CONGRESSIONAL RECORD—SENATE.

FEBRUARY 1, 1886.

By Mr. J. B. WEAVER: Petition of A. McGuire and 501 others, of Kansas, and of Knights of Labor, praying for the passage of a bill to organize Oklahoma Territory—to the Committee on the Territories.

Also, a petition of Mr. Bartow, of Alabama, praying for the passage of the bill for the payment to the Union soldiers of the difference between coin and depreciated paper which they were compelled to receive during the war—to the Committee on the Territories.

Also, petition of Assembly of Knights of Labor, Albia, Iowa, praying for the passage of a bill to organize Oklahoma Territory—to the Committee on the Territories.

Also, petition of J. Williams, of Illinois, and 29 others, praying for the passage of the bill to organize Oklahoma Territory—to the same committee.

Also, a petition of E. M. Smith, of Adair, Iowa, and 30 others, praying for the forfeiture of the unearned land grant of the Sioux City and Saint Paul Railroad, in Northwestern Iowa—to the Committee on the Public Roads.

Also, petition of Caldwell (Kans.) Assembly of Knights of Labor, in regard to Indian Territory—to the Committee on the Territories.

Also, petition of Post 102, Grand Army of the Republic, of Pennsylvania, and of Major Harper Post, 181, Grand Army of the Republic, of Pennsylvania, asking for the passing of the bills giving a portion of the public domain to soldiers, sailors, and marines of the late war, and to pay them the difference between coin and the depreciated currency they were compelled to receive—to the Committee on Military Affairs.

Also, petition of M. N. Simmatt and 342 others, of Kansas, praying for the right of way through the Indian Territory for the Kansas and Arkansas Railroad—to the Committee on the Territories.

Also, petition of Mr. WEBER: Petition in relation to the arraignment act—to the Committee on Invalid Pensions.

Also, petition to place all soldiers who enlisted in 1861 upon the same footing as to bonuses, whether discharged for promotion or for disability—to the same committee.

Also, by Mr. WHEELER: Papers relating to the claim of Martha H. Bone, of Franklin County, Tennessee—to the Committee on Claims.

Also, petition of W. C. Davidson, of Jackson County, Alabama, asking reference of his claim to the Court of Claims—to the Committee on War Claims.

By Mr. WILKINS: Petition of H. H. Geiger, for the passage of a resolution requiring Postmaster-General to perform certain duties and obey certain laws—to the Committee on the Post-Office and Post-Roads.

By Mr. NIXON, of Kansas: Of citizens of Manhattan, Kansas, praying for the suppression of national banks and free coinage of silver and forfeiture of land grants—to the Committee on Coinage, Weights, and Measures.

Also, petition of Ralph Watson and 75 others, citizens of Lansing, Mich., for free coinage of silver, forfeiture of land grants, and suppression of national banks—to the same committee.

The following petitions, praying Congress to place the coinage of silver upon an equality with gold; that there be issued coin certificates of one, two, and five dollars, the same being made legal tender; that one and two dollar legal-tender notes be issued, and that the public debt be paid as rapidly as possible by applying for that purpose the surplus now in the Treasury, were presented and severally referred to the Committee on Coinage, Weights, and Measures.

By Mr. HALL: Of citizens of Oakwood, Kans.

By Mr. REAGAN: Of citizens of Montrose, Lee County, Iowa.

By Mr. REAGAN: Of citizens of Ojai, K. P. House and 94 others, citizens of Kansas.

By Mr. L. H. TAYLOR: Of Simon C. Stratton and 40 others, of Colorado.

By Mr. J. R. THOMAS: Of 299 citizens of Jackson County, Illinois.

By Mr. J. B. WEAVER: Of William A. Doty and 12 others, of Oregon; of P. P. Chapel and about 100 others, of Indiana; of A. W. Dean, and about 75 others, and of J. M. Sanburg and 175 others, of Kansas; of J. L. Hughes and about 100 others, of Iowa; of C. H. Bailey and about 70 others, of New Jersey; and of E. McLean and 55 others, of Kansas.

SNEATE.

MONDAY, February 1, 1886.

Prayer by the Chaplain, Rev. E. D. HUNTLEY, D. D.

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

HOUSE BILLS REFERRED.

The joint resolution (H. Res. 71) authorizing the Superintendent of Public Buildings and Grounds in the District of Columbia to supply plans and specifications to fill certain vacancies in the Pension Building, was read twice by its title, and referred to the Committee on the Library.

EXECUTIVE COMMUNICATIONS.

The PRESIDENT pro tempore, laid before the Senate a communication from the Secretary of War, transmitting in accordance with section 232 of the Revised Statutes, an abstract of the militia forces of the United States; which, with the accompanying papers, was referred to the Committee on Military Affairs, and ordered to be printed.

He also laid before the Senate a communication from the Secretary of War, recommending a reduction of the Board of Commissioners of the Soldiers' Home that legislation be had for the disposition of money and of the effects of deceased members of the Home, which, with the accompanying papers, was ordered to lie on the table, and be printed.

He also laid before the Senate a communication from the Secretary of the Interior, transmitting, in compliance with a resolution of January 25, 1886, a report of W. Hallett Phillips, as special agent, for investigation in connection with the Yellowstone National Park; which, with the accompanying papers, was referred to the Committee on Territories, and ordered to be printed.

He also laid before the Senate a communication from the Secretary of the Treasury, transmitting a report of the Superintendent of the Coast and Geodetic Survey in respect to supplying the Territories with standard balances, weights, and measures; which, with the accompanying papers, was referred to the Committee on Finance, and ordered to be printed.

He also laid before the Senate a communication from the Secretary of War, transmitting, in response to a resolution of January 25, 1886, Special Order 89, Department of Texas, April 29, 1886, in regard to the muster-out of certain troops; which, with the accompanying papers, was referred to the Committee on Military Affairs, and ordered to be printed.

PAPERS AND MEMORIALS.

Mr. ALLISON presented the petition of Pliny Nichols and others, citizens of Iowa, praying that the national Constitution may be so amended as to protect the interests of all the States and Territories in the enjoyment of the right of suffrage on equal terms with men; which was referred to the Select Committee on Woman Suffrage.

He also presented a petition numerously signed by citizens of Newton, Jasper County, Iowa, praying that the coinage of silver may be placed on an equality with the coinage of gold; which was referred to the Committee on Finance.

Mr. INGALLS presented the petition of the Legislature of Kansas, which was referred to the Committee on Military Affairs, and ordered to be printed in the Record, as follows:

House concurrent resolution No. 4.

Whereas General Sheridan, commander-in-chief of the Army of the United States, has recommended the enlargement of Fort Riley with a view of establishing said post a school for the training of the cavalry and light artillery arms of the service and other improvements for the utilization of the large reservation at said military post; and whereas said post and military reservation are well adapted to the uses thus proposed; and whereas said improvements will redound to the general good of the people of Kansas; therefore, be it resolved by the House of Representatives (the Senate concurring therein), That our Representatives in Congress are hereby requested, and our Senators interested, to use their best endeavors to secure this appropriation by Congress so that it will carry out the purposes of the commanding general, making Fort Riley an important military post.

STATE OF KANSAS.
Office of the Secretary of State.

1. E. D. Allen, secretary of state of the State of Kansas, do hereby certify that the within is a true copy of the original resolution now on file in my office.

In testimony whereof I have hereunto subscribed my name and affixed my official seal, at Topeka, this the 21st day of January, A.D. 1886.

E. H. ALLEN, Secretary of State.

Mr. INGALLS presented resolutions adopted by the State board of agriculture of Kansas, urging that the Department of Agriculture may receive attention, and that the Commissioner of Agriculture may be authorized by Congress to have a seat in the President's Cabinet; which were referred to the Committee on Agriculture.

Mr. CAMERON presented the petition of Mrs. Blanché Wendell Woodward, widow of Joseph J. Woodward, late surgeon United States Army, praying that an appropriation be made for the services of her late husband, of which she would be entitled to receive a pension; which was referred to the Committee on Appropriations.

He also presented the petition of Rebecca Merchant, of Ashbury Park, N. J., praying that she be granted a pension on account of a severe wound she received at the battle of New Orleans, in the year 1815, while in attendance upon the late President Jackson; which was referred to the Committee on Appropriations.

He also presented the petition of Rebecca Merchant, of Ashbury Park, N. J., praying that she be granted a pension on account of a severe wound she received at the battle of New Orleans, in the year 1815, while in attendance upon the late President Jackson; which was referred to the Committee on Appropriations.

He also presented the petition of Thomas Chase, of Adair County, Iowa, praying for an unearned land grant of the Republic; which was referred to the Committee on Claims.

Mr. INGALLS, of Iowa, presented the petition of W. L. Huffman and 220 other citizens of Iowa, praying for the organization of the Territory of Oklahoma, and for opening the lands therein for settlement; which was referred to the Committee on Indian Affairs.
Mr. WILSON, of Iowa. I present the petition of M. S. Sanders and 106 other citizens of Iowa, praying for an absolute forfeiture of the uncultivated lands within the limits of the land grant to the Sioux City and Saint Paul Railroad Company. Inasmuch as such subject has been reported upon, I move that the petition lie on the table.

The motion was agreed to.

Mr. JACKSON presented the petition of William B. Miller, of Erwin, Union County, Tennessee, praying for the passage of an act assisting him to the pension-rolls; which was referred to the Committee on Pensions.

Mr. BERRY presented a petition of State officers and members of the General Assembly of Alabama, praying that the road be extended through the Indian Territory to be granted to railroads; which was referred to the Committee on Indian Affairs.

Mr. WILSON (of Tennessee). I present a petition of the New York committee for the prevention of State regulation of vice, officially signed, praying for legislation for the better legal protection of young girls in the District of Columbia and other localities under the jurisdiction of Congress. I do not know where petitions of this class have usually gone.

The PRESIDENT pro tempore. The custom has been to refer such petitions to the Committee on Education and Labor; and this petition will be so referred if there be no objection.

Mr. FRYE. I have what is intended to be a petition, addressed to me from the Knights of Labor of Portland, Me., earnestly requesting the organization of a Territorial form of Government in the Indian Territory in that Territory to immediate settlement under the homestead laws, &c. I ask that the paper be referred to the Committee on Indian Affairs.

The PRESIDENT pro tempore. That order will be made if there be no objection.

Mr. FRYE presented the petition of James A. Van Buren and other vessel-owners of Philadelphia, Pa., praying for the passage of a bill empowering the Secretary of the Treasury to settle all just claims of the American people for work for wages or for work or fair opportunities and just rewards, which is now before the Committee on Public Lands, to which committee I move that the petition be referred.

The motion was agreed to.

Mr. PLUMB presented the petition of John A. Lee, late captain United States Army, praying to be retired with the rank of major; which was referred to the Committee on Military Affairs.

Mr. McGILLAN. I present resolutions adopted by the Board of Trade of Minneapolis, Minn., in the nature of a petition, although addressed to myself, in favor of the improvement of the Mississippi River so as to make it navigable for steamboats to the city of Minneapolis. I ask that the paper be received and referred to the Committee on Commerce.

The PRESIDENT pro tempore. That order will be made if there be no objection.

Mr. McGILLAN. I also present from the same body a petition in favor of the silver-dollar standard currency. I move that it be referred to the Committee on Interstate Commerce.

The motion was agreed to.

Mr. TELLER. I present the petition of John Crown, of Washington, D. C., who represents that he was injured while in the employ of the United States Government, and prays compensation for the injury. I move that the petition be referred to the Committee on Claims.

The motion was agreed to.

Mr. HOAR. I present the petition of Jethro Snow, of Hubbardstown, Mass., who desires that under the power to regulate commerce with foreign nations and among the several States, all intoxicating liquors in the United States may be destroyed by law. I move the reference of this petition to the Committee on Education and Labor, and commend it specially to the attention of my friend the Senator from New Hampshire [Mr. BLATH].

The motion was agreed to.

Mr. JOHNSTON presented petitions of Knights of Labor of Alton, Tuscata, and Clinton, in the State of Illinois, praying for the opening to settlement of lands in the Indian Territory; which were referred to the Committee on Indian Affairs.

He also presented a petition of residents of the town of Lake, State of Illinois, praying for the submission of a constitutional amendment to protect women, the States and Territories in the enjoyment of the right of suffrage in equal terms with men; which was referred to the Select Committee on Woman Suffrage.

He also presented a resolution adopted by the Illinois Mills' State Association, praying for the passage of a law regulating interstate commerce; which was referred to the Select Committee on Interstate Commerce.

Mr. CULLOM. I present a memorial of the Western Furniture Manufacturers' Association, urging the enactment of legislation for the regulation of railroad traffic. I ask that this, which is a very brief paper, be read, so that it may go into the RECORD for reference, as the report of the committee has already been submitted.

The PRESIDENT pro tempore. If there be no objection the paper will be read.

Mr. INGALLS. If the paper is respectful in form let it be printed without reading. The Senator has examined it.

Mr. CULLOM. It is too brief to be printed as a Senate document.

Mr. CULLOM. Let it be printed in the RECORD without reading.

Mr. CULLOM. I have no objection to that.

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

WESTERN FURNITURE MANUFACTURERS' ASSOCIATION.

Saint Louis, Mo., January 21, 1886.

Res: Referring to the inclosed petition of the Western Furniture Manufacturers' Association, I desire to call attention to the fact that while, according to the last United States census, the manufacturing industries of this country are classed under three hundred and thirty-two different titles, that of furniture manufacturing stands fifteenth in the list, and is therefore classed as one of the great "productive industries," there being in 1884 about 2,500 establishments, giving employment to about 63,000 people and producing annually goods valued at about $6,000,000.

The membership of this association is drawn from manufacturers west of the Alleghany Mountains, but I do every thing to believe that the manufacturers of the New England States entertain the same opinion on this subject as we do.

Respectfully yours,
J. W. TREMAYNE, Secretary.

To the Chairman of the Senate Select Committee on Interstate Railroad Transportation, Washington, D. C.

W. F. MANUFACTURERS' ASSOCIATION.

Saint Louis, Mo., July 22, 1885.

To the honorable the Senatorial Interstate Traffic Committee:

The Western Furniture Manufacturers' Association in annual convention assembled, in the city of Chicago, would respectfully submit the following, and recommend that Congress, as speedily as possible, do the following:

First. That Congress compel the railroads in the United States to adopt a uniform rate of freight, which shall not be changed except by authority of the Government, and then only after giving at least three months' notice to the shippers.

Second. That all rebates be prohibited under a severe penalty.

Third. That railroads be prohibited from discriminatorily charging any section of the country by charging more for carrying freight in any direction than they would for carrying same in any opposite direction.

Fourth. That a commission be appointed by Congress having authority to adjust rates and settle all differences between railroads and shippers.

Respectfully yours,
CHARLES P. BLYTH,
Chairman.
J. W. TREMAYNE, Secretary.

Mr. MANDERSON. I present a petition of the State Bar Association of Nebraska, praying that that State may be divided into two judicial districts. The petition sets forth, not at very great length but quite forcibly, the great necessity which exists for a division of that State. I move that it be referred to the Committee on the Judiciary, to be considered in connection with the bill heretofore introduced for that purpose.

The motion was agreed to.

Mr. COCKEII. I present the petition of the Kansas City Clearing House Association, praying that immediate action be taken to extend the civil laws over the Indian Territory, by giving jurisdiction to the United States courts in civil cases in like manner as jurisdiction has been conferred upon them in criminal cases.

This is becoming a matter of very great interest. It is charged that a large number of people who are indebted, have taken their property across the line into the Indian Territory so as to avoid the process of law, and the Territory is becoming a refuge for men who are attempting to avoid the payment of their debts. I hope that the committee will take prompt action on this petition. I move that it be referred to the Committee on Indian Affairs, if that is the proper committee.

The motion was agreed to.

Mr. DAVIS. The committee are now considering the very subject to which the Senator alludes.

Mr. HARRISON. A bill establishing a court in the Indian Territory and defining its jurisdiction was sent to the Committee on the Judiciary, the PRESIDENT pro tempore. The petition has been referred to the Committee on Indian Affairs.

REPORTS OF COMMITTEES.

Mr. DOLPH, from the Committee on Public Lands, to whom were referred the following bills, reported adversely thereon, and postponed indefinitely:

A bill (S. 65) to repeal all laws providing for the pre-emption of the public lands, the laws allowing entries for timber culture, the laws authorizing the sale of desert lands in certain States and Territories, and for other purposes;

A bill (S. 1114) defining the powers of the Commissioners of the General Land Office in respect to canceling private entries of the public domain and to quiet title to lands in the Northwest; and

A bill (S. 1221) relating to suits by the United States to set aside land patents.
Mr. DOLPH. By direction of the same committee I report a bill, accompanied by a written report, which embodies the main provisions of the three bills just reported by me adversely.

The bill (S. 1306) to repeal all laws providing for the pre-emption of the public lands, and to enact laws allowing the purchase of timber-culture, and for other purposes, was read twice by its title.

The President pro tempore. The bill will be placed on the Calendar.

Mr. PLUMB, from the Committee on Public Lands, to whom was referred the bill (S. 1223) for the relief of Wilbur F. Steele, reported it with an amendment.

ARKANSAS HOT SPRINGS.

Mr. BERRY. I am directed by the Committee on Public Lands to report back the concurrent resolution relative to the hot-house and hot-water privileges upon the reservation of Government lands at Hot Springs, Ark.

The President pro tempore. The resolution will take its place on the Calendar.

Mr. BERRY. I ask unanimous consent to dispose of the resolution at this time, as it will occupy but a few moments.

The President pro tempore. The Senator from Arkansas asks unanimous consent for the present consideration of the resolution.

Mr. INGALLS. I should like to see it in print. I ask that it may be over under the rule.

Mr. LOGAN. I should like to hear it read as proposed to be amended.

The President pro tempore. The resolution is reported with an amendment, and will be read as proposed to be amended if there be no objection.

The Chief Clerk read as follows:

Whereas the leases heretofore made of the bath-house and hot-water privileges upon the reservation of Government lands at Hot Springs, Ark., have expired by limitation of law; and

Whereas the Attorney-General of the United States has given an opinion that such leases may be renewed by the Secretary of the Interior without additional legislation:

Be it resolved by the Senate of the United States (the House of Representatives concurred), That the present session of Congress shall extend the terms of the leases of both hot-house and hot-water privileges, with the Secretary of the Interior unless the Forty-ninth Congress shall adjourn without having legislated with reference thereto.

The President pro tempore. The resolution, being objected to, goes over under the rule.

Mr. LOGAN. I wish to give notice to the Senator from Arkansas that when the resolution is before the Senate it ought and I shall move to amend so as to confine it to the present session of Congress only, instead of to the Forty-ninth Congress, in accordance with the view I suggested the other day. I think that will afford plenty of time for legislation on the subject. I merely give the notice so that the Senator may think over it.

Mr. BERRY. Very well.

The President pro tempore. The resolution will take its place on the Calendar.

COMPILATION OF SENATE ELECTION CASES.

Mr. MANDERSON. I am directed by the Committee on Printing to report back a concurrent resolution to print additional copies of the Compilation of Senate Election Cases adversely to the resolution and proposing the adoption of a substitute. I ask that the substitute be now considered.

The President pro tempore. The Senator from Nebraska reports adversely a resolution which will be read.

The Chief Clerk read the resolution, as follows:

Resolved by the Senate of the United States (the House of Representatives concurred), That there be printed and bound for the use of the two Houses 2,000 additional copies of the Compilation of Senate Election Cases, 1789-1883.

The President pro tempore. The resolution reported by the committee as a substitute will now be read.

The Chief Clerk read as follows:

Resolved by the Senate (the House of Representatives concurred), That there be printed and bound for the use of the House of Representatives, and 50 copies for the compiler of the work.

The President pro tempore. The Senator from Nebraska asks for the present consideration of the resolution. Is there objection? The Chair hears none, and the question is upon the adoption of the resolution.

The resolution was agreed to.

The President pro tempore. The resolution reported adversely will be postponed indefinitely if there be no objection.

REPORT ON CENTRAL AND SOUTH AMERICA.

Mr. MANDERSON. I am also instructed by the Committee on Printing to report adversely the motion to print the message of the President of the United States transmitting a letter of the Secretary of State with the report of the commission appointed to visit the states of Central and South America. The committee, ascertaining that that document has been ordered printed by the House of Representatives, report back the motion, recommending no action.

Mr. FRYE. I should like to inquire of the Senator from Nebraska what order has been made touching the printing?

Mr. MANDERSON. I understand that the usual number of the report has been ordered printed by the House of Representatives.

Mr. FRYE. That is right?

Mr. MANDERSON. Nineteen hundred. The committee have thought it best after the 1,900 were printed that the House of Representatives should take action in reference to the printing of any additional number that might be required.

Mr. FRYE. To our merchants and manufacturers it is the most important document that there is.

Mr. MANDERSON. So; I understand; and the printing will be hastened I think by the course the committee suggest.

The President pro tempore. If there be no objection the Committee on Printing will be discharged from the further consideration of the subject.

PRINTING OF PRESIDENT'S MESSAGE.

Mr. MANDERSON. I am also instructed by the Committee on Printing, to whom was referred a House concurrent resolution authorizing the printing of the President's last annual message, with the accompanying documents, to report favorably with certain amendments suggested by the committee. I ask for its present consideration.

The President pro tempore. The resolution will be read.

The Chief Clerk read as follows:

Resolved by the House of Representatives (the Senate concurring), That there be printed and bound 25,000 extra copies of the President's last annual message and accompanying documents for the use of the House.

By unanimous consent, the Senate proceeded to consider the resolution.

The amendments of the Committee on Printing were, in line 2, to strike out the words "and bound," and in line 4, to strike out the words "and accompanying documents," so as to make the resolution read:

Resolved by the House of Representatives (the Senate concurring), That there be printed 25,000 extra copies of the President's last annual message for the use of the House.

The President pro tempore. The question is on agreeing to the amendments.

Mr. INGALLS. Why are the accompanying documents omitted? I think it is customary to print them.

Mr. MANDERSON. They are printed under the general law, and that fact seemed to be misapprehended.

Mr. INGALLS. The other House did not know what they were doing, then?

Mr. MANDERSON. I am not quite at liberty to say that.

The amendments were agreed to.

The President pro tempore. The question is on concurring in the resolution as amended.

The resolution as amended was concurred in.

BILLS INTRODUCED.

Mr. HALLE introduced a bill (S. 1397) to authorize the creation of a new naval observatory; which was read twice by its title, and referred to the Committee on Naval Affairs.

He also introduced a bill (S. 1298) to authorize the Secretary of the Navy to fit out an expedition to observe the total eclipse of the sun which occurs on the 25th August, 1886; which was read twice by its title, and referred to the Committee on Naval Affairs.

Mr. CAMERON introduced a bill (S. 1399) granting an increase of pension to Sarah R. Boyle; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

He also introduced a bill (S. 1300) to authorize the purchase of a site and the erection of a suitable building for a post-office and other Government offices in the city of Wilkes Barre, Pa.; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

He also introduced a bill (S. 1301) giving to lieutenants of the United States Marine Corps who have served as such for a period of fifteen years or more the rank, pay, and emoluments of captains; which was read twice by its title, and referred to the Committee on Naval Affairs.

He also introduced a bill (S. 1302) authorizing the appointment of an assistant secretary of the Navy and fixing the salary of the same, and for other purposes; which was read twice by its title, and referred to the Committee on Naval Affairs.

Mr. PLUMB introduced a bill (S. 1303) granting a pension to John Ross; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

Mr. MAXEY introduced a bill (S. 1305) to grant to the Denison and Wabash Railway Company a right of way through the Indiana Territory, and for other purposes; which was read twice by its title, and referred to the Committee on Indian Affairs.

He also introduced a bill (S. 1306) to authorize the Red River Bridge
Company of Texas to maintain a bridge across Red River; which was read twice by its title, and referred to the Committee on Commerce.

Mr. JACKSON introduced a bill (S. 1397) for the relief of the book agents of the Methodist Episcopal Church South, which was read twice by its title, and referred to the Committee on Commerce.

Mr. JONES, of Arkansas, introduced a bill (S. 1398) granting a pension to Francis M. Yeurian; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

Mr. RIDDLEBERGER introduced a bill (S. 1399) for the relief of the Alabama and Chesapeake Canal Company; which was read twice by its title, and referred to the Committee on Naval Affairs.

He also introduced a bill (S. 1400) for the relief of William Tabb; which was read twice by its title, and referred to the Committee on Claims.

Mr. MANDESONS (by request) introduced a bill (S. 1311) for the relief of the administrators of the estate of Isaac P. Tice, deceased; which was read twice by its title, and referred to the Committee on Claims.

He also introduced a bill (S. 1312) making an appropriation for continuing in effect the provisions of the joint resolution entitled "a joint resolution authorizing the Public Printer to remove certain material from the Government Printing Office," approved February 6, 1880; which was read twice by its title, and referred to the Committee on Appropriations.

Mr. CALL introduced a bill (S. 1313) relative to judgment liens in Federal courts; which was read twice by its title, and, with the accompanying paper, referred to the Committee on the Judiciary.

He also introduced a bill (S. 1314) directing the Attorney-General to prosecute for the cancellation of all patents for land that were obtained by fraud; which was read twice by its title, and referred to the Committee on Public Lands.

He also introduced a bill (S. 1315) requiring the Attorney-General to bring to the attention of the Imperial Government of Russia, the claim of the legal representatives of Benjamin W. Perkins, deceased, a citizen of the State of Florida, to the amount of $999, for delivery to that government of powder and arms during the Crimean War, which was read twice by its title, and referred to the Committee on Claims.

Mr. VAN WYCK introduced a bill (S. 1319) to confirm entries of lands heretofore made under the land laws of the United States; which was read twice by its title.

Mr. VAN WYCK. Mr. President, I desire that the object of this bill, and the motive in offering it, shall not be misunderstood. It is, simply, that the innocent person seeking land under the laws shall have the benefit of such laws as they were administered when his entry was made. The due and fair application of the rulings of former administrations, as well as the correctness of rules and regulations now established. As the citizen can only obey the law by the direction of those who for the time administer it, injustice would be done to make him a sufferer by change of policy.

I move that the bill be referred to the Committee on Public Lands.

The motion was agreed to.

Mr. VAN VYCK introduced a bill (S. 1320) for the erection of a public building at the city of Beatrice, Nebr.; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

Mr. COCKELL introduced a bill (S. 1321) granting annuities of pension to Richard H. McWhorter; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

Mr. GIBSON introduced a bill (S. 1322) to provide for the construction of a public building at the city of Morgan City (port of Brazoria), State of Louisiana; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

He also introduced a bill (S. 1323) providing for the establishment of seaplanes, light-ship, and lights off the mouth of the Mississippi River, and for other purposes; which was read twice by its title, and referred to the Committee on Commerce.

Mr. BIRKENHEAD (by request) introduced a bill (S. 1324) for the relief of Robert D. Frayser, administrator of Fletcher lane, deceased; which was read twice by its title, and referred to the Committee on Claims.

Mr. DOLPH introduced a bill (S. 1325) to place the name of Robert W. White on the register of delinquent soldiers; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Military Affairs.

PAPERS WITHDRAWN AND REFERRED.

On motion of Mr. RIDDLEBERGER, it was ordered, That the papers in the claim of William Tabbs be taken from the files and referred to the Committee on Claims.
tives of the person interested in the claim. I move that it be referred to the Committee on Foreign Relations.

The motion was agreed to.

Mr. MORRILL. I will now take up the House.

The PRESIDENT pro tempore. That order will be made if there be no objection.

Mr. MORRILL. Mr. President, this joint resolution has the unanimous support of the Committee on Public Buildings and Grounds. No appropriation is now called for, but a moderate sum will of course at some future and proper time be asked for.

As a war site near the western entrance to the Capitol grounds there are two circular plots of ground, one at the intersection of Pennsylvania avenue and First street, and another at the intersection of Maryland avenue and First street.

Both of these circles were originally intended as twin sites for statues of monuments to private worth, but their equal prominence should be decorated in some equal and adequate manner is most obvious. To preserve and carry out this intention, it has appeared to the committee that statues of men whose names have been indissolubly linked to the early history of our country, and possessing something of a world-wide fame, might most appropriately occupy these conspicuous places on the western entrance to the grounds in front of the American Capitol.

After careful consideration, and with the advice of many of our fellow-members of the Senate, the names we have selected for the statues as most appropriate are those presented, of Columbus and Lafayette.

Columbus has had his memory perpetuated by the bestowal of his name upon our towns and rivers, and also more prominently by the name of the District of Columbia given here to the seat of Government. The site of the landing of Columbus, by Verrazano, in the Pandion of the Capitol, and the marble group by Penzo on the steps of the eastern front of the Capitol, where the Indian girl appears to be a companion, here, are the only statues of Columbus which have been called upon to make any expenditure in honor of the great discoverer of America. For him no monument, so far as I am aware, has been erected on the American continent. After his death in Spain, where he died in the most pitiable poverty, a magnificent monument was erected to "soothe the dull, cold ear of death" by King Ferdinand in a vain endeavor to blot out the remembrance of his own base and ignoble conduct. A singularly and fait seems to have been on the track of the bold navigator—being robbed of his rights while living, and when dead robbed of honor fairly won, as the new hemisphere, brought to light by Columbus, wears the inextinguishable stamp of another name.

Indeed, as we see it, to be a Columbus more especially than all the rest of mankind for this fair portion and latest-born half of the word, it would seem not to be an excess of our duty, but a privilege to be legally claimed, to place here in the heart of the American Republic some monument that will testify to all coming ages that Columbus did not lack respect and appreciation in the New World which he opened to our fathers, so fruitful to them and to us of countless advantages.

There is, however, an impediment in the way of the accomplishment of this purpose, which but it is proposed to remove, and with the approval of parties most deeply interested.

On the circle at the intersection of First street and Pennsylvania avenue now stands the Naval Monument, which was selected for this site on the ground that it would only be inadequately comprehended from an exhibition of a miniature copy in plaster. The monument, with its fine figures, is exceedingly creditable to the sculptor and the art of the work, but the arrangement in character, and most certainly is misplaced and inapplicable at the front of the Capitol Grounds. If it were to remain there then a monument of similar sadness would be required to represent the Army in other circles, at the intersection of First street and Maryland avenue.

The attention of the Committee on Public Buildings and Grounds has been directed by Admiral Porter, whose good judgment will venture to doubt, to a new site for the Naval Monument "on Connective avenue north of Dupont Circle," which the Admiral says, "will accommodate the monument beautifully, and is the only place in the city," and the committee is disposed to cordially endorse this selection.

On the other circle, at the intersection of Maryland avenue and First street, a site is proposed to place a statue of Lafayette and towns in different States bear his name, and Congress appropriated many years since for his benefit a township of land and $300,000. His portrait has also been procured for the interior of the House of Representants, but the only statute, as I believe, erected to his memory in our country is that recently given by the French Republic to Burlington, in Vermont.

The selection of our statue for Lafayette while living, and their stabbing respect for his important services in our Revolutionary war, is undoubted, and no other name of equal historic prominence has been suggested as more worthy of the distinction now proposed. Beyond this, another consideration, our part would be construed as a graceful tribute to the French Republic.

Here again we find an impediment in the way. In the sunny civilized world, there was inserted a paragraph as follows:

For the preparation of a site and the erection of a pedestal for a statue of the
late President James A. Garfield, $20,000); said site to be selected by and said pedestal to be erected under the supervision of the Secretary of War, the chairman of the joint resolutions on the Library of the Garfield monumental committee of the Society of the Army of the Cumberland.

Under the authority here given it rather unexpectedly appears that the circle at the intersection of Maryland avenue and First street has been selected for the statue of the late President Garfield. The Committee's decision is not as follows; however, believing that this selection was inadvertently made, and made perhaps because the site at the time happened to be unoccupied, propose to authorize and direct the same committee to make a new and different selection of a site, as there is other ground on which would be less desirable and some far more appropriate. President Garfield was greatly beloved and tenderly lamented by the whole country, and he was cruelly assassinated, but so was President Lincoln; and if the statute of the former were to occupy one of these unpaved, low places, it would set the symmetry of the original plan of a statute in the latter should occupy the other circle. It will be remembered, however, that a statue of President Lincoln has already been provided on Lincoln square. But there is room on other public reservations quite as attractive and wholly unoccupied.

In as brief a term as I have been able to use I have explained the purpose of the joint resolution, and I hope it may be considered of sufficient importance to receive at once the favorable action of the Senate.

Mr. CONGER. Mr. President-

The President pro tempore. The Senator from Michigan will allow me to make a statement, in which he used as the word 'examination' which was misunderstood by the President pro tempore. I have a statement that the Senate to proceed to the consideration of this joint resolution now.

Is there objection? The Chair hears none.

Mr. CONGER. It was on that point I was rising.

The President pro tempore. The Chair supposed the Senator wished to address the Chair.

Mr. INGALLS. How is it open to objection this morning?

The President pro tempore. It was introduced this morning as a new proposition.

Mr. INGALLS. As an amendment.

Mr. MORRILL. I asked unanimous consent to make the substitution.

The President pro tempore. The Chair understood the Senator as moving to indefinitely postpone the former resolution with a view to make an independent proposition.

Mr. MORRILL. As a mere matter of form I did that at the suggestion of the Chair.

The President pro tempore. The Senator from Michigan.

Mr. CONGER. We are all aware that the different monuments which have been placed in different parts of this city have been placed by order of Congress, I suppose, one in one square and another in another square, in former times, and almost every session there is a proposition to remove here and there, and appropriated to one or another of the monuments. I have no particular objection to making changes wherever they may be desirable or wherever there is a fitness or propriety in it. I submit this as a change to be made, in order to secure for Columbus a little contracted circle at the foot of the hill at the head of Pennsylvania avenue by removing a monument which has no particular significance, represents no particular thing, which may or may not be as a work of art pleasant to look upon to those who frequent Pennsylvania avenue, is not a desirable change and not a fit place to select for a statue of Columbus. It is down in a hollow. It is surrounded, I admit, by a beautiful travertine and net-work of street-railway tracks. It is unapproachable with safety for women and children, and even for men on foot, at any hour of the day.

The other circle at the head of Maryland avenue is still more inappropriate as a place for a monument for any man that the people of the United States would delight to honor. That, too, is surrounded by a net-work of railway tracks, not only encircling half or more of this city by rail, leading directly to the site of the proposed statue. The Maryland avenue circle is out of the way, not very easy of access either for pedestrians or for carriages containing visiting people of the United States. It seems to me it is as appropriate a place for either of these to be the selection of the statue for the statue of Chief-Justice Marshall was down under the hill and behind the trees. I have wondered that the statue of Chief-Justice Marshall was not selected for the site on the east side of the city, which becomes so intimately associated with the history and genius and so dear to the hearts of American citizens throughout the land.

Sir, my early life passed on the frontier did not permit me the opportunity to have my tastes developed, my mind educated, my manners formed, my character educated for the life that I now lead. I have had to consider it while the Senator from Vermont was making his remarks upon it, have been unable to discover.

It is said that there is no monument of Lafayette; no monument of Columbus. We have a striking monument of Columbus in front of the Capitol. No one views it, not even the rude frontiersman from the West, but wonders what there is in that monument of Columbus with his ball or his apple, the representative of the base-ball clubs of the United States. What is there in that monument to indicate the great discoverer of the New World? Newspaper critics and people who come here to see, and the boys who play ball in front of the Capitol, declare that Columbus and Washington—Greenough's Washington in front of him—are playing a game of pitch and toss and catch, Columbus with ball in hand, and there is some little propriety in the suggestion which comes naturally to the mind of the inarticulate, uneducated, unrefined citizen of the country that Washington is there with uplifted hand ready to receive the ball, Columbus (looking as little like Columbus as he does like Sancho Panza) preparing to throw the ball, and the wonderful monument of Columbus, which can be seen at a distance of a mile or two, is but an afterthought. I have been reminded to ask what they meant by that expression, and I meet with the same reply that I expected, that instead of acknowledging their ignorance, as I am willing to do mine, they said they supposed nation, lift it up out of the valley of humiliation, and away from the rattle and the strain of cars, away from the net-work of street-car rails and tracks; place it in some position of dignity, and one where it may be looked up to with pleasure and not down upon with scorn.
The PRESIDENT pro tempore. The Senator has a right to modify his amendment. The modified amendment will be read.

The SECRETARY. In line 5, section 17, after the word "education," it is proposed to insert:

"Such modifications as Congress shall deem most effectual to secure to said Indians equivalent benefits of such education."

The amendment was agreed to.

Mr. PLUMB. I now move, in order to cover the objections made by Senator from Indiana (Mr. CONGREY), and satisfactorily to Mr. President and the Senate from Massachusetts having charge of the bill, to come in after the proviso in section 20. I think the first proviso is one adopted on my motion, providing for the price of land for town sites, and I think the proviso should be read.

The PRESIDENT pro tempore. The amendment will be read.

The SECRETARY. After the amendment adopted ending with the words, "is full," in line 16, the amendment is reinserted and the Senate makes the following amendment:

And provided further, That no actual settler on said land shall be prevented from acquiring title to one quarter-section of the same by reason of the fact before he has benefited the pre-emption laws.

The amendment was agreed to.

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

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

CHURCH AND STATE.

The next business on the Calendar was the resolutions submitted by Mr. MORRILL, on January 15, authorizing the President to appoint officers of the United States to participate with the officers of any church in the joint conduct and administration of the spiritual or temporal affairs of such churches.

Mr. MORGAN. Let the resolutions be read.

The PRESIDENT pro tempore. The resolutions will be read.

The Chief Clerk reads as follows:

The resolution was read.

Mr. President, the propositions stated in these resolutions I have always considered as axiomatic if not self-evident, and I would certainly not have brought them to the attention of the Senate but for the fact that certain recent actions of the President in relation to the Indian treaties in this country grew out of the legal and political principles of the Constitution of the United States.

Resolved, 1. That in the opinion of the Senate it is not within the power of Congress to appoint officers of any church, or to require that any such officer shall be called, who shall, in the name of, or on behalf of, the United States, be required by a church of the United States to exert control over such officers, or to require such officers to be governed by other than the principles of the Constitution of the United States.

2. That it is a practical violation of the Constitution for the President of the United States to appoint any officer who may be called, who shall, in the name of, or on behalf of, the United States, be required by a church of the United States to exert control over such officers, or to require such officers to be governed by other than the principles of the Constitution of the United States.

3. That it is not the constitutional function of the executive or legislative department of the Government of the United States to exert control over the direction and administration of the religious or temporal affairs of any church or religious sect or society; but such power, if it may be in any case lawfully exerted, can be exercised only by the Government of the United States, can only be exercised by the judicial department.

4. That the power of Congress to grant charters of incorporation to religious societies in localities under its exclusive jurisdiction does not extend to and includes no authority or dominion or control over the affairs of such incorporations through the agency of officers of the United States appointed by the President and paid out of the public treasury.

Mr. MORGAN. Mr. President, the propositions stated in these resolutions I have always considered as axiomatic if not self-evident, and I would certainly not have brought them to the attention of the Senate but for the fact that certain recent actions of the President in relation to the Indian treaties in this country grew out of the legal and political principles of the Constitution of the United States. In the Senate, as in the Committee of the Whole, there now exist some questions which are not self-evident, and perhaps for the first time in the history of the Government, of what is the extent of the power of the Congress of the United States to interfere in the temporal administration of the churches of this country.

The separation of church and state in this country grew out of a sentiment which was promoted more earnestly and zealously by Roger Williams than by any other American citizen of whom I have any information, and which has been combined, not merely as an act of separation, but as an act of conviction, into the great controversy in the time of the inauguration of this form of government, and which should draw the line of demarcation between those powers which in England had been combined, not merely as an act of law, but in the establishment or ordination of one of the estates of the realm. The Church of England is one of the estates of the realm. In the establishment of our constitutional system of government and even of our colonial system of government it was determined by almost the unanimous consent of the American people that the, Church of England should find no place either in the colonial system or in the States united under the more perpetual union that we now enjoy.

Being put by this act in the position of one who has the duty, as a Senator from Dakota, to express the opinion of the Senate from that State, I desire to state that this bill proposes to make a division of the reservation of the Sioux Nation of Indians, in Dakota, into separate reservations, and to secure the relinquishment of the Indian title to the remainder, was announced as first in order; and the Senate, as in Committee of the Whole, resumed its consideration of the bill.

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

After consultation with the Senator from Massachusetts [Mr. DAWES], I offer what I now send to the desk as a substitute for the amendment which was pending at the time the Senate last had this bill under consideration.
Manhattan to be controlled by the spiritual authorities of the church, or whether they shall be subject to the injunctive power of the State. It is a question whether the State may appropriate this church property to the benefit of the congregation; still there is distinct the union in that act of church and state when we require that the power of the State, and that of the United States, shall, in that character, also hold the offices of a church, or an institution that calls itself a church. I regard that as an invasion of the fundamental law of the Constitution of the United States, affecting the rights of the State to legislate on such topics without our interfering or interposing the power of the Government.

The only safe and solid ground on which we can stand is the Supreme Court of the United States, having jurisdiction over all cases of the highest importance. It is plain that the President has the right to appoint the board of trustees; and it can only be exercised authoritatively over the church property by the President of the United States, subject to the control of the Senate. So it is with the religious property of the church. That property is not owned by the church; who has the legal right to hold it; the property held by the President is the property held by the Constitution and also control their spiritual affairs. The question is not how far Congress may go in its legislation, but whether it can take the first step.

As I understand the Constitution of the United States there is a positive inhibition upon us against legislating in regard to the establishment of religion; not to legislate either to establish it, or to prevent its establishment, or to break down its establishment. That question can never be decided by this Court, but whether the subject is one within the domain of the legislative power of the Congress of the United States. The only safe rule that can be adopted is to adhere to the plain mandate of the Constitution that this subject is not within the domain of the Congressional power of legislation, that it is a subject under our Constitution which is left entirely to the free consciences of the people, who may assemble themselves in congregations under whatever organization they may choose to have, or whatever the organization we may choose to give them, without our interfering or interposing the power of the Government of the United States to participate in any way in the regulation or control of those assemblages or congregations.

Sir, we have passed an act here and sent it to the other House which requires that the President of the United States shall appoint fourteen officers for the purpose of the Mormon Church at Salt Lake, in Utah. Let it be remembered that there are Mormon churches elsewhere than in Utah. In looking over a publication made by Mr. Childs, of the Philadelphia Ledger, the other day, I examined the list of changes there given in the character of the Mormon Church, and I find it to be the highest in the world. I find that among the congregations that exist in that city are two Mormon churches, one producing a paper. I doubt very much whether the State of Pennsylvania, which has a larger power in this regard than the Congress of the United States, because I do not understand that Pennsylvania is under a positive instruction to legislate on such topics at all—I doubt very much whether the State of Pennsylvania could inject into that polygamous church in Philadelphia a body of trustees, and in the name of the State of Pennsylvania regulate and control its affairs even to expel the polygamous feature from its creed. But there it stands in the light of day, if there it stands by the tolerance, shall I say, of the people of Pennsylvania, or that it is a thing that involves the deepest contempt of those people for it, yet it is such a toleration that exhibits an actual interference in the affairs of the church.

Religion has been made free from the law in this country, divorce of the church and the state was decreed when our Constitution was formed; but the Congress of the United States, it seems, wants to celebrate the nuptials of the new union between the Mormon Church and the United States. The only way to prevent this polygamous establishment in Utah, we have not sought to injure our powers into the Presbyterian or Methodist or Episcopalian or Baptist, or the Catholic Church in this country. We seek for the first display of the authority of the majority a mingling of church and State; we are a new idea of the union of law and religion, in enacting that the bonds of union shall be celebrated at the polygamous altar of the Church of Jesus Christ of Latter-day Saints in the city of Salt Lake, the capital of Utah.

I maintain that the President of the United States would contribute his best to prevent any board of trustees elected by the state that has voted shall be appointed by him and sent to the Senate for confirmation. We may put law upon that statute-book here requiring him to act in the act of Presidents, and as they act in the United States, shall, in that character, the President, in the Act and it may take the form and shape of a law; but when these trustees are to be appointed by him it would be equally the duty of the Senate to say, that appointment and that law violate the Constitution of the United States, and it will be the duty of the President, in the Senate, to say, that the President of the Senate, in Wallace's Reports. That is a case of great importance, and if the resolution should go to a committee, as I think it need not go to a committee, I respectfully call the attention of that committee, if they hold some right merely under the five-minute rule his time is up. If it be the President, then it will be the influence of this case of Watson vs. Jones upon this great question. That was a Kentucky controversy. It arose in a litigation between the General Assembly of the United States and the Walnut street church in Louisville, Ky. The question was who had the authority to determine who were the board of trustees chosen by the church; who were the men who had the legal right to the property held by the church, and whether the right to select a pastor; who had a right to conduct the financial affairs of the church; who had a right to determine upon the admission of members, their rejection, or a question relating to membership. That case came before the circuit courts of the United States on appeal to the Supreme Court of the United States, and the Supreme Court, after deliberate consideration, pronounced certain results as the conclusions to which it arrived, to which I will invite the attention of the Senate very briefly.

I will read some extracts from the opinion of the Supreme Court in the case of Watson vs. Jones.

"Cases which have come before the civil courts concerning the rights to property held by ecclesiastical bodies may, so far as we have been able to examine, be profitably classified under three general heads: cases do not include cases governed by considerations applicable to a church established and supported by law as the religion of the State.

The first of these is when the property which is the subject of controversy has been, by the deed or will of the donor or other instrument by which the property was created, the income to be devoted to a particular use or purposes, or the enlargement, support, or spread of some specific form of religious doctrine or belief. The second is when the property, which is the subject of controversy, by the nature of the organization, is strictly independent of other ecclesiastical organizations, and, so far as church government is concerned, owes no fealty or obligation to any higher authority.

The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general power of control more or less complete, in some supreme judiciary over the whole membership of that general organization.

In regard to the first of these classes it seems hardly to a rational doubt that an individual or an association of individuals may dedicate property to the trust to the purpose of support and dissemination of the definite religious doctrines or principles, provided that in doing so they violate no law of morality and give to the instrument by which their property is evidenced the formalities which the laws require. And it would seem also to be in the power of the court, in a case properly made, to see that the property is devoted to a specific use or purposes, or the enlargement, support, or spread of some specific form of religious doctrine or belief.

The third is when the property is not the subject of controversy, but when the property, which is the subject of controversy, is held in trust under the management of boards of managers, with certain rights of spiritual and temporal control in the regulation of their own church affairs. So churches have been incorporated in the Territories, some by special act and some under general law. The question arises, has Congress the power to enact a law whereby the President shall be authorized and required to present to the Senate for confirmation the trustees in a church in the District of Columbia?

The President pro tempore. It is the duty of the Chair to inform the Senate that it is a ten-minute rule his time is up. Mr. MORGAN. I ask unanimous consent to be allowed to make a few additional observations.

The President pro tempore. If there be no objection that will be consistent of the Senate, the Senator will proceed.

Mr. MORGAN. There is no reason, if Congress can intervene in the churches in the District of Columbia to appoint trustees for the management of the affairs, which we do not extend their jurisdiction and also control their spiritual affairs. The question is not how far Congress may go in its legislation, but whether it can take the first step.

As I understand the Constitution of the United States there is a positive inhibition upon us against legislating in regard to the establishment of religion; not to legislate either to establish it, or to prevent its establishment, or to break down its establishment. The question can never be decided by this Court, but whether the subject is one within the domain of the legislative power of the Congress of the United States. The only safe rule that can be adopted is to adhere to the plain mandate of the Constitution that this subject is not within the domain of the Congressional power of legislation, that it is a subject under our Constitution which is left entirely to the free consciences of the people, who may assemble themselves in congregations under whatever organization they may choose to have, or whatever the organization we may choose to give them, without our interfering or interposing the power of the Government of the United States to participate in any way in the regulation or control of those assemblages or congregations.

Sir, we have passed an act here and sent it to the other House which requires that the President of the United States shall appoint fourteen officers for the purpose of the Mormon Church at Salt Lake, in Utah. Let it be remembered that there are Mormon churches elsewhere than in Utah. In looking over a publication made by Mr. Childs, of the Philadelphia Ledger, the other day, I examined the list of changes there given in the character of the Mormon Church, and I find it to be the highest in the world. I find that among the congregations that exist in that city are two Mormon churches, one producing a paper. I doubt very much whether the State of Pennsylvania, which has a larger power in this regard than the Congress of the United States, because I do not understand that Pennsylvania is under a positive instruction to legislate on such topics at all—I doubt very much whether the State of Pennsylvania could inject into that polygamous church in Philadelphia a body of trustees, and in the name of the State of Pennsylvania regulate and control its affairs even to expel the polygamous feature from its creed. But there it stands in the light of day, there it stands by the tolerance, shall I say, of the people of Pennsylvania, or that it is a thing that involves the deepest contempt of those people for it, yet it is such a toleration that exhibits an actual interference in the affairs of that church.

Religion has been made free from the law in this country, divorce of the church and the state was decreed when our Constitution was formed; but the Congress of the United States, it seems, wants to celebrate the nuptials of the new union between the Mormon Church and the United States. The only way to prevent this polygamous establishment in Utah, we have not sought to injure our powers into the Presbyterian or Methodist or Episcopalian or Baptist, or the Catholic Church in this country. We seek for the first display of the authority of the majority a mingling of church and State; we are a new idea of the union of law and religion, in enacting that the bonds of union shall be celebrated at the polygamous altar of the Church of Jesus Christ of Latter-day Saints in the city of Salt Lake, the capital of Utah.
This ruling admits of no inquiry into the existing religious opinions of those who comprise the legal or regular organization; for, if such was permitted, a very large number of the states would refuse to have the church among their institutions. It is found to be the only faithful supporters of the religious dogmas of the founders of the United States, and because it was based upon the property or organization, whether it shall be the case of property acquired in any of the usual modes for the exclusion of any religious denomination, or any peculiar form of worship, but of property purchased for the use of a religious congregation; and so long as any existing religious congregation can be ascertained to be that congregation, or its regular and legitimate successor, it is entitled to the use of the property.

In the case of an independent congregation we have pointed out how this identity, or succession, is to be determined, and to decide, and they may have changed before the record of our proceedings. I have therefore felt it my duty to call attention to the subject, for we have unwittingly or not, so argument was made against it—spread the records of this church, and to recognize a church as something that has lawful existence both in moral and in law, and thus recognizing it, to provide for the appointment by the President and confirmation by the Senate of trustees to hold a seat in that Church, and to manage the affairs of a very religious and spiritual in a church, Congress cannot send the agents of the Government to rule in the affairs of a church.

The following bills were severally read twice by their titles, and referred to the Committee on Claims.

The following bills were severally read twice by their titles, and referred to the Committee on Claims.

Mr. HOAR. Mr. President:

The PRESIDING OFFICER. If the Senator from Massachusetts will indicate the Chair as the President, the Chair will lay before the Senate the following bills from the House of Representatives for reference.

The bill (H. R. 3852) for the relief of C. M. Briggs, deceased, was read twice by its title, and referred to the Committee on Claims.

The following bills were severally read twice by their titles, and referred to the Committee on Claims.

A bill (H. R. 116) for the relief of Albertine Cockrum;
A bill (H. R. 325) granting a pension to Daniel Connolly;
A bill (H. R. 236) granting a pension to Mrs. Martha E. Turney;
A bill (H. R. 618) for the relief of Catherine Carse,
A bill (H. R. 615) granting a pension to James Morgan;
A bill (H. R. 777) granting a pension to Frederick Botter;
A bill (H. R. 798) granting a pension to Jethro Hornbeck;
A bill (H. R. 925) to amend an act entitled "An act granting a pension to Rachel Nickoll," approved March 3, 1885;
A bill (H. R. 938) granting a pension to Lewis A. Thornbury;
A bill (H. R. 930) granting a pension to G. W. Fraley;
A bill (H. R. 934) granting a pension to Charles W. Minnis;
A bill (H. R. 936) granting a pension to James T. Caskey;
A bill (H. R. 939) granting a pension to Fred. H. Holbrook;
A bill (H. R. 1555) granting a pension to Isaac Moore;
A bill (H. R. 1319) to increase the pension of Robert D. Fort;
A bill (H. R. 1335) granting a pension to Isaac Chenoweth;
A bill (H. R. 1140) granting a pension to L. H. Ellis;
A bill (H. R. 1472) granting a pension to Mary Murphy;
A bill (H. R. 1564) granting a pension to Mrs. James Saunders;
A bill (H. R. 1569) granting a pension to Nathaniel Taylor;
A bill (H. R. 1735) providing for the education of Catholic children in the United States;
A bill (H. R. 1755) granting a pension to Elizabeth Kahler;
A bill (H. R. 1579) for the relief of Amy A. Lewis;
A bill (H. R. 1592) authorizing the Government of Utah to provide for public schools;
A bill (H. R. 1589) for the relief of Edward B. Baker;
A bill (H. R. 1580) for the relief of Timothy Paige;
A bill (H. R. 1701) granting a pension to Catherine Collins;
A bill (H. R. 1760) granting a pension to Joseph Williams;
A bill (H. R. 1711) for the relief of George C. Haynie;
A bill (H. R. 1834) granting a pension to Mrs. Lona Nelson;
A bill (H. R. 1320) granting a pension to George Black;
A bill (H. R. 3397) granting a pension to Sidney Sherwood;
A bill (H. R. 3339) granting a pension to William H. Blake;
A bill (H. R. 3336) granting a pension to Mrs. A. M. Huns;
A bill (H. R. 4125) granting a pension to John M. Milton; and
A bill (H. R. 4835) to place the name of John Pruitt on the pension-roll.

Mr. ALLISON. I ask the Senator from Massachusetts to yield to me a moment that I may offer a resolution, and I ask unanimous consent that it may be considered now.

The Chair Clerk read the resolution, as follows:

Resolved, That the Secretary of the Senate be, and he is hereby, authorized and directed to pay from the miscellaneous items of the contingent fund of the Senate the following expenses of the late President Thomas A. Hendricks, which were incurred at Indianapolis, Ind., payment to be made upon vouchers satisfactory to the President and approved by the Committee on Audit and Control the Contingent Expenses of the Senate.

By unanimous consent the Senate proceeded to consider the resolution.

Mr. ALLISON. I do not wish to submit any remarks. I merely ask that certain papers which I present may accompany the resolution and go to the committee on finance in its management of the President. The PRESIDING OFFICER. The papers will be referred to the
Committee to Audit and Control the Contingent Expenses of the Senate. The question is on agreeing to the resolution. The resolution was agreed to.

COUNTING OF ELECTORAL VOTES.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 9) to fix the day for the meeting of the electors of President and Vice-President, and to provide for the counting of the votes for President and Vice-President and the decision of questions arising thereon.

Mr. HOAR. I move the amendments which were printed for the information of the Senate by the order made on Thursday last.

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

Mr. HOAR. In section 4, line 57, after the word "counted," it is moved to insert:

Which appear to have been cast by the electors whose names appear on the lists certified by the executive of the State, in accordance with the provisions of section 136 of the Revised Statutes as hereby amended, or in case of a vacancy in the board of electors so certified, then by the persons appointed to fill such vacancy in the mode provided by the laws of the State; or if there be no such list, or if there be more than one such list purporting to be so certified, then those votes, and those only, shall be counted which

It is also proposed to add as a new section:

SEC. 1. That section 136 of the Revised Statutes is amended to read as follows:

"Sec. 136. It shall be the duty of the executive of each State to cause three lists of the names of the electors of each State to be made and certified to the Secretary of State, and to be delivered to the electors on or before the day on which they are required to meet."
agree. The provision for such an arbiter, therefore, comes within the legislative power committed to Congress—

To make all laws which shall be necessary and proper for carrying into execution the powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

A perfect bill, as I believe, would provide for a common arbiter between these two bodies, which the Constitution has left to the laws of that has dealt with this subject from the beginning of the century to the present day; but every such attempt has failed. There never has assembled at the seat of government since the Government went into operation when two Houses of Congress agree as to the person who should be the suitable common arbiter between these two bodies. John Marshall tried it and failed in 1800; Daniel Webster tried it and failed in 1850; the men of 1876 tried it and failed, except for the single occasion with which the electoral commission bill dealt.

Now, the Senator from Ohio [Mr. SHERMAN] has undertaken by the amendment read by him the other day to solve this difficulty by a provision which shall create a common arbiter between these two branches, and with great respect to that Senator—and there is no man in public life in this country for whom my respect is more profound—it seems to me that all the schemes which have been ever suggested since the beginning of the Government to deal with this question that of my honorable friend from Ohio is the worst. I would prefer to take the senior justice of the Supreme Court, as John Marshall I think proposed, as he would be the one that official as an arbiter between the two branches in the present state of political and public sentiment in this country. But certainly whatever it be there is no law which justifies this bill which does not give a judicial function. I do not mean by a "judicial function" one of the functions usually assigned to courts, but I mean judicial in regard to the nature and character of the act to be performed; that is, you are to have a tribunal which is to determine the fact, and the existing law, in contradistinction from determining the law or creating the fact according to his own desire. The legislator enacts the law as the legislator desires and this best suits the public interest, but the elector votes for the candidate who it is his wish shall succeed to the office voted for. But this function is to determine the existing fact and apply to it the previously declared and ascertained law. It is a function in which the wish or the desire of the person exercising it can not properly enter.

What does the Senator from Ohio propose for such a function as this? He proposes a very numerous body, a body which is to consist in the near future of nearly five hundred members. It consists of over four hundred, and after the next census, with the addition of States, it will consist of nearly five hundred members. He proposes a body to deal with questions of frauds at elections, delicate questions of law, State and national, which by no possibility under the circumstances can either debate or give a hearing to any party interested. It is a body made up of earnest partisans, of four hundred or five hundred men selected in the United States more likely than any other body of the same number which could be selected, being brought together on any principle of selection, to have an earnest and impassioned and eager desire and the best interests of the existing civil interests and the public interest in life, whose future are to be very largely affected by the decision one way or the other of the question before them; a body whose two political divisions are to be made for or against the Constitution. It is to be said that it is more affected by the two Houses in a way to the candidate who it is his wish shall succeed to the office voted for. But this function is to determine the existing fact and apply to it the previously declared and ascertained law. It is a function in which the wish or the desire of the person exercising it can not properly enter.

It is a body also where individual responsibility is wholly lost. A man who votes in this joint ballot votes with this crowd where his voice can not be heard in debate or to state his reasons, and where his own personality is entirely merged and disappears for the time being. It is a body also with no character of its own to sustain. If this function were committed to the Senate, it would be committed to seventy-six men whose own dignity and honor and authority, whose title to the respect and remembrance of mankind, depend, as we all feel, very largely upon the honor, credit, and dignity of the Senate. A man who fills a place in the Senate and does his best in it has not only the respect and remembrance of his countrymen, but a character and quality, but the reflected honor and respect which come to him from being a member of this great legislative body which has exhaustively defined the Senate and is to be said to be a possession that shall be no more, in one continuous and unbroken succession; and in the strongest heat of party desire, in the wildest motion of waves of public clamor or the tide of public feeling, the Senators on either side may vote out of the sake of the preservation of an office or personal character which is so to survive the chances or the desires or the excitments of a single Presidential election, to do what is right, not what is mere party, or the desire of the party for the election of Representatives. But this body created by the honorable Senator from Ohio perishes when the single function has been performed. You have therefore as little as possible of security from regard to the personal character of the men taking part in this great proceeding, and no security at all by reason of any dignity of character or permanence of authority of the body to which the function is committed, these persons too taking no oath of office, under no restraint of that kind. The whole question of my friend from Ohio is settled, by enacting that when the two Houses fail to agree on any question, that question shall be determined without partisan bias and according to the merit of the case; contested-election cases are usually decided in the House of Representatives!

The Senator says that he takes this proposition; it has been suggested to him by an analogy to the election of Senators of the United States. Now, the Senator has no authority from the Constitution for this proposition. The Constitution, speaking of an election, that is a proposition for election, not for judgment. Unquestionably the meeting together of the two Houses, the bodies who are to elect one or the other of two candidates, is not only a proper method, but in the case of differences between the two bodies a necessary method, of arriving at an election; but for judgment, I am not aware that in our legislative history there is any instance where there is committed to a body of this class or to two legislative bodies acting on joint ballot the judicial determination of any public question.

The present bill does not attempt to create a common arbiter between the two Houses of Congress. What it does attempt is to reduce to a minimum the cases where any difference can properly arise, proceeding upon the constitutional theory that the appointment of electors, including the determination of the question who has been appointed, belongs to the States, and we shall be contented to exclude not only Congress but every person holding an office of trust or profit under the United States from the whole proceeding. As far as anything to this tribunal for its determination of a dispute as to who are lawfully exercising the function, it gives a decisive weight and power to certain official action of the State itself, and if the amendment which I have proposed shall be adopted no case can arise under this bill of rejecting the vote of any State except in the situation of the existing joint ballot.

The bill provides that where the State has created a tribunal for the determination of questions the proceeding of that tribunal shall have the same force and effect as if the State had no tribunal at all, but one return purporting to come from the State the vote shall not be rejected without the concurrence of both Houses of Congress; and the amendment provides that, in the absence of any State tribunal erected for the purpose of passing upon the validity of the election of electors, the vote of that board of electors which has under the existing law the certificate of the executive of the State that they are the truly chosen board shall not be rejected except by the concurrent vote of the two Houses.

I have not heard upon the floor of the Senate, either in private or public discussion, and I have not found in looking over the debates on this question from the beginning of the Government, a suggestion of any possible case which this bill does not cover and determine except the single case where, growing out of civil war or other causes, there is a struggle in a State and a dispute as to who are lawfully exercising the powers of its government. In that case I think we should on reflection be pretty likely to agree that the vote of the State ought not to be received and counted without the assent of both Houses of Congress. It is possible that if not a civil war but a disturbance and struggle which is inconsistent almost with any fair or satisfactory ascertainment of the will of the people of such a State. We have had several such instances in the United States, but they came out of the relations of the States to their States, and in the relations of people in the State to one another or to the National Government had become settled. In that case the bill requires for the reception and count that the Judges of the Supreme Court of the United States held in Luther v. Borden was required for the determination of which was the lawful State government in regard to all the rest of its relation to the National Government, that is, the recognition of the two Houses of Congress. In Luther v. Borden it was held that in the absence of such recognition by the two Houses of Congress the recognition by the President of the United States would priori facie determine which was the true and lawful State government.

My honorable friend from Ohio says it is a great thing to reject the vote of a State, and he is not willing to trust to one House of Congress alone, guided, in so far as it will by political passions, the power of rejecting without the concurrence of the other House a vote of a State. He should like to ask if the Senator from Ohio knows of any way now under the existing law, of any way since the foundation of the United States, unless he holds to the theory that the States have the right to make any law by which a vote of a State or a State's government to be unused or not counted or be counted except by the concurrence of the other House of Congress, in which case a large majority of the persons who have dealt with this question, in which the vote of any State can be counted except by the concurrent assent of the two Houses of Congress? I do not know of any such understanding which in any other way, this bill limits and narrows the power to do that which has been in existence, though never used, from the foundation of the Government. In the case of a dual State government, two bodies

February 1,
claiming each to represent the will of a people, as I said before, I think there must be some way by which there may be a concurrent action of both Houses before the State should be permitted, when law does not pro-

claim, to take part in this supreme constitutional act—electing the Chief Magistrate of the State.

But there is something of a fallacy, it seems to me, lurking in the phrase which we so often hear, "Rejecting the vote of a State." It seems to me that the vote of a State is very much rejected when you not only exclude the vote of the majority, but it has only author-
ized to represent it, but in addition to that permit others whom it has

not chosen to cast its vote and express its will without authority or consent.

The vote of a State may be rejected when it is voted in the nature of a double return the vote certified by the returning officer of the State is still more rejected when the true vote is cast out and a false vote is counted in its stead.

I have heard Mr. President, that this is all that it seems necessary for me to say at this time in regard to the bill. As it stands, when the

executive of the State has made the certificate provided for by the old

law, to which we now propose to add the great seal of the

State, the State has by a tribunal created by itself settled the question, the action of that tribunal is to govern Congress.

Now, I can not, as I said before, think of any case which this bill does not cover, determined to refer the State to determine, any case in which any fiction or difficulty may be made out of the management provided, except in the case of dual State governments, and in regard to

that the power of one House to reject the vote be not created by this bill,

but it is the only remnant of that power which this bill does not take away.

Mr. SHERMAN. Mr. President, I do not care myself to continue this debate, because I feel very much in the condition of every other

member of this body in regard to the bill. Whatever we do has more or less danger, and I respectfully call the attention of the Senate to the fact that the amendment now proposed by the Senator from Massa-

chusetts introduces another dangerous element, probably as danger-

ous as the present provisions of the bill.

In the case of a double return from a State, as where two sets of electors claim to have been legally elected by the people of a State, instead of providing for either the present bill that it shall require the assent of both Houses to count the votes of that State, the amendment proposes to substitute as the only mode and the final mode of testing the question between the opposing colleges of electors, where there is no tri-

bunal provided in the State, the governor of the State must then decide which of the two sets of electors are the legal electors in the State. The Senate would avoid the difficulty which he has pointed out and which is manifest to every one, the danger of allowing either of the two great political bodies to reject the vote of a State; and he now proposes to leave that question to be finally settled by the governor of the State.

Under the one hundred and thirty-sixth section of the Revised Stat-

utes the governor sends to the Vice-President or the President of the Senate the votes of the electors; but suppose another body of electors in the same State should send their certificates to the Senate, how do they do this without the agency of the governor, to the Senate's presiding officer? The bill provides that any paper purporting to be a return shall be received and read at the following two Houses of Congress. In the first place, it

requires that to be decided by the concurrent action of the two Houses, or by the election of either House, the amendment proposed by the Sena-

tor leaves it entirely to the governor of the State, who naturally belongs to one of the two parties represented by the two opposing colleges of electors.

My friend from Massachusetts has pointed out many objections, and I can see them very strongly too, to allowing this question to be decided by the presiding officer of the Senate, who has the charge of all the electoral votes; but he proposes as the final arbiter on this important question the governor of a State, who probably himself is one of the par-
ties to the contest. It seems to me he is jumping out of the frying pan into the fire. Are we willing to leave to one man, who, being the gov-

ernor of a State, and therefore necessarily a party in the contest that has occurred in the State, to decide this question in which he probably from political feeling or otherwise is more interested than any other

magistrate for the whole country.

Mr. MAXEY. Mr. President—
The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Texas?

Mr. SHERMAN. Certainly.

Mr. MAXEY. I am ignorant to the Senator from Ohio that the very point he is now upon was one of the difficulties which we had in the discussion in 1876. Who is the governor? That is the question.

There is another claimant to be governor in the same State, as there were in Rhode Island once, and there were in Louisiana. Now, in such a case which certificate is to govern?

Mr. HOAR. If the Senator from Ohio will pardon me, that is in con-

clusion that is a case which the Senator from the House will, as

I submit it now. We can not get rid of that. That has been always the difficulty where there were two opposing candidates for governor, and

Mr. SHERMAN. But I come back to the point, waiving the ques-

tion proposed by the Senator from Texas, which is a pregnant one, where there are two opposing candidates for governor, and taking the

close the fact that there are two opposing candidates for governor, as

would naturally be so, because by the laws of nearly all the States the
governors are now elected at the same time that the electors are chosen. Nearly all the States have adopted the mode of conducting the

State elections at the same time that the Presidential election is held. The State of Ohio has been the last to abandon its old mode of electing
governor. It is necessary that we consider the case of one State where there are two opposing candidates for governor, and I ask the Senators to consider the election of electors. I think by the laws of nearly all the States the governor is now elected on that day, so that in the very election which

involves the election of electors probably the question of who is the

governor and who was elected governor at that particular time is not

involved. But suppose the governor is admitted to be duly elected, rep-

resenting one of the parties of the State, especially of a great State, you leave to him the question of deciding this most dangerous and dif-

ferent point.

We can not overcome the difficulty by such a proposition as this. Let the Senator from Massachusetts point out some tribunal. It may be the Supreme Court; it may be an electoral commission organized

under law; it may be a tribunal pointed out by the law beforehand in the nature of a judicial tribunal or some other kind of tribunal; but to

excuse the evil that is involved in both parties, where there is a real
dispute as to who have elected the governor of a State, it seems to me to select the

governor of the State to decide the question is far more dangerous than
to leave it even to the presiding officer of the Senate. So all the argu-

ments which the Senator has drawn from the case of the Senate of a

State ought not to decide the question arise also against the author-

ity to give the governor of a State the power to decide the question. It seems to me that that will not answer, and that the remedy proposed

by the Senator from Massachusetts, who admits the evil and the diffi-

culty, is not a remedy at all, but only aggravates the disease.

In the face of the mandate of the Constitution that when the electoral

votes are read to the two Houses, with all the formalities that can

be surrounded by law, the vote of the Senate and House returns, the

Senator from Massachusetts turns around and says that the votes certified to by the governor shall be counted. It seems to me that that

is not sufficient. It is not a remedy. On the other hand, I would far

rather say that no vote of any State shall be excluded except by the

concurrence of both Houses.

In the case of a single return, although that return may disclose an

illegal election, although it may disclose the election of persons who

were not eligible to the position of elector, although it may involve
difficulties and doubts as to the election or as to the validity of

the return, this very bill provides that the vote shall be counted un-

less the House agrees that it shall not be counted. Now I would far

rather apply the principle to the case put. On the contrary, the Sen-

ator proposes to amend the bill so as to make the clause read:

And in such case of more than one return or paper purporting to be a

return, or of which there shall have been found by the legislative power of the State aforesaid, then those votes, and those only, shall be counted which ap-

pear to have been cast by the electors of the party having the greater number of votes, and the case shall be determined by the executive of the State, in accordance with the provisions of section 136 of the Revised Statutes as hereby amended.

So it provides that in case of a double return the vote certified by the
governor of the State shall be the vote to be counted, and under

the operations of this provision even with both Houses concurring that

the governor of the State is wrong, that he has disregarded the will of

the people of the State of which he is governor, the two Houses con-
curring could not overrule the decision of the executive of the State.

It seems to me that this is a more dangerous complication.

On the whole, without extending this debate further, this matter is

surrounded by many difficulties. When I proposed the other day that

the question should finally be decided by the two Houses acting in a

joint convention I was not entirely satisfied, because I could see that

that involved great difficulties. But suppose, as the bill stood, the

House of Representatives should say that a certain vote should not be counted; in that case it would be the end of it; it would be excluded

indefinitely; whatever opinion the Senate might have; but if, on the

contrary, the Senate should come to a different opinion from the House, then at least there would be one other chance, by convening the two

Houses in joint convention, of having a settlement and a determination of the question, and not merely the rejection of the invalid return, when either House objects the vote is not counted—that is, it is excluded from the count, and the State has no part or lot in the elec-

tion of a President. In the amendment I proposed I provided for at

least three ways of deciding the question in case there were conflicts

when the Senate mingled with the House in joint convention might to

some extent control or affect the vote. I admitted that it was not a

remedy, I did not see that it required me to do so, but it gave me an

added safeguard, and then it gave a decision of the
question so that the vote of the State was counted, and therefore was better than the proposition contained in the bill. Still I was not satisfied.

Now, I think if this amendment is adopted it will only make more manifest the difficulties that exist in the question. I stated the case, and the gentlemen opposite will have to take the executive or governor of a State to decide the very question which we are not willing to leave to the two Houses to decide, which we are not willing to leave to the Supreme Court of any State. I suppose it is stated in the bill with the words, 'If the votes of both Houses are agreed upon.' It would be better to take the executive or governor of a State to decide the question, which we are not willing to leave to the two Houses to decide, which we are not willing to leave to the Supreme Court of any State. I suppose it is stated in the bill with the words, 'If the votes of both Houses are agreed upon,' that it would be better to take the executive of the State, rather than to leave it to a governor, who is himself a party necessarily to the controversy, to decide it.

The proposition of my friend from Massachusetts violates the very rule that has been laid down by Lord Coke, that even Parliament cannot make any man a judge in his own case. Yet this amendment provides that the governor of a State is the judge of the question as to which of two sets of electors is elected, and the governor himself is a party necessarily to the controversy.

But, as I said before, I do not wish to continue this discussion further. I do not believe that in the present condition of the bill we are likely to come to any wise solution of it. I would rather recommit the bill to the Committee on Privileges and Elections, which I know would approach this question with great care. At any rate, I trust that we shall not make the same mistake that was made in those Resolutions, that the present condition of the bill we are likely to come to any wise solution of it. I would rather see the bill go over for a month, and then expect to deal with that question, and I would say that the bill goes over for a month.

Now, if this bill does not give any weight, authority, or dignity whatever to the certificate of the State executive unless the State which he represents has so chosen, because it provides that the State, in the first instance, may appoint another tribunal for the purpose, which implies the desire of the State itself that its executive should be its constitutional voice and authority upon this question that the bill respects. In order to increase the difficulties that exist in the question, the bill gives to the certificate of the State executive when the State itself chooses to reappoint that authority in him. The Senator from Ohio himself denies that the State of Ohio possesses any authority to pass upon this question, and he has said that the votes for Presidential electors shall be certified and certified by the Governor, and that count and certificate shall be conclusive, which would be something which we could not and should not go behind. The bill does otherwise in the provision that in all other like cases which involve the appointment of committees, and sit for weeks and months, even if there is a dispute or contest in their case, until that matter is decided.

So I say that this only is adopting the principle which the Constitution adopts. It only gives this power to the governor when the State is divided, or when there is a dispute between him and one other man, the Secretary of the Senate from Massachusetts. This is all the bill says. It is not the most satisfactory solution of it. I would rather recommit the bill to the committee which has had it in charge, reported to the Senate, stood on its calendar six or eight weeks, the Senate is prepared to deal with that question if it ever is to be dealt with, and we might as well have it over for the electors to be counted, or, in other words, excise it from being counted.

I respectfully submit to the honorable friend from Massachusetts that he has not helped the matter any by his amendment, but he has left it a source of dangerous dispute, and has selected a tribunal the last of all to decide this grave question.

Mr. HOAR. Mr. President, it seems to me, with the profound respect which I always entertain for my honorable friend, that his suggestion hardly indicates the reflection which he is in the habit of giving to such matters. This body has been engaged dealing with this question nearly thirteen years. It has debated it week after week, week after month some sessions, and at last it has three times passed this bill, after discussion, by a vote approaching to unanimity. Now my honorable friend thinks we had better put it off a little longer, recommit the bill to the committee, and see if we can not do something better. I submit that when a bill comes, at the end of two years' debate, by the times adopted by the United States, adopted by the committee which has had it in charge, reported to the Senate, stood on its calendar six or eight weeks, the Senate is prepared to deal with that question if it ever is to be dealt with, and we might as well have it over for the electors to be counted, or, in other words, excise it from being counted.

I respectfully submit to the honorable friend from Massachusetts that he has not helped the matter any by his amendment, but he has left it a source of dangerous dispute, and has selected a tribunal the last of all to decide this grave question.

Mr. HOAR. Mr. President, it seems to me, with the profound respect which I always entertain for my honorable friend, that his suggestion hardly indicates the reflection which he is in the habit of giving to such matters. This body has been engaged dealing with this question nearly thirteen years. It has debated it week after week, week after month some sessions, and at last it has three times passed this bill, after discussion, by a vote approaching to unanimity. Now my honorable friend thinks we had better put it off a little longer, recommit the bill to the committee, and see if we can not do something better. I submit that when a bill comes, at the end of two years' debate, by the times adopted by the United States, adopted by the committee which has had it in charge, reported to the Senate, stood on its calendar six or eight weeks, the Senate is prepared to deal with that question if it ever is to be dealt with, and we might as well have it over for the electors to be counted, or, in other words, excise it from being counted.

I respectfully submit to the honorable friend from Massachusetts that he has not helped the matter any by his amendment, but he has left it a source of dangerous dispute, and has selected a tribunal the last of all to decide this grave question.

Mr. HOAR. Mr. President, it seems to me, with the profound respect which I always entertain for my honorable friend, that his suggestion hardly indicates the reflection which he is in the habit of giving to such matters. This body has been engaged dealing with this question nearly thirteen years. It has debated it week after week, week after month some sessions, and at last it has three times passed this bill, after discussion, by a vote approaching to unanimity. Now my honorable friend thinks we had better put it off a little longer, recommit the bill to the committee, and see if we can not do something better. I submit that when a bill comes, at the end of two years' debate, by the times adopted by the United States, adopted by the committee which has had it in charge, reported to the Senate, stood on its calendar six or eight weeks, the Senate is prepared to deal with that question if it ever is to be dealt with, and we might as well have it over for the electors to be counted, or, in other words, excise it from being counted.

I respectfully submit to the honorable friend from Massachusetts that he has not helped the matter any by his amendment, but he has left it a source of dangerous dispute, and has selected a tribunal the last of all to decide this grave question.

Mr. HOAR. Mr. President, it seems to me, with the profound respect which I always entertain for my honorable friend, that his suggestion hardly indicates the reflection which he is in the habit of giving to such matters. This body has been engaged dealing with this question nearly thirteen years. It has debated it week after week, week after month some sessions, and at last it has three times passed this bill, after discussion, by a vote approaching to unanimity. Now my honorable friend thinks we had better put it off a little longer, recommit the bill to the committee, and see if we can not do something better. I submit that when a bill comes, at the end of two years' debate, by the times adopted by the United States, adopted by the committee which has had it in charge, reported to the Senate, stood on its calendar six or eight weeks, the Senate is prepared to deal with that question if it ever is to be dealt with, and we might as well have it over for the electors to be counted, or, in other words, excise it from being counted.

I respectfully submit to the honorable friend from Massachusetts that he has not helped the matter any by his amendment, but he has left it a source of dangerous dispute, and has selected a tribunal the last of all to decide this grave question.

Mr. HOAR. Mr. President, it seems to me, with the profound respect which I always entertain for my honorable friend, that his suggestion hardly indicates the reflection which he is in the habit of giving to such matters. This body has been engaged dealing with this question nearly thirteen years. It has debated it week after week, week after month some sessions, and at last it has three times passed this bill, after discussion, by a vote approaching to unanimity. Now my honorable friend thinks we had better put it off a little longer, recommit the bill to the committee, and see if we can not do something better. I submit that when a bill comes, at the end of two years' debate, by the times adopted by the United States, adopted by the committee which has had it in charge, reported to the Senate, stood on its calendar six or eight weeks, the Senate is prepared to deal with that question if it ever is to be dealt with, and we might as well have it over for the electors to be counted, or, in other words, excise it from being counted.

I respectfully submit to the honorable friend from Massachusetts that he has not helped the matter any by his amendment, but he has left it a source of dangerous dispute, and has selected a tribunal the last of all to decide this grave question.
very, proposing a new arbiter in the governor of a State where a contest exists. This amendment comes from him, and we respect his opinions greatly, but it seems to me that the amendment itself ought to undergo the careful revision of the committee of which he is the chairman to see whether they would be satisfied to turn over this controversy from the two Houses to the governor of a State. But he says the governors of the States certify to our elections as Senators and to the election of members of the Houses of the Congress. If the governor does, he is only an administrative officer, and upon that certificate a Senator may be sworn in for a month or a day, and the members of the other House may be sworn in even within the same hour. Now, he says that the certificate is only prima facie evidence of the facts contained in it; it is not at all conclusive. But this proposition is to make the action of the governor of a State final and conclusive, so that the two Houses acting in concert may never disagree on any question, and if the two Houses meet together for the express purpose of counting the vote shall not count any paper except that certified to by the governor. In other words, the two Houses and final upon the two Houses and upon the people of the United States.

I say that when the Senator proposes this amendment he enter a cogent, a confession, that the plan hitherto, after thirteen years' consideration and debate, was faulty in the vital part of it; and that some provision must be devised by him to meet this difficulty. Everybody knows, no one better than the Senator himself, that I have great respect for him and for his opinion; but when he comes to a question that may affect the peace of the States, the States, the Union, the Senate, I think he is under the obligation to urge his views to a higher tribunal than himself.

Mr. SHERMAN. Such a position has never been taken in all this controversy for the last thirteen years. If the Senator is willing to say that the vote shall be taken only by the two Houses, and that the Governor shall not have a vote, then it is unnecessary for him to present this amendment, because that is the frame of the bill. It is the only frame of the bill. It is the only frame of the bill, the only way in which the power can be properly exercised, and the only way in which it can be exercised so as to be as conclusive as it is.

Mr. HOAR. My friend will pardon me, that is all the bill does. This bill says that if Ohio leaves it to the governor, then the governor’s certificate shall be conclusive. If she does not leave it to the governor, then his certificate will not be conclusive and will have no effect. I should like to repeat. I ask the Senator not to answer me by saying he has no objection, that his amendment is the only way this amendment against him as it is against me. If it does happen that Ohio says, either in terms or by implication, ‘I want my governor to settle this question, ’ are you not in favor of executing what the bill says shall be done by the Governor of Ohio?

Mr. SHERMAN. It is the only way in which the power can be exercised, and the only way in which it can be exercised so as to be as conclusive as it is.
to be settled by my governor's certificate," you will oppose its being done? Yet you object to the principles of the bill. Although the question was propounded to the Senator three times he was unwilling to answer it, but he meant by saying he does not think it is very probable that the State would safely let its governor appoint the electors, much more count the vote and decide afterward. I asked the Senator, "Do you object to that, if the State does it?" The Senator says, "I do not, if likely the State will do it." Mr. SHERMAN. Let me ask the Senator.

Mr. HOA. Let me finish my proposition, and then I will answer the Senator. Perhaps it may be, that it is not likely that the State will do it; but if in that improbable event the certificate of the electors, as the Senator would not object to it, and thinks it ought to be permitted, does not his whole argument against the bill as proposed be amended sufficiently? I think it is highly probable that the State would do it, then the continuity provided for never arises, and we have got the main portion of the bill which provides for the case settled in the State by the State tribunal. Now I will answer the Senator's question.

Mr. HOA. I thought my friend wanted to ask a question.

Mr. SHERMAN. I asked that question, whether Congress can confer upon a governor of a State a power of this kind which has not been granted by the Senate. Mr. TELLER. The bill does not do that.

Mr. HOA. The bill does not do that. That, it seems to me, is a matter for each State. Then the only point of the Senator's labored argument is this, the difference between an express statute authorizing the Governor to make the certificate and have it conclusive, and the State's leaving it to the governor by refusing to create any other tribunal, in which case this act of Congress has pointed out what, if that tribunal is created, it shall do. In other words, by the admission of my honorable friend from Ohio, his labored criticism and attack upon the bill is reduced to exactly this, that he thinks there is a certain important difference between the case where the State of Ohio, having it in its power to create some other tribunal or to confer this power expressly on the governor, does the latter, and the case where the State of Ohio, having it in its power to create some other tribunal or leave it to the governor without an express enactment, does the latter. It seems to me the argument disappears.

Mr. INGALLS. Obtained the floor. Mr. SHERMAN. Mr. President.

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from Ohio?

Mr. INGALLS. Yes, sir.

Mr. SHERMAN. I wish to call the attention of the Senator from Massachusetts and of the Senate itself to the fact that the electors have nothing to do with a governor of a State. The electors send their votes directly to the President of the Senate.

Mr. HOA. My friend will pardon me; that is provided for in the bill. The governor of a State has a great deal to do with the electors. The electors are bound by the law which has been in existence since 1792, or whatever is the date of the original law, to give three copies, three certificates to the board of electors whom he finds to be chosen. Those three papers are annexed under the statute of the United States and the vote of the electors' certificate would be lost here by a messenger, one of them is sent here by mail, and one is deposited in the office of the clerk of the district court of the United States. The other certificates which the President of the Senate opens, and those are the certificates which are counted in the absence of anything to overthrow them.

Mr. SHERMAN. According to the laws of the United States the governor has nothing to do with the vote of the electors. He certifies and makes out three lists of electors, which he gives to the electors, just as he certifies who are elected members of Congress. He gives those lists to the electors who he thinks are elected, but from that time forward the governor has nothing to do with the electors. The returns are not made to the governor. You will have to change your law so that the returns of the electors shall be made to the governor and certified to the governor.

Mr. HOA. Now, my honorable friend misunderstands me.

Mr. SHERMAN. Wait until I get through.

Mr. INGALLS. When will it?

Mr. SHERMAN. I know this conversational debate between us.

Mr. GEORGE. Is very instructive.

Mr. SHERMAN. May not present the points, but I wish again to call attention to the fact that the provision in the bill as a governor had good men David Davis, of Illinois, was removed from that tribunal and translated to a happier sphere. In the dispensations of Providence he was transferred from the Supreme Court of the State of Illinois, after the passage of the bill, and thus the fifteenth man upon the tribunal was in favor of the election of Mr. Hayes to the Presidency. That is the way that seven to eight became changed to eight to seven. I have heard much about the patriotism of the Democratic party in
that contest, and the moderation of its candidate in consenting to this measurement, shewed a regard for the Constitution and the peace of the Union. I venture to think it would have been well for him, had he foreseen in December, 1876, that when that bill was passed, what the transmutations of politics were to bring about there never would have been a concurrence on the part of the House of Representa-
tives. He was forced from the defects of the electoral law of 1876, and the error under the Constitution for the Democratic party; and the bill we are now considering is but a faint and feeble and fragile imitation of the Electoral Law of 1876.

I shall be instructed far beyond my expectations if some great constitutional lawyer, profoundly familiar with the inner consciousness of the framers of our Government, can assure me how any legislative enactment could have been adopted now or at any time in the full meaning of the Constitution. I desire to be bound that great political tribunal which is to meet to declare the result of the Presidential election in 1888. Here is the fundamental difficulty in my mind (of all others) about all these propositions. The function that is to be performed by the electors of the President and Vice-President of the United States is a political function exercised by the people of the United States acting in their primary capacity; it is a function that is reserved to them in terms by the Constitution itself, and whether the President of the Senate is to count the vote, whether the vote is to be counted by the Senate and House of Representatives separately or jointly, whether it is to be counted by the tribunal proposed by the Senator from Ohio, the fact still remains that the vote is to be counted, and that no act can be passed by any antecedent Congress that can deprive either of the persons or any of those great constitutional bodies of the power and jurisdiction which Congress cannot take away or diminish.

And the President of the Senate makes this declaration only as a public statement in the presence of the two Houses of Congress of the contents of the papers opened and read on this occasion; and not as possessing any authority in law to declare any legal conclusion whatever. 

No sovereign ever laid down scepter and crown more absolutely, more unnecessarily, more in derogation of what might have been lawfully claimed to be the constitutional functions of the President of the Senate than was done by the Senator from Vermont on that occasion. It had never been determined by any tribunal, it had never been decided by any authority, that the phrase "the vote shall be counted" might not by an absolutely justifiable inference have been held to mean that the President of the Senate, being the custodian of those powers, might have had the right to open them, and have the right to count them; and in the great contests of the future emergencies may arise, emergencies are not unlikely to arise in the state of the law on this subject, when it might be well not to be confronted by that perilous precedent. This body by no expression of opinion upon any occasion, either then or at any other time, had renounced its authority through its presiding officer to count the votes in his custody in the presence of the two Houses, and therefore, although I think this act was not warranted by any decision of the Senate, it can not be denied that under the Constitution the Senator from Vermont, as President of the Senate, had the right to do what he did, because he was in the discharge of a duty under the Constitution that he was compelled to decide for himself, and that no person could decide for him.

I heard the Senator from Massachusetts say that we can not confer nor impair this jurisdiction, and I agree with him upon that. No tribunal, no legislative enactment can determine, nor has ever attempted to determine, whether the President of the Senate shall count the vote or not. If he shall count, shall the power become devolved upon him by the Constitution to determine for himself whether he would count that vote or whether he would not. If I had been in that position I would have counted it had the issue been left with me. Let me read what he said. After announcing the state of the vote he continued:

And the President of the Senate makes this declaration only as a public statement in the presence of the two Houses of Congress of the contents of the papers opened and read on this occasion; and not as possessing any authority in law to declare any legal conclusion whatever.

Who is to decide when incapacity occurs: its nature, extent, duration, and end? What law could be enacted to take away from the Vice-President of the United States the absolute duty under the Constitution of determining for himself when incapacity of the President occurs? Who doubts that in 1881, from the 2d day of July until the 19th day of September in that year, the incapability of President Garfield was absolute under the Constitution? The President's incapacity for eighty days, in a sedition as silent as the tomb to which he was so soon to be consigned. He was incapable of performing any executive act and his incapacity in the Hall of State was certain in the memory of his triumphs and of his martyrdom. Only once during that long period did his failing hand trace in wavering characters the letters of his name. There was a case of absolute incapability under the Constitution. The even issue for Incapacitation for incapacity occurred. And I believe that under that instrument, when James A. Garfield sunk to the floor of the railroad station penetrated by the bullet of his assassin, the powers and duties of the President devolved, under the Constitution, upon Chester A. Arthur. Fortunately, sir, difficulty was averted. The world was at peace. The compoure of the American people during that perilous period was a convincing and added proof of their capacity for self-government. But we had no President; we had no Vice-President who had entered upon the discharge of the powers and duties of the President. We were without an executive head. There was no law governing that subject. And yet does any one who recalls the slumbering passions of that epoch suppose for an instant that there had been any emergency, any exigency requiring the performance of executive functions. Mr. Chester A. Arthur could have gone to the door of the White House and peaceably entered upon the discharge of the powers and duties that had devolved upon him under the Constitution? I do not. I am convinced that any such attempt on his part while the breath of life remained could be enacted to take away anything that we can do in the premises; and we can no statute and make no enactment that will in any way interfere with or change or modify the will of that high tribunal when it does not meet in the discharge of the duties devolved upon it under the Constitution.

The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, one of them for President: but in choosing the President, the votes shall be taken by states, the representation of each state being equal. In choosing the Vice-President, a majority of the whole number of electors may be less than a majority in the case of the choice of President.

Who is to decide whether any person has a majority or not? Who is to decide who are the three highest on the list that have been balloted for beforehand? Take the case of 1877. Supposing there had been no committees, and the President of the Senate had not at that time been included in the list, how was the vote to be counted? if the vote had been counted by the tellers at the desk, who was to decide when the emergency arrived which devolved that power upon the House of Representatives? Could any act of Congress, recent or remote, have determined that? Could any act of Congress deprive or take away anything from the power of the House of Representatives to determine for themselves whether there had been an election or not, which of the persons on the list were to be elected as Vice-President, or which of those should be elected by the exercise of the power confided to them by the Constitution?
Careful consideration of this subject will convince any thoughtful student of the Constitution that the scheme which has been devised and which now remains in our organic law is fatally defective, and that nothing can be done by way of legislation to cure the inevitable evils by which it is surrounded, and the more we proceed by legislation to patch it up with less than ten methods of choosing a President, I am very sure that the attempt will be the more difficult to abbreviate the number of perils which surround it, by so much we retard and delay the exercise of the power which the people must ultimately be called upon to perform in a supreme system that shall remove the perils in which it is now enveloped.

A casual survey of the debates in the convention which formed our Constitution discloses a singular condition of doubt and uncertainty upon this subject and no less than ten methods of choosing a President which have seriously proposed and debated. As the article stood within four days after the convention met and as it remained down to within less than two weeks, when it adjourned in September, the National Executive was to be elected by the National Legislature for the term of seven years, and was to be ineligible for another election, and it was not until near the close of the convention, when the rights of the smaller and the larger States began to be in controversy and the people in the Southern States saw that by reason of the exclusion of the negroes from the voting population they were to be at a disadvantage, that this device of an electoral college was finally agreed upon as a compromise for the purpose as far as possible of taking away the power of choosing their President by a direct vote of the people themselves.

It was supposed that these men called electors would be selected from among the most virtuous, the most discreet, the most upright, and the most "continental" persons, as the phrase then employed was, who should assemble apart from the people, like a conclave of cardinals who choose the Pope, and then in the deliberate ascertainment of the merits of the best citizens in the country for the chief executive office, and finally select him without any popular interference whatever. This plan lasted just twelve years. George Washington received all the electoral votes; but in 1800 the last election was decided by the electoral system, which has been described as the elective caucus, and from that time to this the electoral system has been dubious; it is rehash. The electors under the Constitution are puppets. They are like the marionettes in a Punch and Judy show.

The entire functions that they were supposed to exercise under the Constitution have been stripped from them by the people in demanding the right to select a President for themselves; and when there is no department of the power to vote directly for President by the interposition of this absurd device of an electoral college, in the first place through the Congressional caucus and in the next place by the party nominating convention, they have deprived those electors of the semblance of power, and they now stand before the people as the instructed and elected and chosen delegates of a party; and no man so chosen would dare, having been chosen as the electoral candidate of a party, to violate his trust. If any elector at the last election, having been chosen as an elector for Mr. Cleveland or as an elector for Mr. Blaine, had ventured in the college of electors in his State when they assembled for choosing a President under the Constitution to vote for any other than the man that he was elected to support, he would have been an outlaw and an outcast upon the face of the earth.

For these, with many other reasons that might be brought forward, I am determinedly opposed to any further tinkering with this electoral business. The country has outgrown it. It is out-worn. It has been repudiated. It no longer has any significance or substance; and any attempt to patch it up with new habiliments, by new frauds and props and supports to strengthen it, merely delays the action of the people upon this subject in the acceptance of some scheme that will enable them in the exercise of their great functions to decide who shall be President without the intervention of electoral colleges, and certify the imperial will to some competent and defined power that shall declare the result.

I said at the outset that in my judgment the fact that the Senator from Massachusetts had offered an amendment of so material and vital a nature as that which appears in the print before me justified further deliberation upon this subject, and if I understand the meaning of the amendment—and the Senator from Massachusetts assures me privately that I do not—I feel sure that had it been incorporated in the Electoral Commission bill and could have been made effective it would have resulted in giving the people the power of exercising the right of choosing their Democratic candidate, because, if I recollect aright, out of the three electors in Oregon two of them were certified by the governor to have been elected by Republicans and one by Democrats. In case of this critical and emergency occasion it would have been declared to have been chosen by the Democrats, and therewith would have been committed to the fortunes of Mr. Tilden. I may be mistaken. I should like to ask the Senator from Oregon if that was not the condition at that time?

Mr. MITCHELL, of Oregon. That is correct. Certificates were given to two Republicans and one Democrat.

Mr. HOAR. The certificate of the governor of Oregon was that two electors were chosen by the Republicans and one by the Democrats; and if there is no escape from the conclusion that under this amendment if adopted by the Senate and enacted into a law the result might be that this has been any case, or at any time, to which there would be no possibility on the part of the tribunal passing upon these matters to review that decision, then I should like to see this provision submitted to the electorate for a decision; and if that is the result, if a principle so important as this upon the spur of the moment, without debate or consideration or consultation, is to be adopted by the Senate, won with such momentous results, I do not feel that I could be satisfied that we have been wanting in any respect to him in moving to recommence this bill.

Mr. EVARTS. Mr. President, I propose to offer a few remarks upon the subject now before the Senate; and if in the course of those remarks I may be allowed perhaps it would not be convenient to the Senate for me to proceed.

Mr. HOAR. I ask the Senator from New York if he prefers to pro­ceed to-night or to-morrow? It is now after 4 o'clock.

Mr. EVARTS. I can give no opinion in the present stage of the Senate, but if the New York Senator will yield to me for one moment I will move an executive session, but I wish to say one word about it.

The President pro tempore. Does the Senator from New York yield the floor?

Mr. EVARTS. Yes, sir.

Mr. HOAR. I wish to say simply that the Senator from Kansas seems to labor under a misapprehension which has found a place in the press. I interpose my most absolute denial to his statement that the Presidential succession bill which lately passed contained any defect that was not brought to the attention of the committee or which would have affected the vote of any single Senator who voted for it. The difficulty which he calls attention to in that bill was thoroughly and carefully considered by the members of the committee. The Constitution provides that in case of death, removal, resignation, or inability of the President and Vice-President, then certain legislative power is conferred upon the Senate in the utmost importance of the case of the President to provide by legislation at all for the case of the death of a President and Vice-President elect who have not yet become public officers or taken the oath. If, however, that should in the judgment of the legislature be supposed to have been done, and the electoral system is supposed to have meant rather than at its letter, then unquestionably the bill covers that case, not as the Senator suggests an occasion of delay after the election and before the 4th of March, but because if after election and before the ascertainment of the result here on the second Wednesday of February the two persons die, we find our living person has been elected and the House of Representatives, elected in the case of the President and Vice-President elect both die, which would not be likely to happen once in five thousand years, because it is a time when a course of great precautions would be taken; they would not be at the same place except at the moment of inauguration—I say if that remote and almost impossible contingency should happen within that fortnight or three weeks, it is true that the old Secretary of State would hold over under this bill to the end of the next four years. But that would not defeat the purpose of the bill, which is that the principal representative of the prevalent political opinion which had prevailed in the election should succeed and hold the office, except in those cases where in the previous election there had been a change in the politics of the country.

Mr. INGALLS. That sometimes happens.

Mr. HOAR. That has only happened eight times out of our twenty-four Presidential elections so far.

Mr. INGALLS. We have two more.

Mr. HOAR. It would have made no difference at the second election of the first President, who held for eight years. It would have made no difference when Adams succeeded Washington. It would have made no difference when Madison succeeded Adams; when Adams succeeded Monroe; when Van Buren succeeded Jackson; or when Buchanan succeeded Pierce. So the criticism which the Senator makes, and which was thoroughly considered by several Senators upon the committee, merely is that in relieving the legislation of the Government from this monstrosity which had prevailed in the election should succeed and hold the office, except in those cases where in the previous election there had been a change in the politics of the country.

Mr. INGALLS. That sometimes happens.

Mr. HOAR. That has only happened eight times out of our twenty-four Presidential elections so far.

Mr. INGALLS. We have two more.

Mr. HOAR. It would have made no difference at the second election of the first President, who held for eight years. It would have made no difference when Adams succeeded Washington. It would have made no difference when Madison succeeded Adams; when Adams succeeded Monroe; when Van Buren succeeded Jackson, or when Buchanan succeeded Pierce. So the criticism which the Senator makes, and which was thoroughly considered by several Senators upon the committee, merely is that in relieving the legislation of the Government from this monstrosity which had prevailed in the election should succeed and hold the office, except in those cases where in the previous election there had been a change in the politics of the country.

Mr. INGALLS. That sometimes happens.

Mr. HOAR. That has only happened eight times out of our twenty-four Presidential elections so far.
The Clerk read as follows:

Mr. PETTIBONE, by unanimous consent, obtained leave to withdraw from the files of the House, without leaving copies, the papers in the case of Frank A. Page, there being no adverse report thereon.

MR. HANBACK. Mr. Speaker, I rise to a question of personal privilege, and ask that the paper I send to the desk be read.

The Clerk read as follows:

The article, so far as read, does not appear to contain anything personal to the gentleman from Kansas.

Mr. REED, of Maine. Mr. Speaker, I do not understand that the gentleman from Kansas rises to a question of personal privilege.

The gentleman from Kansas [Mr. HANBACK] will state whether he rises to a question of personal privilege or not, and what the question is to which he does rise.

Mr. HANBACK. I state to the Speaker that the article which the Clerk has begun to read and other articles reflect upon this gentleman in his representative capacity there can be no question of personal privilege inquired of as the Chair may see the part of that gentleman. Unless that were the rule, any gentleman might rise to a question of privilege and have anything that he chose read at the Clerk’s desk.

Mr. HANBACK. Yes, Mr. Speaker, I state that there is a question of privilege involved.

The SPEAKER. Then, as the Chair understands, there is an allusion in this paper to the gentleman from Kansas [Mr. HANBACK]?

Mr. HANBACK. Yes; the article—Several Members. Louder.

Mr. HANBACK. Mr. Speaker, I rise to a question of privilege. The SPEAKER. The gentleman from Kansas will state what his question of privilege is.

Mr. HANBACK. The House will understand what the question is as soon as articles are read.

The SPEAKER. But unless the article which the gentleman from Kansas [Mr. HANBACK] has sent to the desk reflects in some way upon the gentleman himself in his representative capacity there can be no question of personal privilege inquired of as the Chair may see the part of that gentleman.

Mr. HANBACK. Not at all; I disclaim that; but I ask that the article that I have sent up be read.

Mr. BRECKINRIDGE, of Kansas. Mr. Speaker, the gentleman from Kansas [Mr. HANBACK] does not state that the article contains any allusion to himself.

The SPEAKER. The article, so far as read, does not appear to contain anything personal to the gentleman from Kansas.

Mr. REED, of Maine. Mr. Speaker, I do not understand that the gentleman from Kansas rises to a question of personal privilege.

The SPEAKER. The gentleman from Kansas states that this article, as he understands it, reflects upon the House of Representatives itself, and he raises the question not as a matter of personal privilege, but as a matter involving the privileges of the House.

Mr. HERBERT. Mr. Speaker, on this question I desire to make a suggestion to the Chair. It seems to me that the time has come when the Chair should consider whether the rule in question ought not to be more rigidly enforced. As I understand it the rule of law in analogous cases is that when the question of the admissibility of a paper is raised, the paper is submitted to the judge, and he decides, from an inspection itself, whether it be admissible or not. In that manner counsel are prevented from getting before the jury any improper matter.

Mr. REED, of Maine. Where is the jury here?

Mr. HERBERT. This is the jury—or rather the country is the jury before which the gentleman from Kansas desires.

Mr. REED, of Maine. Then your object is to prevent this from getting to the country.

Mr. HERBERT. The country is the jury before which the gentleman desires to get this matter presented in an improper manner.

Now, I suggest, Mr. Speaker, that the proper course would be, when a writing is sent up to be read, for the Speaker himself to read it. He is to judge in the first instance. If there be an appeal from his decision, then, as a matter of course, the House ought to have the document before it. But until there is an appeal from the decision of the Speaker, he and he alone should decide whether the writing or document presented raises a question of privilege or not.

If upon inspection it appears clearly to the Speaker that there is nothing in the article that constitutes matter of privilege, then the Speaker will state what his opinion is. From the paper itself this proposition must appear.

Mr. DUNN. If the Speaker will allow me I would like to make one suggestion in the same line as that of the gentleman from Alabama (Mr. HERBERT) and in addition to what he has stated I would permit that the rule on this subject should be interpreted like the rule of law in pleading fraud. It is not sufficient that a pleader shall allege