testimony of A, B, C, and D, who knew nothing and can know nothing of the intention, as alleged, of abandoning their residence on the part of some of these young men who had gone away—some of them had been absent from their homes for a year—and yet, in the face of the fact that these were young men seeking employment, looking for employment, searching for a means of livelihood, you are asked to mark them down as illegal voters, every one of those men who had lived there for years in that neighborhood, who had been born and raised there, and whose families were still living there. And you are asked to follow it up by the declaration of a man made under the circumstances such as I have narrated to an attorney of the contestee, and a postmaster who perchance had his help to secure his position, and follow it up by taking their statements as to what these men had said under such circumstances and not under oath.

But there is another thing about this Liverpool Township. Mark you, here is where the fraudulent votes came from. When they got through tallying the votes the two clerks disagreed by seven votes; one of them had seven more votes recorded for McKinley than the other had. What did they do? Did they count the votes over and see who was wrong? Oh, no; they only averaged them up, and McKinley unquestionably has got his average part of the seven votes more than he is entitled to; and yet you are to retain a man in his seat on this floor by virtue of declarations coming through such sources as this; a man admitted by everybody not to be entitled to a seat, unless you take notice of this testimony and give to it all the faith that you would give to the testimony of an honest man under honest circumstances and under oath.

Now, a word or two further. I want to allude to Fairfield Township for a few moments. There were 11 votes in that township in that county that were not counted for Wallace that my friend from Ohio at least now admits ought to have been counted. They were votes cast unquestionably by poor men, by illiterate men, men who wanted to vote for Mr. Wallace but were afraid to do it openly, as shown by the fact that instead of their going to a man who knew how to write and spell the name properly they undertook to write their own ballots, because of the fact that they were afraid to let somebody know that they were scratching a Republican ticket. There was one of these that was cast for "Wales," and it is claimed that that does not spell Wallace.

Well, now, I think it may be conceded to be a very short, simple, and phonetic way of spelling that name, and the intention of the voter is evident. That, however, they are unwilling to admit. Another undertook to spell it and wrote it "Ma. Wllac." Another spelt it, but they claimed that the second "l" was an "s," and the final "e" was an "r," so that it made "Walser," although the "Jonathan H." was prefixed to it; and that they would not count either, though it is manifest that the vote was intended for Wallace. Another one spelt the name "Wallac" and they undertook to interpret that as not intended to be a vote for Mr. Wallace, but for somebody else. There are a number of other votes which were cast in the township of Fairfield where Major Wallace was spelt correctly, but where the initials were wrong. These I hold were intended to be cast for the contestant.

Well, now, as an illustration I may mention that I received a note last night from the distinguished Speaker of the House simply introducing somebody—I want you to know that the Speaker and I have no corrupt alliance [laughter]—and I found the note was addressed "J. W. FOLLETT." I have known the Speaker for years and he has known me for years, and we have been together in this House; and

yet, instead of putting on the note my proper initials, "J. F.," he calls me "J. W." Should I have refused to open the note on the ground that it was intended for somebody else? So say our friends on the other side of the House. Why, sir, if you are to apply rules of that kind to an election you would universally defeat the will of the people so far as it was attempted to be expressed by men who were not entirely familiar with the initials of the candidates before them or with the spelling of their names. I have received hundreds of letters spelling my name with every combination almost that could be put together having an approximation to its pronunciation, and I never questioned that those letters were intended for me. So with these ballots. Who doubts that every one of them was intended for Wallace in this case?

One thing more. They say this ballot-box was not properly kept. The proof shows that the ballot-box was untouched and unopened from the time the ballots were cast, and it was locked up until the time it was produced for examination. It was in the hands of Republicans. They had it under their supervision. The township judges intrusted with its custody were Republican judges. When the ballot-box was produced, and before it was produced, men were put upon the stand who testified in numbers ranging from 5 up to 13, I think, that there were such ballots as these that had been cast and that the judges had not counted in that box. The testimony, therefore, before the box was opened was strong and conclusive that such ballots were there and would be found there. When it was opened they were found, and there were 11 of these ballots that had been refused, the judges not counting them. There were 11 of those ballots that the contestant claimed he had a right to have counted for him. And every fair-minded, impartial man upon this floor will agree with me that he had a right to have every one of them counted.

Let me refer to another thing, as illustrating the entire fairness of the minority in this case. If you look at the minority report, on page 14, you will observe the third name from the bottom is "——— Wallace, Beaver Township, Mahoning County." The ticket they attempt to exclude there had distinctly written upon it "Jonathan H." where they have got the dash. But you are asked to take that vote out because of the dash in the place of "Jonathan H." And that is called fairness and treating this House fairly upon the investigation of a matter of this kind.

Now I want to say a word or two with reference to the four tickets which it is claimed ought to be counted for the contestee, where it is said that when the ballots were opened in the morning there were no Republican tickets except such as had the name of McKinley scratched upon them. Those tickets were in the box; the persons whose duty it was to pass upon that question, who had them while they were fresh, before there was any opportunity to tamper with them, before there was any opportunity to still further erase, if any erasures or attempted erasures were made of the marks, those men counted these ballots and made their return; and you are asked to undo that work upon the statement of a clerk, who afterward says he thinks there were four more of them—without our knowing how much the attempt to erase the erasure might have been subsequently made, you are asked to count those votes for the contestee.

I say the parties whose duty it was to pass upon that question were the judges of election. They were there that night. The minority say they were working in dim candle-light. How do they know that they did not have an argand burner? They did not know that the light was not as bright as that of the sun at noon-day. We are to presume at least they had light sufficient to enable them honestly, intelligently, and fairly to discharge the duties they were intrusted with. They did discharge them. They said how many of those votes showed they were scratched and intended to be scratched, how many of those votes ought to be counted for the one or the other; and their determination on that question is final and conclusive, and certainly will be relied upon by this House in preference at least to an attempt that may now be made on the ground of the opinion of some clerk called to testify in the interest of the contestee to show that 4 more of them ought to be counted.

I believe, Mr. Speaker, if ever there was a case presented to Congress where the contestant was entitled to his seat it is this; and in this belief I but voice the sentiment, I know, of a large portion of the voters of my State. If ever there was a contestant entitled to a seat upon the floor it is Jonathan H. Wallace, the contestant in this case. For fifteen months he has been kept out of that office by what is now admitted to be a fraudulent return of the returning board of Ohio—if not fraudulent, at least mistaken. We might say "mistaken" if it were not the fact that they applied in this case one rule when in the very same election in another district they applied the other rule. Men do not make that kind of mistakes. It was a deliberate attempt, in my judgment, to put into this House and keep here until such hour as a contest could determine the rights between these two parties a man who was never elected and who the returns showed was never elected to the seat.

The question is whether this House, by any specious argument, by any declaration or admitted testimony of the attorney of the party as to conversations which he had with men alleged to have been illegal voters, but without any proof of the fact that they were illegal voters, shall now vote to continue and force upon the eighteenth Congressional district of Ohio a man they did not elect, but the man whom they repudiated at the polls. I do not believe it is within the province of honest men to undertake to stifle the voice of the people or to suppress their deliberate judgment as expressed at the polls by continuing in a seat upon this floor a man that his constituents elected to stay at home, and to keep out of that seat the man they chose as their Representative, and who is entitled to the seat for which the contestee has been drawing the pay, and in which up to this time he has been performing the duties of a Representative for six months and obtaining all its honors and emoluments. I think that for the nine months which are left of this Congressional term the man whom the people elected ought to be placed in the seat to which the voice of the people called him, and to which they designated him as their Representative.

I want now to call attention for a single moment to the views of the minority upon the question of the kind of testimony that should be sought in cases of this kind as expressed by the minority of the Committee of Elections in the case of O'Ferrall against Paul. The gentleman who wrote that minority report said that the report from which the gentleman from New York [Mr. ADAMS] read the other day was simply an expression of his individual opinion, with which the subcommittee did not agree when it was submitted to that subcommittee. I have here the views of the minority as reported to the House in that case. Mark the language:

> We contend that the only reliable evidence would be the testimony of the alleged delinquents, or a sworn copy of the list of such as paid their tax, made out by the collector to whom the tax was paid and by whom the receipts were issued. If the latter could not be obtained, then the delinquent voters alone could testify.

Mr. MILLER, of Pennsylvania. Will the gentleman permit me a moment?

Mr. FOLLETT. Certainly.

Mr. MILLER, of Pennsylvania. The gentleman ought to do me the justice to read a little further on, where I went on to state that I do not deny that the affiliations of the voter, the persons with whom he came to the polls, the persons who gave him his ticket, were all competent evidence to show how that voter voted.

Mr. FOLLETT. Neither do I deny it in this case.

Mr. MILLER, of Pennsylvania. Allow me to say to the gentleman that of the 557 votes which you voted to take off from the votes of Judge Paul there was not one of them called, neither was there a man who testified as to how one of them voted, and there was not a man who testified as to with whom one of them came to the polls.

Mr. FOLLETT. The gentleman is on the Committee on Elections, and can take his own time.

Mr. MILLER, of Pennsylvania. Then you ought not to quote me. You sustained that report.

Mr. FOLLETT. On the distinct ground, as shown by the testimony, that nobody could get the tax receipt except as it came from a Read-juster.

Mr. MILLER, of Pennsylvania. In nine cases out of ten they got the tax-receipts a week before the election.

Mr. FOLLETT. The O'Ferrall and Paul case is settled.

Mr. MILLER, of Pennsylvania. Oh, yes; there is no doubt about that.

Mr. FOLLETT. And this will be directly.

Mr. MILLER, of Pennsylvania. But not on the same principle that you adopted in the case of O'Ferrall against Paul, or, if you do, you must vote for McKinley.

Mr. HEWITT, of Alabama. And the gentleman from Pennsylvania on the same principle must vote for Wallace.

Mr. MILLER, of Pennsylvania. Oh, no; there is testimony here as to how McKinley's men did vote—testimony as to their declarations.

Mr. FOLLETT. I suppose the gentleman can have an hour, while I have not that amount of time left, and I can not yield any further.

A great deal has been said here about magnanimity and all that sort of thing. I do not think that is a question which should affect a case of this kind. If I can reach what I believe to be the expressed voice and will of the people, I intend that to be my only rule in my action on this floor in contested-election cases.

Now, so far as gentlemen on the other side of the House are concerned, or a large proportion of them, and more especially so far as concerns the contestee in this case, in his seven years' service in this House there never has been a case where a Democrat and Republican were contesting—though in many of those cases the majority of votes in favor of the Democrat was thousands—there never was a case in which that gentleman, if he voted at all, did not vote for the Republican during his seven years' service.

A MEMBER. How many cases?

Mr. FOLLETT. About forty-six cases. It may be that I am mistaken, but I have been advised that my friend from Ohio [Mr. MCKINLEY] made his canvass boasting that he had voted in the last Congress to unseat twelve men on this floor who were Democrats and to seat twelve Republicans, and he regretted that he did not have a chance at more of them. I say it comes with a bad grace from gentlemen in cases of this kind, upon testimony such as this, for them to say that they are ignoring party affiliations, that they are ignoring party lines, that they are ignoring party prejudices for the purpose of retaining in his

seat here a man that the people never intended to occupy that seat at all.

My friend from Ohio says that his majority here is 67. How made? By cutting off from Mr. Wallace 10 votes that the men who counted the returns say he was entitled to upon simply a clerical error, without a shadow of proof that it was anything more than a clerical error; by denying to him votes that were intended for him—such, for instance, as the votes of men who were so unfortunate as to be compelled to live in the county infirmary, one of whom, 80 years of age, had been living there for years, and at every election had gone back to the township from which he was sent and voted there. He did it at this election. The gentleman from Ohio says that the supreme court of Ohio has decided that the proper place for such a man to vote was in the township in which the infirmary was situated. The supreme court of Ohio decided nothing of the kind. That court has said that a man may adopt the infirmary as his home and make that his voting place; but when he chooses to go back to where his early associations were—to the township from which he was sent—the place where he can vote surrounded by his friends and former neighbors—it is his right to do so. The supreme court never said anything to the contrary. [Applause on the Democratic side.]

HOUSE CONTINGENT FUND.

The SPEAKER, by unanimous consent, laid before the House a letter from the Clerk of the House of Representatives, submitting a statement of the condition of the miscellaneous items of the contingent fund, and recommending an appropriation to meet expenditures from that fund; which was referred to the Committee on Appropriations.

ENROLLED BILL SIGNED.

Mr. HOLMES, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled a bill of the following title; when the Speaker signed the same:

A bill (H. R. 3967) for the establishment of a bureau of animal industry, to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced that the Senate returned to the House, in compliance with its request, the bill (H. R. 5377) for the allowance of certain claims reported by the accounting officers of the United States Treasury Department.

The message further announced that the Senate returned to the House the bill (H. R. 6762) to authorize the construction of a bridge across the Missouri River at a point to be selected between the north and south lines of the county of Douglas, State of Nebraska, and to make that a post-road, the same having been heretofore recalled from the House by the Senate.

OHIO ELECTION CONTEST—WALLACE VS. M'KINLEY.

The House resumed the consideration of the report of the Committee on Elections upon the contested-election case from the eighteenth district of Ohio.

Mr. MILLS. Mr. Speaker, I believe that the public will when expressed in the form ordained for its manifestation is the supreme law of the land, and that it ought to be obeyed and executed in good faith by every one charged with its enforcement. The people of the United States have ordained a Constitution and laws for their government, and they have required us as their representatives before entering upon our duties to take an oath to support that Constitution. One of its articles imposes upon us the duty of hearing and determining the right in every contest for a seat in this House. We are made the judges of the "election, returns, and qualifications" of its members. We are not to determine as partisans, but as fair and impartial judges. We are not to determine who ought to have been elected, but who has been. We dare not in the presence of our consciences, if they are not dead, vote in a contest for a seat here according to our partisan prejudices. We must vote, as judges, according to the law and the testimony, and that alone.

I will not appeal to party prejudice to aid me in my cause. The only appeal I make to my own prejudice is to "get thee behind me, Satan," that I may examine impartially and determine with a clear judgment and a living conscience, which of these two the legal voters have chosen for their Representative. Having examined the subject, I have reached the conclusion that Mr. McKinley was fairly elected. I do not intend to apologize for the conclusion at which I have arrived. I have no apologies to make to any one. Believing from the law and the testimony that McKinley is elected I should be less than a man if I should sit here and permit party clamor around me to drive me to vote against my convictions.

It has been my habit ever since I have had a seat in the House when I was not familiar with the case to give the benefit of the doubt to my own party associates and vote with my friends on the committee. But when I have had an opportunity to examine the case for myself, or to hear the discussion of the controversy and become informed, I have appealed from party allegiance to the tribunal of my own judgment and conscience. It is not for me to say how I would have had the election. If that was the question I would not hesitate a moment how to vote. But that is not the question. And the question is one that must be decided, if decided rightly, not by my prejudices but by my conscience and convictions.

Now, let us examine the case. And in doing so I will give to McKinley only the votes the testimony shows he is clearly entitled to, and to Wallace all the doubtful votes. This is putting Mr. Wallace's claim on the strongest ground. Let us take McKinley's side of the case and add to his vote the legal ballots that were excluded and subtract from him all illegal and doubtful votes and ascertain his true vote. The canvassing board gave him 16,906 votes. There is no contest about those votes. No one denies that they are all legal. Then he is entitled to a ballot cast in the name of "Kinley" instead of "McKinley." This vote is conceded in the brief of contestant. He is entitled to the vote of Orlando Brown, who voted for Congress and justice of the peace in the same box instead of different boxes. This vote is conceded in contestant's brief. He is entitled to 1 vote which was excluded because the voter put Hune's name, who was a candidate for district attorney, in the wrong place on the ballot, and that vote is conceded in contestant's brief. That makes 3 more.

Mr. TURNER, of Georgia. Let me inform the gentleman as to that ballot.

Mr. MILLS. Yes, sir.

Mr. TURNER, of Georgia. I will state for the information of the gentleman from Texas that that concession made in the brief was made from misconception of the testimony. In the printed form of the ticket it appears to be set out as the gentleman takes as conceded, but in pursuing the matter and going to the original ballot I find that Hune ballot to which you refer is in this state: the name of Hune is written beneath that of McKinley and not where the gentleman states.

Mr. MILLS. Mr. Hune was a candidate for district attorney. In voting for Hune the voter wrote his name on the wrong part of the ballot. That is what I said.

Mr. TURNER, of Georgia. I say, according to the rules the vote is counted for the written and not the printed name.

Mr. MILLS. That is the rule as to two candidates running for the same office. But Hune and McKinley were not running for the same office. Hune was a candidate for district attorney, and McKinley for Congress, and the elector voted for both, but by mistake wrote the vote of Hune on the wrong part of the ballot. The vote is conceded in the brief, but whether it is or not, it is clear that that vote ought to be counted for McKinley for Congress and for Hune for district attorney.

At two precincts there were 2 votes cast for McKinley with his name written under the printed name of Wallace. These votes are legal and must be counted. Wallace has 2 of precisely the same sort which we concede to him. That makes 5 that must be added to the number given him by the canvassing board. Then he is entitled to the vote of George W. Shrimp. He was a legal voter who had lived in the county where he offered to vote, all his life, had lived in the same precinct, had voted there before. He tendered his vote and it was excluded. McKinley is entitled to have that vote. (McCrary on Elections, sec. 530.)

Now we come to the Butler recount. There were 4 votes thrown out which were cast for McKinley. The testimony is that some one had taken the ballots and erased the printed name of McKinley with a lead-pencil and written Wallace's name under it. These persons came to the polls to vote and desired to vote for McKinley, and there were no other tickets to be had, so they procured a piece of India rubber and rubbed out Wallace's name and all the marks over McKinley's printed name, and then put the ballots in as they were originally printed. They testified to these facts themselves, and that they had so voted. There can be no doubt as to their right to have their votes counted. Wallace has 11 votes that were cast for him in the same way. These votes were not counted by the judges, but they are allowed by the committee. They are the Fairfield box votes, which we concede to him. If Wallace is entitled to the 11 votes so cast for him, McKinley is entitled to the 4 so cast for him. Then the recount at Austintown showed a gain of 2 votes for McKinley, and the recount at Butler a gain of 2 votes for McKinley. These he is entitled to. Wallace gained 11 on the recount at Fairfield and they are conceded to him, and McKinley is equally entitled to the 4 votes he gained on the recount, and certainly so when 1 vote is deducted from him which he lost by a recount at another box. This makes 14 votes that must be added to the number given McKinley by the canvassing board, making in all 16,920.

The contestant in his brief claims that 12 votes should be deducted from McKinley which he charges were illegal. Among these is the vote of Lucas, of whom we heard this morning. He was a colored boy of about 20 years of age. He was a "spring chicken," and both Republicans and Democrats were after him. A Republican started to the polls with him and gave him a Republican ballot. He suspicioned him when he gave him the ticket. He says he folded it in a peculiar manner that he might recognize it when he went to vote. He thought the boy put the ballot in the box, but as he went away one of Wallace's friends said that Lucas had voted for Wallace. This boy afterward said he had two tickets, and held back the Republican ticket and put the Wallace ticket in the box. It seems his mother called

him to account for voting the Democratic ticket. He admitted he had voted for Wallace. He said that he was full—I suppose of whisky—and that he had voted for Wallace. McKinley's friend says he found the ballot he gave him on the seat of the buggy when he returned, folded just as it was when he gave it to him.

Mr. ROGERS, of Arkansas. You call that a "spring chicken," do you? [Laughter.]

Mr. MILLS. Who will say that the Democratic party of Ohio is wanting in enterprise when they can outstrip the Republicans with the colored voter?

Mr. HEWITT, of Alabama. Let me ask the gentleman from Texas, does the evidence show that the Democrat who said that the negro voted a Democratic ticket had an opportunity to determine that fact?

Mr. MILLS. It shows that he was about, and when he saw the ticket go in he let a smile drop out of the left corner of his eye and said, "That vote is for Wallace." But I do not charge that vote to Wallace; I charge it to McKinley and deduct it from him as an illegal vote. As I said, I have deducted all doubtful votes from McKinley. Another vote which I take from McKinley is that of a Presbyterian preacher who had lived for years in the town in which he voted. He had been sent by his church to establish a mission in this city. He says he never abandoned his residence where he voted. He always claimed it as his home, and that he voted there, and thought he had a right to vote there. We were told a few moments ago, and correctly too, that the intention has much to do in fixing the residence of a person. This law is not peculiar to Ohio. It is the law everywhere in the United States, and I suppose in Europe. If one leaves a place where he has a home with the intention of returning, he still retains his home. If he leaves with the intention of remaining away, he abandons it. This man by the law was entitled to vote in Ohio, but we we will deduct him as an illegal voter from McKinley. Out of the 12 who are about as well entitled to be counted illegal voters for McKinley as the 2 I have given I deduct 9. The remaining 3 were paupers who voted at the election; but there is not a word of proof that either one of them voted for McKinley or that either one of them was a Republican. There is no proof as to how they voted or as to their politics. So that deducting 9 from 16,920 leaves McKinley's true vote 16,911. On this vote he must succeed or fail.

Now let us take Mr. Wallace's side of the case. The canvassing board give him 16,898. He claims 16,938. Let us correct an error of 10 votes in the footing up by the canvassers, which makes his corrected vote 16,888. To that add the votes he claims should be given him, and his vote is 16,928. We will not contest any of the votes he claims should be given him. The error in footing up the vote must be corrected. The gentleman from Georgia [Mr. TURNER] says the 1,497 votes from Carroll County were stated in so many words in the return. They are so stated, but the abstract which accompanies it shows the mistake. Will not the statement in the certificate be corrected by the tabular statement of the vote in the abstract? Suppose a lawyer sues on two promissory notes, which he sets out in his petition, each for $200, and says that the defendant owes him $500. Will not the court look to the notes to see the correct amount? If the court should render judgment for $500, would not a revisory court correct it? That is the position of the case. The certificate from Carroll County shows 1,497, but it refers to the abstract, and that shows 1,487.

Now, it is charged that the committee have a certificate made by the same officers since then that corrects the mistake and shows that 1,497 is right. But the subsequent certificate can not be received. Where an officer is charged by law with the performance of a duty and once performs that duty he has no authority to reopen and examine the case anew unless that authority is given by law. When he has once acted his authority is exhausted and he is nothing more than a private citizen as far as that case is concerned. That has been decided repeatedly. It was held so by Chief-Justice Marshall in the Marbury and Madison case. I have here a decision of Chief-Justice Denio, of New York, which says:

> The common council, having once legally canvassed the returns of the election for mayor, have exhausted their power, and can not subsequently reverse their decision by making a different determination.
>
> The effect of the returns is not open for consideration in a collateral proceeding in which the title of the officer is in question.

The same was held here in election reports by Mr. Kerr and Mr. RANDALL. Both of them were afterward Speakers of this House. In the case of Chrisman *vs.* Anderson both sides of the committee laid down that principle. The House may have testimony taken to prove that was the correct vote, and it may go behind the first certificate, but the officer who made it cannot go behind it.

Now, then, that leaves Mr. Wallace's vote 16,928 and Mr. McKinley's vote 16,911. That gives Mr. Wallace 17 votes the advantage. Now I begin to take from him his illegal votes. According to my statement Mr. Wallace is 17 votes ahead, and I have to commence to see if there were any illegal votes cast for him, which must be subtracted. I find in his brief he admits 2 votes that were illegal and were cast for him. That leaves but 15. I find in his brief he admits there are 4 illegal votes, but he says there is no proof for whom those votes were cast, and he assumes therefore that they should be taken from Mr. McKinley. I shall give you those voters by name, and will show how they voted. The contestant's brief says:

> As to Charles Huhn, William Ward, Frederick Mayer, and James Sypher, mentioned in the above list of 16, we think that the testimony shows that they were illegal voters by reason of not having resided in the State or county the required time. But there is no testimony to show whether these persons voted for contestant or contestee. It is shown that they voted at said election, and there is some testimony tending to show that they were Democrats. They were not examined as witnesses, but it appears from the testimony that all of them except Mayer might have been examined if contestee had desired so to do.

Now, Mr. Speaker, as to the rule of law much has been said here about taking the admission of the voter as to how he voted. But the rule as established the other day in the case of O'Ferrall against Paul is that if you first establish the illegality of the vote and then the party affiliation of the voter, that is sufficient until rebutted to determine for whom the illegal vote was cast. Now, if these voters were Democrats and not authorized to vote at this election, that is testimony sufficient to show that they voted for Wallace until there is testimony contradicting that statement. Now let us see for whom they voted.

The testimony says:

> Q. Do you know anything as to whether the said Charles Huhn voted in Liverpool Township, Columbiana County, Ohio, on the 10th day of October, 1882; and if so, what?
>
> A. After repeated interviews with him he confessed that he had voted here.
>
> Q. Do you know what ticket he voted, and for whom he voted for member of Congress at said election?
>
> A. I do.
>
> Q. State whom he voted for for member of Congress, and what ticket he voted?
>
> A. He voted for Wallace.
>
> Q. Do you know the politics of said Charles Huhn? If so, state what his politics is.
>
> A. Democrat; that is personal knowledge on my part.

That ought to be sufficient for Mr. Huhn.

Mr. EATON. Is not that hearsay testimony?

Mr. MILLS. He says he knows of his own personal knowledge.

Mr. EATON. You had better have got the testimony of the voter.

Mr. MILLS. He could not be compelled to testify if he had been summoned. I come now to the case of Frederick Mayer. I quote from the record, page 259:

> Q. Do you know Frederick Mayer?
>
> A. Yes, sir.
>
> Q. Was he residing here at the time of the October election, 1882; and, if so, how long had he been residing here at that time?
>
> A. He was residing here. I first got acquainted with him about the latter part of May, 1882.
>
> Q. Where, if you know, had he been residing before that time?
>
> A. He told me he had been residing in Trenton, N. J.

It is to be remarked that the illegality of the votes of these people is admitted. I will now read to show how this man voted.

I read from the testimony:

> Q. Do you know whether he voted at the election on October 10, 1882?
>
> A. Yes, sir.
>
> Q. State, if you know, whether he voted or not, and for whom he voted, at said election.
>
> A. Yes, sir, he voted. He voted for Wallace.

In reference to William Ward the testimony shows that he lived at Steubenville, in a different Congressional district; that he voted at Liverpool, in the eighteenth district; and the testimony of William Parks (page 251) says that "he is a Democrat, I know." What doubt can there be that his vote should be deducted from Wallace? According to the rule laid down by his attorney in his brief, and which has been sanctioned by this committee and this House, the proof of his party affiliation is sufficient evidence that he voted for his party's candidate.

The testimony in regard to James Sypher will be found on page 197 of the record. James Porter, produced as a witness, testifies as follows:

> Q. Are you acquainted with James Sypher?
>
> A. Yes, sir.
>
> * * * * * * * *
>
> Q. State if you know what ticket he voted, and for whom he voted for member of Congress from this district.
>
> A. He said he voted the straight Democratic ticket.

Now there can be no question as for whom these people voted; I have read you the testimony. Mr. Wallace admits that these voters were illegal; but he charges that there was no testimony as for whom they voted. I have read you the testimony showing that they voted for Mr. Wallace.

Mr. MCADOO. Will the gentleman permit me to ask him a question?

Mr. MILLS. Yes, sir.

Mr. MCADOO. How did this man get his knowledge of that?

Mr. MILLS. I do not care about how he got his knowledge.

Mr. MCADOO. Did he say that he saw them vote for Mr. Wallace?

Mr. MILLS. As I said awhile ago, the main question is, was the voter a Democrat? and that is proved here.

Mr. MCADOO. It does not follow that they voted for Wallace.

Mr. MILLS. The voter said he did, and I have read you the testimony of the witness. I say I do not care how he arrived at his conclusions; I lay aside that question entirely. If the witness knows that the voter was a Democrat, and if the contestant admits that he voted illegally, then the burden of proof is on Wallace to show that he did not vote for him. That is the very doctrine which we established the other day

in the case of O'Ferrall against Paul. It is the very doctrine which has been established heretofore, that a man's party affiliations show for whom he votes, and if he is an illegal voter, then his vote must be charged against the candidate who represents the party to which the voter belongs. The man's party affiliations determine how he votes. I will not take up the time of the House by discussing the question of admissions. The rule as laid down was correctly stated by my friend the other day. And the counsel of the contestant in his brief says so. Let me read you what the counsel of the contestant says in his brief. He says:

The witness (Bricker) swears that he saw him (Charles Hardesty) vote—

That is one of the votes which I have taken away from McKinley—

The witness (Bricker) swears that he saw him vote; did not see the face of his ticket, but both witnesses know him to be a Republican in politics, which raised the presumption that he voted for contestee.

That is a reasonable presumption; the position is unassailable and I maintain it to-day. Now in regard to those people about whose admissions you have heard so much said, so far as I have been able to examine, I believe that every solitary one of them is proved to be a Democrat. I therefore take those illegal votes away from the vote for Wallace.

Then his counsel says in his brief that there were 4 other Democratic illegal votes. This is what he says:

Of the 29 names before referred to, there remain for consideration the four following, to wit: 1, William Liebschuer; 2, Henry Tasket; 3, John Rumberger; 4, J. P. Stirling.

He charges that those were illegal votes, but says there was no testimony as to how they voted, and therefore they must be taken from McKinley by some rule of law which he does not quote. Now, how did these parties vote? On page 203 of the record is the testimony of James Stevenson:

Q. Do you known when William Liebschner came to this place and from whence he came?
A. He came about September or October, 1881, from Johnstown; don't know what State. I don't know only what I heard him talk about.
Q. Do you know anything about when he came here except what he said?
A. No, sir.
Q. Please state whether or not he voted at the election for State and county officers and member of Congress held in this township on the 10th day of October last, if you know.
A. Yes, sir.
Q. How do you know that he voted?
A. He told me so.
Q. Do you know who he voted for for member of Congress from this district? And if so, state who he voted for and your means of knowledge.
A. Yes, sir; he voted for Wallace. I know it because he told me so; and I have no other means of knowledge.
Q. Please state when and where he told you this.
A. In William Brunt's pressing shop. We both worked there for William Brunt. It was since this contest came out.

There is one who admits that he voted for the contestant. Then on page 205 is the testimony of John W. Vodrey. He testifies as follows:

Q. Are you acquainted with Henry Tasker, of East Liverpool; and if so, how long have you known him, and where?
A. I am acquainted with him; have known him several years in East Liverpool.
Q. State what you know as to his residence at this time of the election for State and county officers and member of Congress on October 10, 1882, and before.
A. The first I remember of him he lived here; then he went to Beaver Falls; I couldn't say when; then he went to Trenton, N. J.; I don't know where he went after that, but he was in Baltimore and New York; then he came here in the first part of March, 1882.
* * * * * * *
Q. Do you know whether he voted at the election on the first Monday of April last year?
A. He said he went to vote, but his vote was rejected on the grounds that he had not been here long enough, and he knew then that he had no right to vote. This was the spring election last year.
Q. What, if anything, did you hear him say as to whether or not he voted at the fall election for member of Congress in 1882? And you may state whether he said who he voted for and what he said, if anything, as to his right to vote there.
A. He said he had voted for member of Congress in 1882; he said he voted for Wallace, and he said he had been here a good while since the spring election, and he thought he had a right to vote in the fall.

On page 257 the testimony says of John Rumberger he told me "he voted for Wallace," and on page 283 a witness testifies that Sterling told him he voted for Wallace.

There are 8 of these votes. Two or three of these voters stated that they voted for Wallace, and the others are proven to be Democrats; and they are all admitted in the brief of the contestant to be illegal voters. These 8 added to the 2 before make 10 illegal votes, which taken from the 17 leaves 7. Then we come to 6 other votes, the testimony in regard to which will be found on page 304 of the record. This is the testimony:

Q. Do you know Joseph Hanlan, Oscar Bates, Hugh McCurran, Frank Allison, Frank Green, and James McCurran?
A. Yes, sir.
Q. Where did they reside during the month of October, 1882?
A. In Wheeling, I believe.
Q. Do you know the politics of said persons, or either of them, at said time?
A. I believe they were all Democrats.
Q. State what, if anything, you know as to said persons or either of them leaving Wheeling on or about the 10th of October, 1882, where they went to, if they left, and their purpose in going, if you know.
A. They came to East Liverpool to vote on that day.
Q. Do you know for whom they voted for member of Congress at said election?
A. For Wallace.

Now, here are six persons who lived in the State of West Virginia who went to East Liverpool, in Ohio, on the day of election and voted for Wallace. It is unnecessary to multiply words about them. People in West Virginia do not have the right to vote in Ohio; they must vote in their own State.

We now come to persons who voted in the wrong wards. In the State of Ohio the law requires every man to vote in his own ward, in his own precinct, and declares every vote outside of that to be an illegal vote. I now refer to the testimony to be found on page 381, the testimony of John Rigler:

Q. 1. What is your name, age, occupation, and place of residence?
John Rigler; am 45 years of age; am a molder; and live in Canton, Stark County, Ohio.
2. In what ward in the city of Canton, Stark County, Ohio, did you live on and before the 10th day of October, 1882?
On the corner of Seventh and Cherry, what they call now the fourth ward, in said city of Canton; I did not know that last fall.
3. How long had you resided in this same place before the 10th of October?
I can't tell exactly, but I think it will be nine or ten years this 1st of April.
4. To what political party did you belong last October?
I always voted the Democratic ticket; I didn't vote the ticket out and out generally.
5. Did you vote at the October election in 1882; and, if so, where did you vote?
I voted on that day; I voted on Tuscarora street.
6. Where did you vote; in what ward?
I voted in the fourth ward.
7. You stated in your first answer that in October you lived in the fourth ward. Do you mean that you lived in the fourth or fifth ward?
I meant the fifth ward, but supposed it was the fourth ward I lived in. I supposed I lived in the fourth ward, but as I find out now it was the fifth.
8. For whom did you vote for Representative in Congress from the eighteenth district of Ohio on that day?
Wallace.
9. Was the Wallace whom you say you voted for on that day Jonathan H. Wallace, the candidate on the Democratic ticket from said district for Congress?
Yes, sir.

Now, there is one man who admits that he voted in the wrong ward. Mr. Speaker, the right of suffrage is not a natural right like the right of life, liberty, or property. It is a political right conferred by law, and must be exercised in obedience to law or the vote is illegal. This man's vote can not be counted. He had no more right to vote than a citizen of Illinois, or Indiana, or West Virginia, or Pennsylvania, because the law under which the right of suffrage is exercised in the State of Ohio required him to vote in his own precinct or not at all. Deducting this vote, Mr. Wallace is one ahead.

Now look at the testimony of Frank Walters, on page 382:

Q. 1. What is your name, age, occupation, and place of residence?
Frank Walters; am 27 next month; was in the saloon business all winter, and live in Canton, Stark County, Ohio.
2. Where did you reside on and before the 10th day of October, 1882?
In the city of Canton, Stark County, Ohio.
3. On what street and in what ward of said city did you reside on and before said 10th day of October, 1882?
On Tenth street; couldn't say as to the ward; the second house west from the corner of Tenth and Walnut, on the north side of Tenth.
4. What ward did you live in at that time, as nearly as you can tell?
I supposed at that time it was the second ward, but have heard since it was the fifth.
5. Will you examine the ward map of said city of Canton, now before you, and state what ward it was you lived in in October, 1882?
I have examined the map. It is in the fifth ward.
6. Did you continue to live in the same place after said election?
I did for a month after election, and then moved to Sandusky City.
7. Did you vote at the October election, 1882, in said city of Canton; and, if so, at what ward in said city did you vote?
I did; I voted at the seventh ward.
8. Did you vote for any candidate at said election for Congress in said seventh ward in said city of Canton; if so, for whom did you so vote?
Voted for Wallace, the Democratic candidate.

Now, can there be any contest about how that man voted or whether his vote was illegal? This vote must be deducted from Wallace; and now there is a tie.

Now I refer to the testimony of Daniel Winkleman:

6. In what ward in the city of Canton is your said residence?
I live in the sixth ward.
7. Did you vote at the last October election in this State?
Yes, sir.
8. Where did you cast your vote?
By the engine-house, on Eighth street, corner of Poplar.
9. In what ward of said city of Canton is said engine-house, where you voted at said election?
It is in the seventh ward.
10. What ticket did you vote at said election?
(Question objected to.)
The Democratic ticket.
11. For whom did you vote for member of Congress at said election?
(Objected to.)
I voted for Wallace, I guess.
12. State whether you voted at said election the entire Democratic ticket?
(Objected to.)
Yes, sir.

Is there any question about how that man voted, or whether his vote was legal or illegal? Deducting his vote from Wallace, McKinley is now 1 ahead.

I have not time to go over all these. There are 6 voters who voted in the wrong ward, John Rigler, Frank Walter, Morton Zilch, David Winkleman, Celestine Jordan, and John Moriarity. One of these is John Moriarity, who lived in the north ward of Alliance and who voted in

the south ward. He testifies to it himself. Here are these 6 votes that must be deducted from Wallace, leaving McKinley, if I have made the count correctly, 7 votes ahead.

Then there are the votes of Charles Ducatry, M. Stimler, B. Waldecker, and Joseph Frickert, who were paupers in the poor-house and who voted in the wrong townships. These men voted for Mr. Wallace, as they testify themselves. They say that they are Democrats. One of them stated in his pride (and I honor him for it) that he had commenced by voting for Martin Van Buren, and had always voted the Democratic ticket, and voted it straight. These men did not vote in the townships in which they lived. The poor-house was in Plain Township. These four men voted in other townships; no one of them voted in the township in which he lived. Each one of them, when questioned, said that the poor-house was his home. My friend from Georgia [Mr. TURNER] who is listening to me, and who is familiar with the testimony, knows that it is true. My friend shakes his head; and that puts me to the proof. Let me read the evidence of Charles Ducatry.

Mr. TURNER, of Georgia. Take the next two.

Mr. MILLS. Then I understand the gentleman admits the case as to the first two, Ducatry and Stimler. When he says "the next two" I understand him to mean Waldecker and Frickert. I will read from evidence of Stimler, on page 413:

4. Since you have lived in the poor-house have you adopted it as your home?
That is now my home.
5. State whether you voted at the last fall's election; and, if so, where?
I voted the Democratic ticket at Frieburg, Washington Township, Stark County, Ohio.
6. State what ticket you voted at said time and place.
Democratic ticket; I voted it since 1835; I first voted for Van Buren for President.
7. Is the poor-house in Washington Township?
No; in Canton Township.
8. Who did you vote for for member of Congress at said election?
I don't know any more; I voted the whole Democratic ticket; I put on none and took none off.

This voter, it appears, testifies that the poor-house was his home.

Mr. TURNER, of Georgia. The gentleman had better read the cross-examination.

Mr. MILLS. That may occupy more time than I had expected to use in this way, but I will do so:

Cross-examination:

1. Was the ticket you voted printed in English or in the German language?
In German; I got it from Piera at the court-house; he hauled me from the poor-house and I went to Strasburg on the train.
2. Have you always voted in Washington Township?
Yes, sir; in Strasburg; lived over thirty years there.
3. Do you go down there to vote every year from the poor-house?
Yes, sir.
4. Do you stay at the poor-house all the time, or not?
I don't know whether I will stay there or not; when I get a little help I will go away.
5. Have you been at the poor-house all the time for the last three years?
Yes.
6. Is not your home in Washington Township?
Not now; I live in the poor-house now.

I do not see how the evidence could be any stronger. Yet this, I infer, is the strongest case that the majority of the committee have, and the weakest on the side I am advocating.

Mr. TURNER, of Georgia. You did not finish reading that testimony.

Mr. MILLS. I thought I read all that covered the case. If my friend had called my attention to any particular part that he wished read I would have done so. He can refer to the book and read any part he wishes in his own time.

Now, I hold as to these people at the poor-house that the home of a pauper is just like the home of anybody else, it is wherever the party lives with the intention of remaining. If he is there one moment with such an intention, it is as much his home as though he staid there a thousand years. But if he is there with no fixed intention of remaining, it is not his home, though he may remain there for years. These people lived at the poor-house. That was their present home; and some of them said that they expected to stay there always, for they had no means of living elsewhere. Where such an intention is fixed in the mind, that constitutes that place the person's home. I read from a decision of the supreme court of Ohio on this subject in 34 Ohio Reports:

The court below specially found that each of the persons whose right to vote in Falls Township is drawn in question possessed the necessary qualifications to entitle them to vote therein, if they could, after becoming inmates of the infirmary, change their respective residences from other townships in said county to that township, and that while such inmates they severally did adopt Falls Township as their permanent residence, and by such act of adoption and selection, and not otherwise, did change their residence to Falls Township.

This we think they were competent to do. Persons may be, and often are, so needy and helpless as to make it reasonably certain that the remainder of their days will be spent in the infirmary—

That is what these people said—

and when this is the case the infirmary is to such persons in the full sense of the term their habitation or home. If the inmate is a voter, and has no family in another township, and has adopted the infirmary as his abode, looks upon and treats it as his home, and has been sufficiently long a resident, he is entitled to vote at all elections in the township wherein the infirmary is situated.

That made the infirmary the voting-place for those four paupers; but they did not vote there; every one of them voted at different places, and must be deducted from Wallace, because their votes are illegal.

That is 11 majority McKinley has got. I can give you the 10 votes you claim by the incorrect footing and still McKinley has 1 majority. I will not go further. Here is a list of illegal votes I might discuss. I will give you 1 more illegal vote that was cast for Mr. Wallace.

Mr. SPRINGER. Do you claim the deduction of 10 from the vote for Wallace in Carroll County?

Mr. MILLS. I did, but I have given that up. I mean I have 11, or 1 over that 10. I claim that ought to be corrected.

Mr. SPRINGER. Do you claim that Mr. Wallace was not entitled to the 1,497 votes?

Mr. MILLS. I claim if he was entitled to them he ought to have proved it. I say the second certificate was not such a certificate as the law regards as competent testimony.

Mr. SPRINGER. Competent if that is the issue.

Mr. MILLS. No, sir. It is competent for either party to show the mistake, if any, but it is not competent for an officer to do so by his second certificate. The officer was authorized by law to give a certificate; having once discharged that duty, his official authority is exhausted.

Mr. TURNER, of Georgia. My friend is mistaken about the facts. This was not an election return; he certified a copy of the record in his office.

Mr. MILLS. My dear sir, it is not peculiar to judges of election and canvassing boards. The supreme court of the different States can not do it. No court can exercise this duty twice. If a judge renders a decision once the law does not give him power to rehear and revise a decision made at a former term unless the law specially gives that power.

Mr. SPRINGER. Is it not a fact that Mr. Wallace did receive in that county 1,497 votes?

Mr. MILLS. I think not. I have no evidence of it.

Mr. SPRINGER. The return shows it.

Mr. MILLS. The return shows 1,487 votes. When you add it all up it gives only 1,487.

Mr. SPRINGER. Does not Mr. McKinley admit that Mr. Wallace received that number of votes in that county?

Mr. MILLS. I do not say so. My friend from Georgia says he conceded it in his answer. He does not admit he received 1,497 votes, as I understand him.

Mr. SPRINGER. The fact is he received 1,497 votes.

Mr. MILLS. Not at all. He does not admit it. As I have shown, McKinley is 1 ahead of Wallace. I grant you the 10 votes to which you are not entitled by law. I have 11, and after allowing you those 10, I have shown that McKinley is 1 ahead.

But there is one more, a gentleman by the name of Herschel Urmson, who was a minor of only 20 years of age. He was an honest, good boy in Ohio and voted the Democratic ticket, but he commenced too early. He went to the polls and voted for Wallace. Next time he will be all right; but the law forbids that vote being counted. He says in his own testimony that he was 20 years and 7 days old when he voted.

So I might go on. Here is Samuel Thompson, who is an illegal voter. I took away from McKinley all parties claimed to be of weak mind and not of sufficient intelligence to vote; I took them away because they were charged as not having intelligence enough to vote, and they were doubtful, and I gave that doubt to Mr. Wallace. But here is one Samuel Thompson, proved by the testimony as not having sufficient intelligence to vote. Not only that, but in the asylum he was classed among idiots. He voted for Mr. Wallace. Is not that enough?

This is the kind of testimony that you have got to pass upon in voting to seat the contestant here. Can you afford to do it? My friend said the other day that to continue Mr. McKinley in his seat would be to break down and violate every principle of law and overturn all of the testimony, as I understood him. But to seat Mr. Wallace simply because we have a majority here, and the power to do it, against the sworn testimony of the voters themselves and the testimony as to the illegality of votes which were returned for him, is to rush in the face of an intelligent public opinion which will hold us responsible. It is no use to tell us that the Republicans did the same thing when they had the majority, and that because they did it we should do it too. They did it, it is true, but there are many empty seats on that side of the House to-day. Many of our people will turn their faces against us if we occupy the position in which that side of the House has seen proper to place itself. Our partisan affiliations and feelings are as strong as theirs; our people will train with us, and will march with us under the common flag only when that is borne aloft over a party which plants itself squarely upon the eternal principles of right and justice.

I will not follow the lead of gentlemen upon the other side of the House who have turned out our people here when we have had majorities ranging all the way up from the hundreds to the thousands. I will not accept their example or be tortured into any spirit of retaliation, and punish them because they violated the law when they had the power. Mr. McKinley is elected by the legal votes of his district, and he is entitled to occupy a seat on this floor. It is not good policy, any more than it is just or right, to punish a Republican because the Republicans when they had the power punished us. We are tread-

ing upon dangerous ground, we are treading upon the rights of our own people when we undertake to set aside the will of an intelligent people who love fair play and who will require of us that justice shall be done though the heavens fall. [Applause.]

Mr. RANNEY addressed the House. [See Appendix.]

Mr. TURNER, of Georgia. Before I take the floor to close the debate I desire to ask the gentleman from Ohio whether he desires to be heard?

Mr. McKINLEY. Mr. Speaker, in response to the inquiry of the gentleman from Georgia, the chairman of the Committee on Elections, I desire to say that if it is his purpose to take a vote on this case this afternoon I will content myself with occupying only five or ten minutes of the time of this House.

Mr. TURNER, of Georgia. I hope the gentleman will take the time now and occupy ten minutes if he wishes, as I do not desire to limit him.

Mr. McKINLEY. Then the vote will be taken to-night?

Mr. TURNER, of Georgia. It will depend upon the temper of the House after the gentleman has finished his remarks.

Mr. McKINLEY addressed the House. [See Appendix.]

Mr. TURNER, of Georgia. Mr. Speaker, I desire now——

Mr. CALKINS. Will my friend from Georgia yield a minute to me to make a simple statement to the House?

Mr. TURNER, of Georgia. I have no time to spare.

Mr. CALKINS. But a simple statement.

Mr. TURNER, of Georgia. To what does the gentleman refer?

Mr. CALKINS. To a suggestion made by a gentleman on the other side of the House during the debate to-day in reference to—— [After a pause.] Perhaps I have been misinformed, but I wanted to correct a statement which I understood was made in reference to the action of the Committee of Elections of the last House. If I have been misinformed about the matter, of course I do not ask the gentleman to yield me any time.

Mr. TURNER, of Georgia. Mr. Speaker, before I demand the previous question I desire to present a rapid review of the questions involved in this case.

Fortunately the honorable gentleman from Ohio [Mr. HURD] and his colleague, the sitting member [Mr. McKinley], have saved me much labor by the concessions which they have made in this debate. Every proposition by which on yesterday I endeavored to demonstrate *prima facie* that the contestant is entitled to occupy this seat has been yielded. I therefore need only to reassert that by the returns Mr. Wallace was elected and the sitting member defeated.

I had intended to advert to that intrepid statement made by the gentleman from Texas [Mr. MILLS] as to the error in addition alleged against the return from the county of Carroll. But the gentleman from Ohio, the sitting member himself, disdains to stand upon that position, and I pass it by in silence. I was surprised that a lawyer laboring to be fair should have stigmatized the corrected copy of this return duly certified by the officer charged by law with its custody as a supplemental election return. But as I have stated, I pass that by.

The grounds on which the sitting member relies for the maintenance of his seat having been presented, I propose now to state the concessions which I make to the other side.

I concede that there were illegally rejected from the count for Mr. McKinley the vote on which his name was written "Kinley," also Orlando Brown's vote (Columbiana County), and in Mahoning County, Austintown Township, 2 other votes which appear to be due to him on a recount. There may also be allowed him an additional vote in Washingtonville precinct, Salem Township, making 5 votes in all which should have been but were not counted for him.

On the other hand, I insist that there were an equal number of illegal votes counted for him, to wit, the votes of Elias Medley, Charles C. Douglass, and Frank Lucas, in Stark County, and Samuel Collins and Mark Green, in Columbiana County. There is here a full set-off. It will be remembered that the report which I had the honor to submit for the committee finds for the contestant a majority of 30, taking the votes as they were actually cast.

I now come to the list of 55 votes which the sitting member claims should be deducted from contestant. They constitute the chief defense to this case. Of the infirmary votes, I think that two of them ought to be deducted from Mr. Wallace. I refer to the votes of Charles Ducatry and Joseph Frickert, who should have voted in the township in which the poor-house was located, because they had abandoned their former homes for all purposes.

Let the 5 votes alleged to have been cast for contestant in the wrong wards of Canton be also deducted, notwithstanding the objection so strongly urged by my colleague [Mr. ADAMS]. I also deduct from the contestant the votes of Frederick Ott, Herschel Urmson, John A. O'Neil, Thomas Black, Frederick Mayer, and perhaps 1 other.

Taking from the contestant the 13 votes just enumerated, he still has a majority of 17 votes. No other concessions can be justly made.

I ought, Mr. Speaker, to allude to Fairfield Township. I do not think that the ballot-box there was kept as the law of Ohio requires. I wish to concede that much to the gentleman from Massachusetts. But the evidence of the judges of the election and of other persons who were standing by at the election demonstrates that there were at least as many ballots for Wallace rejected there for misspelling as were found in the box at the recount. And it is on their testimony that I count these irregular ballots for the contestant.

On a recount in Butler Township the gentleman from Massachusetts claims an addition of 6 votes for McKinley. The integrity of the box in that case was questioned; it was held in illegal custody under circumstances which gave an opportunity to tamper with the ballots and to change the result.

The law of Ohio requires that the box shall be given to the township clerk and that the key shall be given to the minority judge. In that township the key was given to the Republican judge; so that the key and the box were in the hands of partisans of Mr. McKinley. Yet with all his virtuous indignation about the opportunity to Democrats of tampering with the ballot-box in Fairfield, he wants to assume that Republicans who had the opportunity would not do that sort of thing. [Laughter and applause.]

In his schedule of illegal voters the sitting member challenges Frank Lucas, to whom the gentleman from Ohio [Mr. FOLLETT] has alluded. Lucas was working for one of the partisans of the sitting member, who carried him to the polls in a carriage, gave him a ticket, saw him vote, and returned him to his work. Now, when the contestant undertook to prove that this Lucas was a minor, a prompt effort was made to show by rumor that he had voted for the contestant!

It seems to be the rule in the eighteenth district of Ohio when you have shown a man to be an illegal voter to assume that he was an idiot or a Democrat. [Laughter.]

The defense also arraigns a mythical man named William Ward, who is said to have voted for the contestant. There is not one particle of evidence showing that this man voted at all, except hearsay. The poll-list, which has been put in evidence, does not contain his name. And yet the gentleman from Massachusetts and those who concur with him in opinion propose to deduct this imaginary vote from the contestant. The evidence of a record seems to be worth less than rumor.

Let me illustrate the fairness of the other side by a sample of the votes which we allege to have been illegally cast for Mr. McKinley. Take the case of Elias Medley. The law of Ohio requires that a man shall have resided for thirty days in the county in which he offers to vote. My friend from Massachusetts states in his report that the evidence fails to show that this vote was illegal. The testimony to which the gentleman himself refers in his own report, the evidence of the man himself, shows that he had lived in the county in which he offered to vote only twenty-five days. Elias Medley must fall into ranks with the paupers!

The sitting member challenges the vote of Michael Higgins on the ground of imbecility. The evidence shows that this man was employed as a watchman on the railroad to guard the track and prevent accidents to the trains. His overseer, the section-master, stated that he was entirely competent for this responsible service. He "associated with Democrats," "was understood to be a Democrat," and therefore he was an idiot and a fool! [Laughter.] Samuel Thompson, they claim, was another Democratic idiot, and they propose to show by his private declarations that he voted for contestant. It is said that he was too stupid to vote, and in the same breath it is claimed that he was competent to give away the rights of all the public by his mere admissions!

Take the cases of Peter Helms, William Henry, and this man Ward (the last of whom I have shown did not vote at all). The witness William Parks said that William Henry told him that Ward and Helms said that they had voted. [Laughter.]

These are but samples of the votes about which my learned friend from Massachusetts [Mr. RANNEY] has no sort of doubt.

As to the rejection of illegal votes I cite the established rule:

> It is not sufficient that there should exist a doubt as to whether the vote is lawful or not, but conviction of its illegality should be reached to the exclusion of all reasonable doubt. (1 Bartlett, 25.)

Where the proof falls short of conviction, let us give the benefit of all doubts to the voter.

Declarations alleged to have been made by voters not at the election, but three or four months afterward, pending the contest, and proved by the agent and attorney of the sitting member, were offered as evidence in this case to show that the votes challenged by him were cast for the contestant. This species of evidence overlies the defense like a blanket. Under its cover chiefly it is proposed to subtract from the contestant more than 30 votes. The gentleman from Ohio [Mr. HURD] concedes this estimate and insists upon the rejection of these votes. The gentleman from Massachusetts [Mr. RANNEY] says that "the English cases and nearly all American cases favor the admissibility of such testimony." I join issue, and denounce this testimony as hearsay and inadmissible for any purpose.

Strike out the hearsay testimony, and you have the basis upon which I have reached my conclusions. Add the hearsay testimony, and then you have the basis upon which the contrary view rests.

I contend for a great principle of law. I demand that contested elections shall be adjudicated upon reliable evidence and under time-honored rules essential to the security of American liberty and to the purity of American elections. The gentleman from Ohio [Mr. HURD] has im-

ported from England, duty free, as a work of art I presume [laughter], this vicious principle of hearsay evidence in these cases. I followed him on that little bill the other day, and feel very hard with not many of my friends around me. [Laughter.] I decline to follow him on this occasion. He stated candidly the case of Cessna *vs.* Myers was authority for the position which I here take; but he then stated in the same breath that that case had been overruled by the British Parliament. [Laughter and applause.] Why, Mr. Speaker, I decline to accept the reversal of American law and American precedents by those who did not give us the ballot but who borrowed it from us. [Applause.]

I insist that they shall learn lessons of popular liberty from us on this side of the ocean rather than that we shall learn of them in a school in which we are their masters. [Applause.] He refers to a case cited in Douglass. In England voting is *viva voce*, and the principle there settled was that the admissions of the voter as to his disqualifications can be given in evidence in a contested election.

Now, Mr. Speaker, from that great State from which you come and from which comes my good friend and colleague [Mr. ROBERTSON] has come a precedent which must command the respect and confidence of every gentleman on this floor.

I refer, sir, to the case of Letcher against Moore, which originated at a time when these cases were carefully and elaborately tried. In that case the report was made by a gentleman from the State which I now in part humbly represent. I refer to Mr. Jones. In that report, which I have before me, the Committee on Elections unanimously held in a case originating in a State where the voting was *viva voce*, and where the only question was as to the disqualification of the voter, "that all declarations or statements made by voters after the election relative to their right of suffrage should be rejected." That case was upon all-fours with the British cases, and overrules them. (Clark and Hall's Digest, page 750.)

Mr. ROBERTSON. What about the Vallandigham against Campbell case?

Mr. TURNER, of Georgia. I had intended to consider that case at a later stage of my argument, but the gentleman has flaunted it in my face and I will give him the benefit of it now. The case of Vallandigham *vs.* Campbell has been cited in the minority report and by every gentleman who has preceded me in this debate as the leading case upon the competency of declarations made by voters after the election. I deny that it is authority for any such thing. What is the authority in an election case? Is it the report of the committee? If so, only a minority of the committee in that case adopted the proposition for which my colleague contends, and the majority of the committee were against it. Or is the authority of an election precedent to be found in the decision of the House? If the gentleman will read the report of Mr. LAMAR, which he cites, to the end, he will find that Mr. LAMAR distinctly states that the admission of the declarations of voters made after the election was not necessary to the decision of the case. There were 14 majority for Vallandigham without regard to the votes whose rejection from Campbell depended on the declarations of voters. And Mr. LAMAR adds "that as to declarations, most of them were made at or about the time of voting, on the day of election, or soon after." (Digest 1834–'65, pages 235, 236.) But, sir, following the analogies of the courts, I put the judgment of the House in that case upon the good count in the report. On the basis of common sense the fair inference is that the House put the decision upon that part of the report which demonstrated Vallandigham's election without reference to the obnoxious evidence. But in any view the authority of the case on this question evaporates into thin air.

Reference has been made in the report by the learned gentleman from Massachusetts to other cases. Let us take the case of Bell against Snyder.

Mr. RANNEY. Take the case cited from the twenty-seventh New York——

Mr. TURNER, of Georgia. I hope the gentleman will let me select his authorities in my own way. In passing from the Vallandigham case I want to suggest that while I believe that gentleman did commit himself in a mild form to this unfortunate doctrine, yet a careful examination of all of the authorities he cites in support of his position (and I have traced them all with the minutest research) fails to disclose a single American case which sustains his opinion, except the case from New Jersey, to which I may presently refer.

But I come to the other authorities cited by the gentleman from Massachusetts. I take the case of Farlee against Runk, and I ask the gentleman to look at pages 91 and 92 of that case as it appears in the reports of contested elections of the House. My learned and elaborate friend from Massachusets cited that case as a precedent for the admission of the declarations of voters made after the election to show how they voted. I affirm, with the case before me, that that report distinctly rejects the doctrine, and the action of the House was in accordance with it. I take it for granted that the gentleman has only read the report as printed in the digest. It states that if certain evidence is competent and credible Mr. Farlee was elected, and appends an exhibit, marked D, setting out this evidence. The resolution submitted declared Mr. Farlee not elected, the digest having strangely omitted the exhibit.

I have had recourse to the orignal publication of the full report made by the House, which I hold in my hand. Turning to the page on which the exhibit is found, it will be seen that the evidence by which it was proposed to deduct each unlawful vote from Mr. Runk was as follows: "He told me he voted for Mr. Runk," "He said he voted for Mr. Runk," &c. That is the character of the testimony on which the Committee on Elections invited the action of the House; and the action of the House, as well as of the committee, was the rejection of the principle of evidence for which the gentleman from Massachusetts contends. Mr. Runk retained his seat. This is the precedent which the gentleman, without sufficient investigation, lays at the threshold of this case, and on which he predicates his conclusion. I put him on it and hoist him with his own petard.

I refer now to the case of Bell against Snyder (Digest of Contested Election Cases, 1871 to 1876, page 248), on which the gentleman from Massachusetts relies with great confidence. To that case the compiler of the digest has prefixed a syllabus, one paragraph of which is as follows:

The declaration of a voter as to how he voted or intended to vote is competent testimony.

I wonder why the gentleman from Massachusetts did not go deeper into this case—why he did not look at the report.

Mr. RANNEY. I did look into it. But the syllabus refers to the *res gestæ*.

Mr. TURNER, of Georgia. But the gentleman has cited this case as if it were authority for his position, and now he concedes he knew it was not authority. [Applause.]

Mr. RANNEY. I concede no such thing.

Mr. TURNER, of Georgia. Here is what the report says:

The law is settled that the declaration of a voter as to how he voted or intended to vote, made at the time, is competent testimony on the point.

The gentleman cited this case in his report as authority for the proposition that the declaration made by the voter three or four months after the election was competent testimony.

Mr. RANNEY. Some were made at the time.

Mr. TURNER, of Georgia. Now, Mr. Speaker, I had for the gentleman from Massachusetts the charity to suppose that he had been misled by a hasty examination of the cases he cited.

Mr. RANNEY. You are mistaken.

Mr. TURNER, of Georgia. I am now led to think that my charity was misplaced. Now this paragraph which I have just read, with the whole report, negatives the doctrine that the declarations of voters made long after the election can be admitted. Again I have turned the enemy's guns upon himself.

I desire to state that Mr. LAMAR, of Mississippi, who made the minority report in the case of Vallandigham against Campbell, was also a member of the committee which reported the case of Bell and Snyder. His attention was necessarily called to it; and he filed no minority report. He seems to have acquiesced in this report, which in effect reverses the doctrine deduced from the case of Vallandigham. I believe on the evidence which I have given that the gentleman from Mississippi whose great name has been invoked here has changed his opinion on this question. Certainly when the opportunity was given him to stand by his own proposition he acquiesced in a report which confined this kind of testimony entirely to *res gestæ*.

Mr RANNEY. How about the New York case?

Mr. TURNER, of Georgia. I ask the gentleman to be patient. I am trying to give all the authorities in my own way.

The case of Cessna against Myers distinctly affirmed the doctrine on which I stand in this case (Contested Elections, 1871–'76, page 60). The Newland and Graham case from North Carolina establishes the same doctrine (Contested Elections, 1834–'65, page 5). The New Jersey case (1 Bartlett, 19) to which such frequent reference has been made on this floor, laid down the proposition that the admissions of the voters, both as to their disqualifications and as to how they voted, should be received. Does the gentleman from Massachusetts go that far?

Mr. RANNEY. That case goes to the full extent of that principle. The case of Cessna against Myers modifies it.

Mr. TURNER, of Georgia. The case of Cessna does not merely modify, it explodes the New Jersey case. Again I ask, does the gentleman think that the admissions of the voter may be received to show not only how he voted but his disqualifications as a voter?

Mr. RANNEY. Will you give me a chance to answer?

Mr. TURNER, of Georgia. I will, to answer "yes" or "no," but nothing more, for the gentleman has had his time. The gentleman declines to give a categorical answer.

Now, I affirm that, except the gentleman from Ohio [Mr. HURD], who is not afraid to accept responsibilities, there is no other man on this floor who will go to the extent of the New Jersey case.

Mr. RANNEY. I do not.

Mr. TURNER, of Georgia. Then the gentleman repudiates that case himself. So do I.

I will now turn my attention to the gentleman from Massachusetts [Mr. RANNEY] in the proper order of this debate, saving the highest and best for the last. My excellent friend from Kentucky [Mr. ROB-

ERTSON] has grown weary of the case of Cook and Cutts, decided by the last Congress; but I beg his permission to give it a brief review. An attentive examination of that case will show by clear evidence that the gentleman from Massachusetts [Mr. RANNEY] has made some progress since he participated in the report and the discussion of that case.

Mr. RANNEY. I stand by my report in the case of Cook vs. Cutts.

Mr. TURNER, of Georgia. Let us see if the gentleman still stands by it. I have examined that case with a great deal of care. The majority report in that case was made by Mr. Beltzhoover, of Pennsylvania.

Mr. RANNEY. I submitted a dissenting opinion.

Mr. TURNER, of Georgia. I will come to that, my friend, if you will be patient. I will show that the gentleman did not dissent from the proposition which I shall state. If he can show that he did, at least he has not yet done so.

In the report made by Mr. Beltzhoover it was distinctly stated that there were alleged to have been counted for Cook certain illegal votes, but that the only evidence by which it was attempted to show that these votes were cast for Mr. Cook consisted of the declarations of voters made in casual conversation.

Mr. Beltzhoover in his report denounced such testimony as hearsay and incompetent, and the majority of the Committee on Elections of the Forty-seventh Congress indorsed that report, and the House admitted Mr. Cook to his seat. So the last Congress also established the precedent that the hearsay statements of illegal voters can not be produced as evidence on which to deny a man a seat in this House.

Now let us go one step further in this history. I have invoked a precedent set by the House which I think is of higher authority than the gentleman from Massachusetts, much as I respect him. Mr. Thompson, of Iowa, then a member of the Committee on Elections, filed a minority report, in which he undertook to exclude these hearsay votes from Mr. Cook, and on that basis to decide the case against him. The gentleman from Massachusetts, then as now a member of the committee, had the opportunity to sign this report and declined to do it.

Mr. RANNEY. I put in one of my own.

Mr. TURNER, of Georgia. The gentleman put in a report of his own, and in that report of his own, in three distinct places where the question confronted him, he distinctly declined to take the position he has taken here to-day.

Mr. RANNEY. I said nothing adverse to it.

Mr. TURNER, of Georgia. There was a fine opportunity for the gentleman to assert those deep convictions of a patriotic heart. [Laughter.]

Mr. RANNEY. It was not necessary to the case.

Mr. TURNER, of Georgia. I suppose it is necessary now. The gentleman split hairs then, and has been splitting hairs all through this case. If he had believed in this great fundamental law of election cases, there was a good time for him to have embedded it in our parliamentary history. If he believed in it then and did not do it, I charge him with having neglected a high public duty. I invoke the authority of the last Congress and the great name of the gentleman from Massachusetts himself.

I have gone over the entire field. I have shown that there is not a single accepted authority in the decisions of Congress for the proposition which has been contended for by the other side. As to the case of Wigginton against Pacheco, the gentleman from Iowa [Mr. COOK] has already demonstrated that the evidence in that case was ample and complete without reference to any declarations made by the voter.

Now to come to the text-writers. I affirm with entire confidence that there is no single one of them that sustains the proposition laid down by the gentleman from Massachusetts. McCrary denounces it; Cushing denounces it; and every other text-writer whom I have consulted, including Cooley, the author of Constitutional Limitations, denounces it.

Yet my good friends on the other side of this case, gliding easily over these authorities, brushing out of their paths these great precedents on which our rights and our freedom depend, striding over them with relentless unconcern, assuming that the British Parliament can overturn American precedents, propose here, in a land of law and liberty, to admit hearsay testimony on the trial of a question which involves the right to make laws for fifty millions of people. Do it if you dare, and I will then be a prophet of evil, as the gentleman from Ohio [Mr. HURD] has been.

Once establish the fact that a fellow is an illegal voter and criminal, even though the Republican partisan of the sitting member conveyed him in a carriage to the polls, gave him a ticket and voted him—assume, if you please, that the vote is illegal, and then compound with him and prove that he said he voted for the other man.

Besides the case of Lucas, take also that of Beiber as another illustration. Beiber, in the first place, was not an illegal voter. He had as much right to vote in his county as any other man who lived there, having only temporarily lived elsewhere, intending to return. On this foundation Mr. McKinley's attorney, a skilled artisan in this industry, was sent to Beiber, and told him he had information that he (Beiber) would state exactly how he voted. Beiber replied that he had voted for Wallace. But this statement was elicited from him by the previous assurance that no harm would be done to him, even if he had voted illegally. Here is the key-note. Involve the voter in a criminal penalty, and then compromise with him—compound the crime by inducing him to admit that he voted for the other candidate.

On this principle, Mr. Speaker, illegal votes which ought not to be counted at all will count twice; first for the man for whom they are cast, and then by subtraction from his competitor. This scheme of evidence is an *ex post facto* poll! It is a hired, clandestine, partisan recount! It is a supplemental return made by the paid rounders of a party! It incloses in each unlawful ballot a "little joker!" It is a protective tariff for the slums! It utilizes the sluggish currents that now escape through the sewers of society and concentrates them upon the wheels of the "machine!" It will raise the wages of election experts, and protect and dignify a sickly, struggling industry! Mr. Speaker, on this question I belong to the school of the reformers. Following the lead of the gentleman from Texas [Mr. MILLS] and the gentleman from Ohio [Mr. HURD], I want to give this business a deep, horizontal, Morrisonian cut! [Laughter and applause.]

Mr. RANNEY. What about the New York case?

Mr. TURNER, of Georgia. The gentleman from Massachusetts again calls my attention to a certain case decided in a New York court and predicated chiefly on the British cases. I could show if I had time that that case has been reversed in the courts (9 Kansas, 569; McCrary, section 273), and no man knows it better than the gentleman from Massachusetts. [Applause.]

There is on the Avenue occasionally as one passes down from the Capitol a man who holds on his arm a basket, and who has a board across his breast on which there is written this sentence: "I am blind." There are some gentlemen higher in the scale of life who when they appeal to the charities of the public need not carry that sort of legend on their bosoms to show that they can not see. [Laughter and applause.]

I call for the previous question.

The previous question was ordered.

The SPEAKER. The question first recurs on the resolution of the minority moved as a substitute for the resolution of the majority of the Committee on Elections, which will be read.

The Clerk read as follows:

Resolved, That Jonathan H. Wallace was not elected as a Representative to the Forty-eighth Congress from the eighteenth Congressional district of Ohio.

Mr. HART demanded the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 108, nays 158, not voting 57; as follows:

YEAS—108.

Adams, G. E.	Ellwood,	Lacey,	Ray, G. W.
Anderson,	Evans, I. N.	Laird,	Robertson,
Atkinson,	Everhart,	Lawrence,	Robinson, J. S.
Barr,	Funston,	Long,	Rockwell,
Bayne,	George,	Lyman,	Rowell,
Belford,	Goff,	McCoid,	Ryan,
Bingham,	Harmer,	McComas,	Skinner, C. R.
Bisbee,	Hart,	McCormick,	Smalls,
Blackburn,	Hatch, H. H.	Millard,	Spooner,
Brainerd,	Henderson, D. B.	Mills,	Steele,
Brewer, F. B.	Henderson, T. J.	Morey,	Stephenson,
Brewer, J. H.	Hepburn,	Morrill,	Stewart, J. W.
Browne, T. M.	Hiscock,	Nelson,	Stone,
Brown, W. W.	Hitt,	Nutting,	Strait,
Brumm,	Holmes,	Ochiltree,	Struble,
Burleigh,	Holton,	O'Hara,	Taylor, E. B.
Calkins,	Hooper,	O'Neill, Charles	Taylor, J. D.
Campbell, J. M.	Horr,	Parker,	Thomas,
Cannon,	Howey,	Payne,	Thompson,
Chace,	Hurd,	Payson,	Valentine,
Culbertson, W. W.	Johnson,	Perkins,	Wait,
Cullen,	Kasson,	Peters,	Wakefield,
Davis, G. R.	Kean,	Phelps,	Washburn,
Davis, R. T.	Keifer,	Poland,	Weaver,
Dingley,	Kelley,	Potter,	White, Milo
Dorsheimer,	Kellogg,	Price,	Wise, J. S.
Dunham,	Ketcham,	Ranney,	York.

NAYS—158.

Adams, J. J.	Clardy,	Findlay,	Le Fevre,
Aiken,	Clements,	Follett,	Lewis,
Alexander,	Cobb,	Foran,	Lore,
Arnot,	Connolly,	Fyan,	Lovering,
Bagley,	Converse,	Garrison,	Lowry,
Ballentine,	Cook,	Geddes,	McAdoo,
Barbour,	Cosgrove,	Glascock,	Matson,
Barksdale,	Covington,	Graves,	Maybury,
Beach,	Cox, W. R.	Green,	Miller, J. F.
Belmont,	Crisp,	Greenleaf,	Mitchell,
Bennett,	Culberson, D. B.	Halsell,	Money,
Blanchard,	Curtin,	Hardeman,	Morgan,
Bland,	Davidson,	Hatch, W. H.	Morrison,
Blount,	Deuster,	Hemphill,	Moulton,
Boyle,	Dibble,	Hewitt, G. W.	Muldrow,
Breckinridge,	Dibrell,	Hoblitzell,	Murphy,
Broadhead,	Dockery,	Holman,	Murray,
Buchanan,	Dowd,	Houseman,	Mutchler,
Buckner,	Dunn,	Hunt,	Neece,
Budd,	Eaton,	Jones, B. W.	Nicholls,
Cabell,	Eldredge,	Jones, J. H.	Oates,
Caldwell,	Elliott,	Jones, J. T.	O'Ferrall,
Campbell, Felix	Ellis,	King,	Paige,
Candler,	Ermentrout,	Kleiner,	Patton,
Carleton,	Ferrell,	Lamb,	Peel,
Cassidy,	Fiedler,	Lanham,	Pierce,

Post,	Shelley,	Tillman,	Wemple,
Pryor,	Singleton,	Townshend,	White, J. D.
Pusey,	Skinner, T. G.	Tucker,	Wilkins,
Randall,	Slocum,	Tully,	Williams,
Rankin,	Snyder,	Turner, H. G.	Willis,
Reagan,	Spriggs,	Turner, Oscar	Wilson, W. L.
Reese,	Springer,	Van Alstyne,	Winans, E. B.
Riggs,	Stevens,	Vance,	Wolford,
Rogers, J. H.	Stewart, Charles	Van Eaton,	Wood,
Rogers, W. F.	Stockslager,	Ward,	Woodward,
Scales,	Sumner, C. A.	Warner, A. J.	Worthington,
Seney,	Sumner, D. H.	Warner, Richard	Yaple.
Seymour,	Taylor, J. M.	Wellborn,	
Shaw,	Throckmorton,	Weller,	

NOT VOTING—57.

Boutelle,	Gibson,	Jeffords,	Robinson, W. E.
Bowen,	Guenther,	Jones, J. K.	Rosecrans,
Breitung,	Hammond,	Jordan,	Russell,
Burnes,	Hanback,	Libbey,	Smith,
Clay,	Hancock,	McKinley,	Storm,
Collins,	Hardy,	McMillin,	Talbott,
Cox, S. S.	Haynes,	Miller, S. H.	Wadsworth,
Cutcheon,	Henley,	Milliken,	Whiting,
Dargan,	Herbert,	Morse,	Wilson, James
Davis, L. H.	Hewitt, A. S.	Muller,	Winans, John
Duncan,	Hill,	O'Neill, J. J.	Wise, G. D.
English,	Hopkins,	Pettibone,	Young.
Evins, J. H.	Houk,	Ray, Ossian	
Finerty,	Hutchins,	Reed,	
Forney,	James,	Rice,	

So the substitute was not agreed to.

On motion of Mr. POST, of Pennsylvania, by unanimous consent, the reading of the names was dispensed with.

The following pairs were announced:

Mr. ROBINSON, of New York, with Mr. JAMES, on the contested-election case of Wallace *vs.* McKinley. Mr. ROBINSON would vote to seat Mr. Wallace; Mr. JAMES would vote to continue the seat to Mr. McKinley.

Mr. HOPKINS with Mr. MILLIKEN, on the contested-election case of Wallace *vs.* McKinley. Mr. MILLIKEN would vote in favor of Mr. McKinley; Mr. HOPKINS for Mr. Wallace.

Mr. BOUTELLE with Mr. COX, of New York, on the contested-election case of Wallace *vs.* McKinley.

Mr. GIBSON with Mr. GUENTHER, on the contested-election case of Wallace *vs.* McKinley. Mr. GIBSON would vote in favor of contestant; Mr. GUENTHER in favor of contestee.

Mr. WADSWORTH with Mr. HENLEY, on the contested-election case of Wallace *vs.* McKinley.

Mr. MILLER, of Pennsylvania, with Mr. MCMILLIN, on the contested-election case of Wallace *vs.* McKinley for this day.

Mr. HILL with Mr. HOUK, on all political questions for this day.

Mr. JORDAN with Mr. JEFFORDS, on all political questions for this day.

Mr. GEORGE D. WISE with Mr. LIBBEY, on all political questions for this day.

Mr. DARGAN with Mr. WILSON, of Iowa, on all political questions for this day.

Mr. DUNN. I did not hear the Clerk read the pair of my colleague [Mr. JONES].

The SPEAKER. The pairs read this morning are not reported again during the day.

Mr. DUNN. I wish to state that my colleague is absent by reason of sickness.

Mr. BOUTELLE. I would like to have it stated in connection with my pair with the gentleman from New York that I would vote in favor of Mr. McKinley retaining his seat, and if Mr. COX, of New York, were present he would vote the other way.

Mr. LOWRY. I wish to state that Mr. ENGLISH is prevented from attending to-day by reason of illness.

The result of the vote was then announced as above recorded.

The SPEAKER. The question is upon the adoption of the resolution reported by the majority of the committee.

Mr. BELFORD. I desire to ask whether it is proper to offer this resolution as a substitute for the report of the committee?

The SPEAKER. It would not be in order; the previous question has been ordered. The question is upon the adoption of the resolution reported by the majority.

The resolution was agreed to.

Mr. TURNER, of Georgia, moved to reconsider the vote by which the resolution was agreed to; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. WALLACE then appeared at the bar of the House and qualined, taking the oath prescribed by section 1756 of the Revised Statutes.

LEAVE TO PRINT.

Mr. ROBERTSON, of Kentucky. On yesterday in my remarks I left out a summary of the vote in the case of Wallace *vs.* McKinley, and I wish to add some other remarks to my argument on that occasion. I would like to have the privilege of the House to print the same in the RECORD. [See Appendix.]

There was no objection.

And then, on motion of Mr. CASSIDY (at 6 o'clock and 30 minutes p. m.), the House adjourned.

PETITIONS, ETC.

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

By Mr. BALLENTINE: Papers relating to the claim of William H. Brown—to the Committee on War Claims.

By Mr. BELMONT: Petition of Daniel Valentine and 55 others, residents of Glen Cove, N. Y., protesting against the establishment of a governmental telegraph monopoly—to the Committee on the Post-Office and Post-Roads.

By Mr. BINGHAM: Papers relating to the pension claim of Joshua Armstrong and of James Nelson—severally to the Committee on Invalid Pensions.

Also, resolutions of the council of the city of Philadelphia, urging the removal of the walls of the United States arsenal and the United States asylum in said city—to the Committee on Appropriations.

By Mr. CALDWELL: Petition of clerks in the distributing department of the post-office at Nashville, Tenn., for adjustment of salaries, &c.—to the Committee on the Post-Office and Post-Roads.

By Mr. S. S. COX: Memorial of Albert Meyer, in regard to certain action of the Swiss Government—to the Committee on Foreign Affairs.

Also, remonstrance of N. Wilson against an appropriation for payment of French claims, &c.—to the Committee on Appropriations.

Also, memorial of A. Foster Higgins, concerning New York Harbor—to the Committee on Rivers and Harbors.

By Mr. HARMER: Resolutions of the council of the city of Philadelphia, urging the removal of the walls around the United States arsenal and United States asylum in said city—to the Committee on Appropriations.

By Mr. MCCOMAS: Petition of 60 officers and soldiers of the Union Army, asking that pensions be granted to ex-prisoners of war—to the Committee on Invalid Pensions.

By Mr. MATSON: Petition of Winchester Post, No. 333, Grand Army of the Republic, Department of Indiana, favoring the recommendations of the pension committee of the national encampment of the Grand Army of the Republic—to the same committee.

By Mr. PERKINS: Resolutions of the New York Leaf-Tobacco Board of Trade, favoring the repeal of the internal-revenue laws taxing tobacco—to the Committee on Ways and Means.

Also, resolutions adopted at a conference of the county and city superintendents of education in Virginia, favoring the passage of the Blair educational bill—to the Committee on Education.

By Mr. REESE: Petition of citizens of Georgia, in favor of the Senate educational bill—to the same committee.

By Mr. J. H. ROGERS: Petition of post-office employés, Little Rock, Ark., for equalization of salaries, &c.—to the Committee on the Post-Office and Post-Roads.

By Mr. SINGLETON: Memorial of S. R. Berry, S. C. Shepard, and others, in relation to legislation on the subject of telegraph laws, &c.—to the same committee.

By Mr. THOMPSON: Petition of Middleton Smith, for commutation of quarters and fuel while on Point Barrow expedition, as provided by law—to the Committee on Appropriations.

By Mr. VANCE: Petition of J. S. West and 50 citizens of Macon County, North Carolina, asking aid to common schools from the surplus in the Treasury—to the Committee on Education.

By Mr. YOUNG: Papers relating to the claim of Robert H. Cleer—to the Committee on War Claims.

SENATE.

WEDNESDAY, *May* 28, 1884.

Prayer by Rev. C. E. MANDEVILLE, D. D., of Rockford, Ill.

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

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate a communication from the Secretary of the Navy, giving notice of the transmission by him to the House of Representatives of the report of Lieut. Giles B. Harber, United States Navy, concerning the search for the missing persons of the Jeannette expedition, and of the transportation of the remains of Lieutenant Commander De Long and companions to the United States; which was ordered to be printed and placed on the files.

PETITIONS AND MEMORIALS.

The PRESIDENT *pro tempore* presented a communication from William F. Lutz, of Washington, D. C., submitting for inspection a design for an official seal which he desires to engrave for the United States Senate; which was referred to the Committee on Rules.

He also presented a petition of Devol Post, No. 313, Department of Ohio, Grand Army of the Republic, praying that a pension of $8 a month may be granted to every Union soldier and sailor who served sixty days or more in the late war of the rebellion and who under existing laws is not entitled to that or a greater sum; which was referred to the Committee on Pensions.

Mr. PLATT presented a petition of William H. Miller and others, mechanics, inventors, and manufacturers, of Meriden, Conn., praying