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, petition of S. M. Barton, of Ohio, and about 75 others, 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 Military Affairs.

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 N. J. Williams, of Illinois, and 28 others, praying for the passage of the bill to organize Oklahoma Territory—to the same committee.

Also, 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 Lands.

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 162, Grand Army of the Republic, of Pennsylvania, and of Major Harper Post, 181, Grand Army of the Republic, of Pennsylvania, asking for the passage 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. Sinnatt and 342 others, of Kansas, praying for the right of way through the Indian Territory for the Kansas and Arkansas Railway—to the Committee on the Territories.

By Mr. WEBER: Petition in relation to the arrearage act—to the Committee on Invalid Pensions.

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

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. WINANS: Petition of James G. Meade, William W. Osborn, and 90 others, citizens of Lansing, Mich., 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 78 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 this purpose the idle surplus now in the Treasury, were presented and severally referred to the Committee on Coinage, Weights, and Measures.

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

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

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

By Mr. I. H. TAYLOR: Of Simon C. Stratton and 40 others, of Columbiana County, Ohio.

By Mr. J. R. THOMAS: Of 229 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. Doan, and about 75 others, and of P. 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 H. McLein and 55 others, of Kansas.

SENATE.

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 plants and shrubs to fill certain vases 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 compliance 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, concurring in a recommendation of the Board of Commissioners of the Soldiers' Home that legislation be had for the disposition of money and 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 War, concurring in a recommendation of the Board of Commissioners of the Soldiers' Home that a rate be fixed by law for keeping a member of the Home at the Government Hospital for the Insane; which, with the accompanying papers, was referred to the Committee on the District of Columbia, and ordered to be printed.

He also laid before the Senate a communication from the Secretary of the Interior, transmitting, in compliance with a resolution of January 12, 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 War, transmitting, in response to a resolution of January 25, 1886, Special Order 89, Department of Texas, April 28, 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.

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.

PETITIONS 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 women 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.

He also presented the petition of B. C. Armstrong and 172 other citizens of Iowa, praying for certain legislation relating to the Indian Territory; which was referred to the Committee on Indian Affairs.

Mr. INGALLS presented a concurrent resolution 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 at 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 instructed, to use their best endeavors to secure such an appropriation by Congress as will fully carry out the purposes of the commanding general, making Fort Riley an important military post.

STATE OF KANSAS,
Office of the Secretary of State:

I, E. B. Allen, secretary of state of the State of Kansas, do hereby certify that the foregoing is a true and correct 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 22d day of January, A. D. 1886.

[SEAL.] E. B. 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 and Forestry.

Mr. CAMERON presented the petition of Mrs. Blanche 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 while in attendance upon the late President Garfield; which was referred to the Committee on Appropriations.

He also presented the petition of Rebecca Merchant, of Asbury Park, N. J., praying that she be granted a pension on account of her son, Capt. Henry G. Merchant, late of the Twenty-third Regiment Pennsylvania Volunteers; which was referred to the Committee on Pensions.

He also presented the petition of Thomas Chase, of Philadelphia, Pa., late third assistant engineer on the United States steamer San Jacinto, praying to be allowed a pension; which was referred to the Committee on Pensions.

Mr. WILSON, 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 unearned lands within the limits of the land grant to the Sioux City and Saint Paul Railroad Company. Inasmuch as that 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 R. Miller, of Erwin, Unicoi County, Tennessee, praying for the passage of an act restoring 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 the State of Arkansas, praying that the right of way through the Indian Territory be granted to railroads; which was referred to the Committee on Indian Affairs.

Mr. FRYE. 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, the opening of lands 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 is no objection.

Mr. FRYE presented the petition of James A. Van Buren and 88 other vessel-owners of Philadelphia, Pa., praying for the passage of a bill repealing the compulsory pilotage laws in part; which was referred to the Committee on Commerce.

Mr. PLUMB. I present the petition of Charles Frederick Adams in support of the bill (S. 1226) to utilize certain public lands toward securing for the American people "work for workers and wages 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. McMILLAN. 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. McMILLAN. I also present from the same body a petition in favor of the repeal of the silver-dollar coinage act, and also in favor of continued efforts to secure a system of bimetallism with foreign nations to make gold and silver standard currency. I move that it be referred to the Committee on Finance.

The motion was agreed to.

Mr. TELLER. I present the petition of John Crean, 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. BLAIR].

The motion was agreed to.

Mr. CULLOM presented petitions of Knights of Labor of Alton, Tuscola, 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 of 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 resolution adopted by the Illinois Millers' State Association, favoring 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. INGALLS. 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 to be printed in the RECORD, as follows:

WESTERN FURNITURE MANUFACTURERS' ASSOCIATION,
Saint Louis, Mo., January 21, 1886.

SIR: Referring to the inclosed petition of the Western Furniture Manufacturers' Association, I desire to ask 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 1880 about 5,600 establishments, giving employment to about 62,000 people and producing annually goods valued at about $83,000,000.

The membership of this association is drawn from manufacturers west of the Alleghany Mountains, but I have every reason 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.

THE WESTERN FURNITURE MANUFACTURERS' ASSOCIATION,
Saint Louis, Mo., July 22, 1885.

To the honorable the Senatorial Interstate Traffic Committee:

We, the Western Furniture Manufacturers' Association in annual convention assembled, in the city of Chicago, would respectfully submit the following, and recommend that Congress enforce it by proper legislation:

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

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

Third. That railroads be prohibited from discriminating against 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. SLIGH,
President.
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. COCKRELL. I present the petition of the Kansas City Clearing House Association, praying that immediate action be taken to extend the civil law 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 place of 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. DAWES. 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 they were 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. 1296) to repeal all laws providing for the pre-emption of the public lands, the laws allowing entries for 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 bath-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 lie 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 concurring), That in the opinion of Congress such leases of bath-house and hot-water privileges should not be renewed by 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 for action I shall move to amend so as to confine it to the present session of Congress 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 concurring), That there be printed and bound for the use of the two Houses 2,500 additional copies of the Compilation of Senate Election Cases, 1789-1885.

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 concurring), That there be printed and bound 3,050 additional copies of the Compilation of Senate Election Cases, 1789-1885; of which 1,000 copies shall be for the use of the Senate, 2,000 copies 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 final 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 how many?

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 it 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. HALE introduced a bill (S. 1297) to authorize the erection 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 29th of August, 1886; which was read twice by its title, and referred to the Committee on Naval Affairs.

Mr. CAMERON introduced a bill (S. 1299) 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.

He also introduced a bill (S. 1304) granting a pension to William Reynolds; 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 Washita Valley Railway Company a right of way through the Indian 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. 1307) 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 Claims.

Mr. JONES, of Arkansas, introduced a bill (S. 1308) granting a pension to Francis M. Yearian; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

Mr. RIDDLEBERGER introduced a bill (S. 1309) for the relief of the Albemarle 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. 1310) for the relief of William Tabb; which was read twice by its title, and referred to the Committee on Claims.

Mr. MANDERSON (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, 1883; 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 suit for the cancellation of all patents for land that have been 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 institute proceedings in the circuit court of the State of Florida to determine the rights of claimants and of the United States to land grants made by the Spanish Government under the treaty of 1819; which was read twice by its title, and referred to the Committee on Private Land Claims.

Mr. WILSON, of Iowa (by request), introduced a bill (S. 1316) for the relief of the devisees of the late John Ruppert; which was read twice by its title, and referred to the Committee on the District of Columbia.

Mr. CONGER introduced a bill (S. 1317) for the relief of Josephus Johnson; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

Mr. MITCHELL, of Oregon (by request), introduced a bill (S. 1318) for the relief of J. J. Vandergrift; 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. It does not defend rulings of former administrations, nor question 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 policies.

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

The motion was agreed to.

Mr. VAN WYCK 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. COCKRELL introduced a bill (S. 1321) granting arrears 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 Brashear), 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 fog-signal, 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. HARRIS (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 Williams upon the retired-list of enlisted men; 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 Tabb be taken from the files and referred to the Committee on Claims.

On motion of Mr. MANDERSON, it was

Ordered, That all papers pertaining to the claim of the estate of Isaac P. Tice be taken from the files of the Senate and referred to the Committee on Claims.

On motion of Mr. COCKRELL, it was

Ordered, That the memorial and papers in the claim of Durant H. L. Bell be withdrawn from the files and referred to the Committee on Claims.

On motion of Mr. CULLOM, it was

Ordered, That the papers in the claim of Mary A. Lewis be taken from the files and referred to the Committee on Claims.

CIVIL SERVICE EXAMINATIONS.

Mr. CALL submitted the following resolution; which was read:

Resolved, That the Committee on Military Affairs are hereby instructed to report a bill modifying the civil-service law, so that Union soldiers and sailors who served with distinction in the late war shall not be required to submit to a civil-service examination before appointment to any of the offices embraced in that law.

The PRESIDENT *pro tempore*. Does the Senator from Florida ask for the present consideration of the resolution?

Mr. CALL. Merely for the purpose of saying a word, and then I shall ask that it be printed and laid on the table.

I merely wish to say that the resolution has been prepared by me in consequence of a letter received from a very distinguished officer, as I am informed, of the Union Army, resident in the State of Florida, who served with great distinction in the war, was severely wounded, and is now in receipt of a pension from the Government. The letter to which I refer is as follows:

NORWALK, PUTNAM COUNTY, FLORIDA, *January* 24, 1886.

SIR: I have the honor to acknowledge receipt of your inclosure of General Black's letter, dated January 4, 1886. In compliance with the suggestions therein made I wrote the secretary Civil Service Commission, who furnished me the necessary blanks and instructions. I have studied them carefully, also the civil-service report for 1885, and am forced to the conclusion that it is a "freeze-out." If I were financially in a condition to expend $100, which I am not, for the purpose of going to Washington for examination, my chances even then for appointment would be very remote.

Thanking you sincerely for the interest you have manifested in my behalf, I think it best for me to drop the matter here.

I am, sir, very respectfully, yours,

ROBT. M. BARD.

Hon. WILKINSON CALL,
United States Senate, Washington, D. C.

As the letter states, this gentleman recently made application for an appointment as one of the examiners in the Pension Bureau. He is a man of great intelligence, and one who has served the country in a position of distinction. His letter discloses the fact that after an examination of the regulations in regard to civil-service examinations required to be made before an appointment he is unable to comply with them.

It occurs to me that some remedy ought to be provided where a man has sufficient ability and sufficient intelligence to have served with distinction in the Army and is not able to comply with the regulations of the Civil Service Commission before obtaining an inferior appointment as an examiner. So I have introduced the resolution, and I move that it be printed and laid on the table, with the accompanying letter.

The motion was agreed to.

CALLED BONDS HELD BY NATIONAL BANKS.

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

Resolved, That the Secretary of the Treasury be directed to inform the Senate what proportion of the $10,000,000 United States bonds called for payment March 1, 1886, are held by national banks as a basis for circulation.

ALFRED B. MEACHAM.

Mr. MITCHELL, of Oregon, submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That the Secretary of the Treasury be, and he is hereby, directed to report to the Senate whether Alfred B. Meacham, late superintendent of Indian affairs for the State of Oregon, was at any time, and, if so, on what date, declared by the Treasury Department, or its accounting officers, or any of them, to be in default on his official bond as such superintendent of Indian affairs and in arrears to the United States on such bond, and, if so, to what amount and under what particular bond, and on what account or accounts; also, if he was so declared to be in default and in arrears, what amounts of money, if any, have been paid to said Alfred B. Meacham since the date when he was so declared to be in default and in arrears by the United States as compensation or salary, and for what service or services the same was paid, and the date of payment of each item thereof; and also what further or additional amounts, if any, have been paid said Alfred B. Meacham by the United States since the date when he was so declared to be in default and arrears on his said official bond, the dates of such payments respectively, the several amounts thereof, and on what account or accounts paid.

B. W. PERKINS'S CLAIM AGAINST RUSSIA.

Mr. HOAR submitted the following resolution; which was read:

Resolved by the Senate, That the President of the United States be requested 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 United States, against the Government of Russia, growing out of a contract or contracts, alleged by the claimant to be obligatory on that government, for the purchase and delivery to that government of powder and arms during the Crimean war, in the years 1855 and 1856, with a view to ask the said government to consider the said claim and to provide for the allowance and payment of such sum as shall be found to be justly due to the said claimant.

The precedent for this resolution is the one adopted by the Senate at the first session of the Forty-eighth Congress, in the year 1884, on the claim of Helen M. Fiedler, executrix, against the Government of Brazil.

Mr. HOAR. The resolution is offered by request of the representa-

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.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. CLARK, its Clerk, announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. 116) for the relief of Albertine Cockrum;
A bill (H. R. 225) granting a pension to Daniel Connolly;
A bill (H. R. 226) granting a pension to Mrs. Martha E. Turney;
A bill (H. R. 613) for the relief of Catherine Collins;
A bill (H. R. 618) granting a pension to James Morgan;
A bill (H. R. 777) granting a pension to Frederick Bottjer;
A bill (H. R. 788) granting a pension to Jeptha Hornbeck;
A bill (H. R. 925) to amend an act entitled "An act granting a pension to Rachel Nickell," approved March 3, 1885;
A bill (H. R. 928) granting a pension to Lewis A. Thornbury;
A bill (H. R. 929) granting a pension to G. W. Fraley;
A bill (H. R. 934) granting a pension to Charles W. Minnix;
A bill (H. R. 936) granting a pension to James T. Caskey;
A bill (H. R. 1084) granting a pension to Alice S. Holbrook;
A bill (H. R. 1255) granting a pension to Isaac Moore;
A bill (H. R. 1319) to increase the pension of Robert D. Fort;
A bill (H. R. 1352) granting a pension to Isaac Chenoweth;
A bill (H. R. 1469) granting a pension to Lois Holt;
A bill (H. R. 1472) granting a pension to Mary Murphy;
A bill (H. R. 1564) granting a pension to Phebe Saunders;
A bill (H. R. 1568) granting a pension to Nathaniel Taylor;
A bill (H. R. 1574) granting a pension to Sarah L. Bragg;
A bill (H. R. 1575) granting a pension to Elizabeth Kahler;
A bill (H. R. 1579) for the relief of Amy A. Lewis;
A bill (H. R. 1582) for the relief of Eleanor C. Bangham;
A bill (H. R. 1589) for the relief of Newton O. Baker;
A bill (H. R. 1590) for the relief of Timothy Paige;
A bill (H. R. 1701) granting a pension to Anson B. Sams;
A bill (H. R. 1703) granting a pension to Joseph Williams;
A bill (H. R. 1711) for the relief of George C. Haynie;
A bill (H. R. 1824) granting a pension to Mrs. Louisa Noland;
A bill (H. R. 1836) granting a pension to George Slack;
A bill (H. R. 3387) granting a pension to Sidney Sherwood;
A bill (H. R. 3520) granting a pension to William H. Blake;
A bill (H. R. 3828) for the relief of the estate of C. M. Briggs, deceased;
A bill (H. R. 3538) granting a pension to Mrs. Amy A. Hurst;
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.

The message also announced that the House had passed the bill (S. 377) granting a pension to Matthias Leckner.

STATUES OF COLUMBUS, LAFAYETTE, AND GARFIELD.

Mr. MORRILL. I ask that the concurrent resolution reported by me from the Committee on Public Buildings and Grounds on the 28th of January be taken up for consideration.

The PRESIDENT *pro tempore*. If there be no objection the concurrent resolution will be read.

Mr. MORRILL. I am directed by the Committee on Public Buildings and Grounds to offer a substitute making the concurrent resolution a joint resolution and proposing a further amendment at the end of the resolution. I ask unanimous consent that the substitute be now considered as the original proposition.

The PRESIDENT *pro tempore*. The substitute reported by the Committee on Public Buildings and Grounds will be read by its title.

The joint resolution (S. R. 35) setting apart public reservations for statues to Columbus, Lafayette, and James A. Garfield was read the first time by its title.

The PRESIDENT *pro tempore*. The Senator from Vermont asks the consent of the Senate to substitute this in place of the concurrent resolution, its form being changed to a joint resolution.

Mr. INGALLS. Let it be read at length for information.

The joint resolution was read at length, as follows:

Resolved by the Senate, &c., That the circle at the western entrance of the Capitol grounds from Pennsylvania avenue shall be, and hereby is, forever set apart as a site for a statue of Christopher Columbus; and the circle at the western entrance to the Capitol grounds from Maryland avenue shall also be, and hereby is, forever set apart as a site for a statue of the Marquis de Lafayette; and the naval monument, now standing upon the circle first herein mentioned, shall be removed and placed upon the triangular reservation bounded by Connecticut avenue, Twentieth street, and Q street. Also, that in lieu of the site selected for a statue of the late James A. Garfield under the authority of an act approved July 7, 1884, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1885, and for other purposes," by the Secretary of War, the chairman of the Joint Committee on the Library, and the chairman of the Garfield monumental committee of the Society of the Army of the Cumberland, a new and different site shall be selected, and the Secretary of War, the President *pro tempore* of the Senate, and the chairman of the Garfield monumental committee of the Society of the Army of the Cumberland are hereby authorized to make such selection.

The PRESIDENT *pro tempore*. The Chair will suggest to the Senator from Vermont that it would probably be better to journalize the proceedings by postponing indefinitely the concurrent resolution and taking up for consideration the joint resolution now reported.

Mr. MORRILL. I will make that motion.

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.

All are aware that 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 or monuments. That points of such 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 picture of the landing of Columbus, by Vanderlyn, in the Rotunda of the Capitol, and the marble group by Persico on the steps of the eastern front of the Capitol, where the Indian girl appears to be a conspicuous figure, are the only objects for which Congress has ever 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 kingly ingratitude. A singularly sad fate seems to have pursued 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 ineffaceable stamp of another name.

Indebted, as we must feel ourselves to be, to 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 respectful 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, but which 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 assigned to this cite when its full effect could 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 as a work of art, but it is mournful and rather funereal in character, and most certainly is misplaced and inappropriate 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 on the other circle, 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 few will venture to dispute, to a new sight for the Naval Monument "on Connecticut avenue north of Dupont Circle," which, the Admiral says, "will accommodate the monument beautifully, and is the best and only place in the city for it," and the committee are disposed to cordially indorse this selection.

On the other circle, at the intersection of Maryland avenue and First street, it is proposed to place the statute of Lafayette. Many counties and towns in different States bear his name, and Congress appropriated many years since for his benefit a township of land and $200,000. His portrait has also been procured for the interior of the House of Representatives, but the only statute, as I believe, erected to his memory in our country is that recently given by a patriotic gentleman to the city of Burlington, in Vermont.

The affection of our people for Lafayette while living, and their abiding 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, such action on our part would be construed as a graceful tribute to the French Republic.

Here again we find an impediment in the way. In the sundry civil bill of 1884 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, $30,000; 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 Committee on the Library, and the chairman 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 on Public Buildings and Grounds, 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 are many places which would be not 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 statue of the former were to occupy one of these circles, then to preserve the symmetry of the original plan a statue of 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 terms 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 the Chair. The Senator from Vermont asks unanimous consent of 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 take this up as 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 Journal Clerk informs the Chair that in the arrangement of the Journal it will be most proper and orderly to take the other way.

Mr. MORRILL. I do not desire to press this if a single Senator has any objection to its consideration.

Mr. CONGER. I desire to make one or two remarks if it is to be acted on at this time.

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 from the place appropriated to it some one or another of these monuments. I have no particular objection to making changes wherever they may be desirable or wherever there is a fitness or propriety in making changes; but I submit that the proposed change, 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 tracery 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 circle, but, with other tracks, leading direct 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 inappropriate a place for either of these two statues as the selection of the place 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 placed in the open area of the grotto, more frequented, more observable down under that tile-roof than in the place where it stands now.

If it is worth while to have erected a suitable statue to the memory of Columbus, the discoverer of this new world, and to that distinguished foreigner who came here in the flush and glow of youth to tender his services to our people struggling for freedom, and who became the champion of American liberty on this continent by the side of Washington and the great heroes of our own country, place it in a fitting situation, 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.

Sir, I venture to say that the good people of the United States who are compelled to look down upon the statue of Columbus, and look down upon the statue of Lafayette, if placed at the sites proposed by this committee, would become humpbacked in looking down upon the discoverer of the continent and the friend of the early days of the liberty of this nation.

The great fault in placing monuments in this city of Washington is that inappropriate places have been selected for those monuments. The great Washington Monument was placed upon the lowest ground in this city that could be said to be above the overflow of the freshets of the Potomac, away down almost on tide-level, a monument only peculiar, and only wonderful and only magnificent on account of its height and of the massiveness of the structure—a monument which should have been placed upon the highest ground within the District of Columbia; a monument which should have been lifted out of the swamp so as to gain three or four hundred feet in elevation upon some of the high hills of the Soldiers' Home, or at least upon the highest ground on Capitol Hill to begin with, and then add 576 feet to the elevation thus acquired. The common judgment of the people of the United States who visit this city is aroused to inquire why Congress when it undertook to rebuild that old decaying monument, commenced forty years ago, did not remove it to some elevated place, inasmuch as height and show are all that was to be obtained by a great monument of stone reared toward the heavens.

Now, sir, I may be alone in my view upon the subject of placing the monument of Columbus down at the foot of the hill; I may be alone in my view of the impropriety of placing the monument of Lafayette in another direction at the foot of the hill and make its foundations among the old shifting sands of Goose Creek as it was called, and of the Tiber when it was renamed, as the dirty creek that runs through the capital of the United States, for both are on the level of the shifting sands formed by the currents of that insalubrious stream. What particular motive led to the selection of these places for these two monuments I certainly, in the limited moment in which I have had to consider it while the Senator from Vermont was making his remarks upon it, have been unable to discover.

Sir, 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 inartistic, 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 woman crouched at his side, no one can tell whether she may not be the wife of the catcher or the pitcher, entreating Columbus to withdraw from the game before he has a dislocated thumb or a bruised arm. [Laughter.]

There is one memorial to Lafayette in the Capitol of the nation. There is in the Hall of the House of Representatives a painting procured many, many years ago by a citizen of Michigan from France, of which this is a duplicate, and another presented by that citizen to the State of Michigan, now in the hall of the house of representatives of my State, a counterpart, the duplicate of the one in this building; a picture said to be valuable, a painting said to be life-like, a painting said to be a representative of that great friend of America. Although this nation has never done anything in that regard, I feel proud that a citizen of my own State thirty years ago and more, perhaps, did from his own treasure and with his own funds and by his own zeal procure the only two good pictures of Lafayette that have been received in the United States, and that have ever been considered as a fit memorial of that grand and glorious name so intimately associated with our early history and so dear to the hearts of American citizens throughout the land.

Sir, my early life passed on the frontiers did not permit me the opportunity to have my tastes educated and refined. There never has been the classical eye; there never has been the æsthetic taste circulating around in my veins; never been educated in the subtleties of the "*renaissance*." I do not know what it means. [Laughter.] There is not a Senator here knows what it means; but I have counted within my recollection thirteen Senators, seven on that side of the house, six on this, who have used that expression "*renaissance*" within two years from last Thursday prior to this time. With a kind of solicitude and humility, which becomes my ignorance on such occasions, I have been reminded to ask what they meant by that expression, and I met with the same reply that I expected, that instead of acknowledging their ignorance, as I am willing to do mine, they said they supposed

almost everybody knew what that meant. [Laughter.] My learning was at fault; my advances have been repelled and rebuffed by the very men whose expressions, whose use of the words had incited me to more study to inform myself of the unknown things of art.

Sir, I have seen it stated for many years, from time to time, in the art reviews of critics who have studied the statuary and the monuments of this magnificent city, this city of magnificent distances, that there is not in the whole city one single work of art patronized and executed by the will of the people of this nation that is worthy of its place. The attention of the common citizen who comes here with his wife and daughter, and wanders through the ornamental rooms of this Capitol, may be drawn away by the kind wife as he is looking at the nude figures on the walls for fear his taste might become a little irregular. Take the picture in the rotunda of the Capitol, Washington—it is said to be Washington in the guide-book, I believe—seated up among the clouds, and damp clouds at that, with the angels crowding around him, as if a thunder-storm had poured out all the beauties of heaven in his presence; and Neptune with his trident, gods and goddesses and angels, and demons for aught I know, surrounding that great canopy above us representing the glory of Washington. I do not know but that is all according to the innate proprieties of art. It may be a beautiful painting, but I must say that the only thing about it that ever approved itself to my mind was that it was so far up that "distance lent enchantment to the view." That is about all there is about it. I say it with sincerity. I am no fit person to make a criticism, and have ventured to make these remarks that this resolution may go over, and others who do know or pretend to know something of art may think of this subject a little before it shall be adopted.

Mr. MORRILL. I have been delighted, as I always am, with the speech on art by the Senator from Michigan. I discover that his chief objection to the present joint resolution appears to be that these sites are each surrounded by railroads. I suppose the Senator may have heard of the speech of Mr. Wise—I believe Henry A. Wise, of Virginia—in relation to the statue of Columbus on the steps of the Capitol, and the statue in front of Washington. I believe it was said by Wise that Washington exclaimed to Christopher Columbus, who was apparently holding a ten-pin ball aloft in his hands, "Christopher, why don't you let her rip?" [Laughter.] Now the Senator from Michigan, as it appears to me, has "let her rip" this morning; and if I should find that there are not two-thirds of the Senate in favor of this resolution I shall not desire to have it passed.

Mr. CONGER. Mr. President, the Senator from the foot-hills of the Green Mountains, with the vision of Liberty upon the mountains and all kinds of strange forms passing in the clouds, has a poetical temperament and a poetical vision and great taste in these matters of art; but I must say that in the serio-comic allusions I made to some things about this city—and some of my suggestions were very important, and I saw they were received favorably by my friends around the Senate Chamber—of all the things I suggested relating to art and the lack of art, art culture, and places for exhibition, the Senator can think of nothing (and I do not know whether to accept it as a matter of pride or a matter of regret that in all the visions I presented to his mind he can think of nothing) but the Senator from Michigan's reply to him and tell a story about Columbus that some wise man told. [Laughter.]

I do not pretend to understand these questions of art, but I have heard learned disquisitions from the Senator from Vermont upon art works here until I have thought that if the country had not needed his great services and the powers of his mind in legislation and carrying forward many of the measures affecting the vast concerns of a great and proud nation, he mistook his calling, and ought to have been a painter, or a sculptor, or an artist; and yet he turns as if he had no reply to make to these questions, which are serious ones, about the appropriateness of this recommendation of his committee, and when I have suggested that the places are inappropriate he turns about with a story! I venture to say to the Senator that when this resolution comes up for discussion, and other gentlemen, better fitted than I am to discuss it, shall state more fully and forcibly than myself the value of these little suggestions, he will not turn them off with a joke or with ridicule.

The PRESIDENT *pro tempore*. The joint resolution will be considered read the second time and placed on the Calendar.

SIOUX RESERVATION IN DAKOTA.

The PRESIDENT *pro tempore*. If there be no further "concurrent or other resolutions" the consideration of the Calendar is now in order under the eighth rule.

The bill (S. 52) to divide a portion 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.

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

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.

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:

Subject to such modifications as Congress shall deem most effective 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 the Senator from Indiana [Mr. HARRISON], an amendment which is satisfactory to him and to the Senator from Massachusetts having charge of the bill, to come in after the proviso in section 20. I think the first proviso is the one adopted on my motion, providing for the price of land sold for town sites, and I ask that this may follow that.

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

The SECRETARY. After the amendment adopted ending with the word "void," in line 16, section 20, it is proposed to add:

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 that he may heretofore have had the benefit of 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. MORGAN January 11, 1886, in relation to the appointment of 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 church, &c.

Mr. MORGAN. Let the resolutions be read.

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

The Chief Clerk read as follows:

Whereas the union of church and state in the conduct of a joint administration of the temporal or spiritual affairs of any church or religious sect or society is dangerous to the freedom of religous worship and opinion, and violates the 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 the United States, by whatever name they may be called, who shall, in the name of, or on behalf of, the United States, be required to participate with the officers of any church or religious sect or society, whether or not the same is incorporated, in the joint conduct and administration of the spiritual or temporal affairs of such church, sect, or society.

2. That it is a practical violation of the Constitution for the President of the United States to appoint any such officer under any law which assumes to confer such power on him, and that requires such duties to be performed by such appointee as are mentioned in the first resolution, and that fixes upon them a direct accountability or responsibility to the executive or legislative department of the Government of the United States for their conduct in office.

3. That it is not the constitutional function of the executive or legislative department of the Government of the United States to exert control in 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 by any department of 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 include the right or authority to participate in the administration of the affairs of such incorporations through the agency of officers of the United States appointed for such purpose and accountable to the Government for their conduct in office.

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 action of the Senate itself seems to me to make it necessary that we should now have some definition, 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. He started the great controversy in the time of the inauguration of the colonial system in this country which should separate the power of the Government from the spiritual or temporal power of the church, and which should draw the line of demarkation 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, from which country we obtained our liberties and the first germs of our civilization, and our first ideas of personal protection and liberty, is not an incorporation. It may not be called a creature of the law any more than Parliament can be called a creature of the law or the royal prerogative a creature of the law. 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 that feature of the British Government should find no place either in the colonial system or in the States united under the more perpetual union that we now enjoy.

Recently an act was passed by this body, which requires that the President shall appoint and the Senate shall confirm fourteen trustees to act in a church. It makes no difference whether the action of these trustees is to be spiritual or temporal, whether the board of trustees is

to be controlled by the spiritual authorities of the church, or whether they hold some right merely in trust of a temporal character, some property right for the benefit of the congregation; still there is distinctly the union in that act of church and state when we require that persons who hold the positions of officers of the United States Government 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 executive power, the legislative power, and also the judicial power. Neither one has had to meet heretofore such a baneful attack. Neither one, after this law shall have gone into existence, can ever welcome again to itself the thought that it is free from association with spiritual affairs and church government.

In the District of Columbia there are many churches incorporated, none of them, I believe, by a special act of Congress, but under a general law of incorporation these religious establishments and charitable institutions have become incorporated with boards of managers, with trustees, and also 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 Senator that under the five-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 considered as the consent 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 their temporal affairs, why they may 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, to prevent its establishment, or to break down its establishment. The question is 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 of the United States as trustees in 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 churches in the city of Philadelphia, that city of brotherly love and of high morality, which we are all proud of. I find that among the congregations that exist in that city are two Mormon churches, one polygamist and the other anti-polygamist.

I doubt very much whether the State of Pennsylvania, which has broader powers in this regard than the Congress of the United States—because I do not understand that Pennsylvania is under a positive inhibition to legislate on such topics at all—I doubt very much whether the State of Pennsylvania could inject into that polygamist church in Philadelphia a body of trustees and, in the name of the State of Pennsylvania, regulate and control its affairs even to expurgate 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? It may be a tolerance that involves the deepest contempt of those people for it, yet it is such a tolerance as prevents that State from 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 Government, and take charge of the ordinances of that polygamous establishment in Utah. We have not sought to inject 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 this character of power of a mingled authority of church and state, this 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 consult his duty in refusing to appoint this board of trustees which the Senate has voted shall be appointed by him and sent to the Senate for confirmation. We may put a law upon the statute-book here requiring him to make such appointments, and this President or another may approve it and it may take the form and shape of a law; but when these trustees come 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 country, and it shall not be a proper subject to be considered in this body whether we will confirm or not the appointees.

The only power that can be exercised authoritatively over the church organizations in this country is clearly defined in the case of Watson *vs.* Jones, in 13 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, whatever it shall be—I suppose it will be the Judiciary, if any—to 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 authority of the General Assembly of the Presbyterian Church in the United States and the Walnut street church in Louisville, Ky. The question was who had the jurisdiction to determine who were the board of trustees chosen by the church; who were the men who had the legal title to the property held in trust for the congregation; who had 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 any question relating to membership. That case came from the circuit court of the United States on appeal to the Supreme Court of the United States, and the Supreme Court, after deliberate consideration, announced certain results as the conclusions to which they 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:

> The questions 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 them, be profitably classified under three general heads, which, of course, do not include cases governed by considerations applicable to a church established and supported by law as the religion of the State.
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> 1. 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 is held, by the express terms of the instrument devoted to the teaching, support, or spread of some specific form of religious doctrine or belief.
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> 2. The second is when the property is held by a religious congregation which, by the nature of the organization, is strictly independent of other ecclesiastical associations, and, so far as church government is concerned, owes no fealty or obligation to any higher authority.
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> 3. 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 and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization.
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> In regard to the first of these classes it seems hardly to admit of a rational doubt that an individual or an association of individuals may dedicate property by way of trust to the purpose of sustaining, supporting, and propagating definite religious doctrines or principles, provided that in doing so they violate no law of morality and give to the instrument by which their purpose is evidenced the formalities which the laws require. And it would seem also to be the obvious duty of the court, in a case properly made, to see that the property so dedicated is not diverted from the trust which is thus attached to its use. So long as there are persons qualified within the meaning of the original dedication, and who are also willing to teach the doctrines or principles prescribed in the act of dedication, and so long as there is any one so interested in the execution of the trust as to have a standing in court, it must be that they can prevent the diversion of the property or fund to other and different uses. This is the general doctrine of courts of equity as to charities, and it seems equally applicable to ecclesiastical matters.
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> In such case, if the trust is confided to a religious congregation of the independent or congregational form of church government, it is not in the power of the majority of that congregation, however preponderant, by reason of a change of views on religious subjects, to carry the property so confided to them to the support of new and conflicting doctrine. A pious man building and dedicating a house of worship to the sole and exclusive use of these who believe in the doctrine of the Holy Trinity, and placing it under the control of a congregation which at the time hold the same belief, has a right to expect that the law will prevent that property from being used as a means of support and dissemination of the Unitarian doctrine, and as a place of Unitarian worship. Nor is the principle varied when the organization to which the trust is confided is of the second or associated form of church government. The protection which the law throws around the trust is the same. And though the task may be a delicate one and a difficult one, it will be the duty of the court in such cases, when the doctrine to be taught or the form of worship to be used is definitely and clearly laid down, to inquire whether the party accused of violating the trust is holding or teaching a different doctrine, or using a form of worship which is so far variant as to defeat the declared objects of the trust.
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> The second class of cases which we have described has reference to the case of a church of a strictly congregational or independent organization, governed solely within itself, either by a majority of its members, or by such other local organism as it may have instituted for the purpose of ecclesiastical government, and to property held by such a church, either by way of purchase or donation, with no other specific trust attached to it in the hands of the church than that it is for the use of that congregation as a religious society.
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> In such cases where there is a schism which leads to a separation into distinct and conflicting bodies, the rights of such bodies to the use of the property must be determined by the ordinary principles which govern voluntary associations. If the principle of government in such cases is that the majority rules, then the numerical majority of members must control the right to the use of the property. If there be within the congregation officers in whom are vested the powers of such control, then those who adhere to the acknowledged organism by which the body is governed are entitled to the use of the property. The minority, in choosing to separate themselves into a distinct body, and refusing to recognize the authority of the governing body, can claim no rights in the property from the fact that they had once been members of the church or congregation.

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 small minority, without any officers of the church among them, might be found to be the only faithful supporters of the religious dogmas of the founders of the church. There being no such trust imposed upon the property when purchased or given, the court will not imply one for the purpose of expelling from its use those who by regular succession and order constitute the church, because they may have changed in some respect their views of religious truth.

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But the third of these classes of cases is the one which is oftenest found in the courts, and which, with reference to the number and difficulty of the questions involved, and to other considerations, is every way the most important.

It is the case of property acquired in any of the usual modes for the general use of a religious congregation, which is itself part of a large and general organization of some religious denomination, with which it is more or less intimately connected by religious views and ecclesiastical government.

The case before us is the one of this class growing out of a schism which has divided the congregation and its officers, and the presbytery and synod, and which appeals to the courts to determine the right to the use of the property so acquired. Here is no case of property devoted forever by the instrument which conveyed it, or by any specific declaration of its owner, to the support of any special religious dogmas, 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 ascertained; but in cases of this character we are bound to look at the fact that the local congregation is itself but a member of a much larger and more important religious organization, and is under its government and control, and is bound by its orders and judgments. There are in the Presbyterian system of ecclesiastical government, in regular succession, the presbytery over the session or local church, the synod over the presbytery, and the general assembly over all. These are called, in the language of the church organs, "judicatories," and they entertain appeals from the decisions of those below, and prescribe corrective measures in other cases.

In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority, is that whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final and as binding on them in their application to the case before them.

Applying the doctrines of this decision to the powers of the church in Utah which is alleged to be an ecclesiastical denomination with certain governing powers in its church organization, are we not bound as the Supreme Court have been bound to accept from that church its decree as to its will and purpose in the conduct and management of the church; and are not the trustees that we put in there bound, as the trustees of Walnut street church were bound by the declaration of the General Assembly of the Presbyterian Church in the United States, to execute the will of that great judicatory? What else is the Mormon Church, incorporated under that act of the Legislature of the Territory of Utah, except a great and supreme ecclesiastical judicatory? If it be not polygamous, it is lawful. If it be polygamous, the trustees can not correct polygamy. Such duties do not and can not belong to their office. They claim that the polygamous feature of the Mormon Church is a question of doctrine and faith which the great supreme judicatory has the right to decide, and that it is the practice and not the creed which the laws may touch, and the Supreme Court of the United States would sustain them, if necessary, under this opinion, unless that decision involved absolutely and expressly, or by necessary intendment, the support or propagation of a crime against society in the United States.

We all understand of course that any organization pretending to be a church which undertakes to propagate a crime can not claim the immunity or benefit of being a Christian or religious organization which Congress may not touch. But, sir, the existence of crime in a church does not concern the power of Congress to interpose trustees there. When we acknowledge, as we do in this act, that it is a church having rightfully this supreme judicatory, and that it is a church incorporated by law in which every Mormon in Utah is an incorporator, when having made all these declarations in behalf of that church we for any purpose, whether to purify its morals or to rob it of its property, interpose officers of the Government of the United States there to control its affairs as a board of trustees, we usurp to ourselves a power that even the judiciary have found themselves unable to grasp. The Supreme Court declare expressly that they are bound by the supreme judicatory of a church in matters relating to church government and property and by its decrees, and they have no power to reverse the judgment of the General Assembly of the Presbyterian Church in the United States in respect of the right of control over the Walnut street church. For the reason that this is a subject which under the laws and the Constitution of the country is beyond the reach of legislative power, and also of judical power, it is also beyond the power of the Executive. The President can never constitutionally appoint these officers of the United States to offices created in the Mormon Church with powers to assist in its administration and to report their official conduct to the Secretary of the Interior.

I have thought, Mr. President, that the Senate could well afford to express its opinions upon these resolutions. The country is not going to be quiet after we have asserted on our part the right to interfere by law in the church management of any of the churches that happen to be in Territories within our exclusive jurisdiction. After we have once asserted and maintained by enacting a law that we have the right to put trustees into a church and participate in its management, and that those trustees are not to be selected by the church, are not to be chosen in a manner conformable to its charter or to its principles or method of organization, but they are to be officers of the United States, and as such are to take their seats in a church board, the country can not be quiet while such a declaration, coming from this august body, remains uncontradicted upon the record of our proceedings. I have therefore felt it my duty to call attention to the subject, for we have unwittingly or not—no, not unwittingly, for argument was made against it—spread upon the records of this body the declaration of our power to recognize a church as something that has lawful existence both in morals 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 board to manage its affairs. Whether it is to manage things temporal or spiritual in a church, Congress can not send the agents of the Government to rule in the affairs of a church.

The PRESIDING OFFICER (Mr. HARRIS in the chair). The Senator from Alabama will please suspend. The hour of 2 o'clock having arrived, it is the duty of the Chair to lay before the Senate the unfinished business, which is by unanimous consent the bill (S. 9) to fix the day for the meeting of the electors of President and Vice-President, and to provide for and regulate the counting of the votes for President and Vice-President and the decision of questions arising thereon.

HOUSE BILLS REFERRED.

Mr. HOAR. Mr. President——

The PRESIDING OFFICER. If the Senator from Massachusetts will indulge the Chair a moment, the Chair will lay before the Senate bills from the House of Representatives for reference.

The bill (H. R. 3828) for the relief of the estate 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 Pensions:

A bill (H. R. 116) for the relief of Albertine Cockrum;
A bill (H. R. 225) granting a pension to Daniel Connolly;
A bill (H. R. 226) granting a pension to Mrs. Martha E. Turney;
A bill (H. R. 613) for the relief of Catherine Collins;
A bill (H. R. 618) granting a pension to James Morgan;
A bill (H. R. 777) granting a pension to Frederick Bottjer;
A bill (H. R. 788) granting a pension to Jeptha Hornbeck;
A bill (H. R. 925) to amend an act entitled "An act granting a pension to Rachel Nickell," approved March 3, 1885;
A bill (H. R. 928) granting a pension to Lewis A. Thornbury;
A bill (H. R. 929) granting a pension to G. W. Fraley;
A bill (H. R. 934) granting a pension to Charles W. Minnix;
A bill (H. R. 936) granting a pension to James T. Caskey;
A bill (H. R. 1084) granting a pension to Alice S. Holbrook;
A bill (H. R. 1255) granting a pension to Isaac Moore;
A bill (H. R. 1319) to increase the pension of Robert D. Fort;
A bill (H. R. 1352) granting a pension to Isaac Chenoweth;
A bill (H. R. 1469) granting a pension to Lois Holt;
A bill (H. R. 1472) granting a pension to Mary Murphy;
A bill (H. R. 1564) granting a pension to Phebe Saunders;
A bill (H. R. 1568) granting a pension to Nathaniel Taylor;
A bill (H. R. 1574) granting a pension to Sarah L. Bragg;
A bill (H. R. 1575) granting a pension to Elizabeth Kahler;
A bill (H. R. 1579) for the relief of Amy A. Lewis;
A bill (H. R. 1582) for the relief of Eleanor C. Bangham;
A bill (H. R. 1589) for the relief of Newton O. Baker;
A bill (H. R. 1590) for the relief of Timothy Paige;
A bill (H. R. 1701) granting a pension to Anson B. Sams;
A bill (H. R. 1703) granting a pension to Joseph Williams;
A bill (H. R. 1711) for the relief of George C. Haynie;
A bill (H. R. 1824) granting a pension to Mrs. Louisa Noland;
A bill (H. R. 1836) granting a pension to George Slack;
A bill (H. R. 3387) granting a pension to Sidney Sherwood;
A bill (H. R. 3520) granting a pension to William H. Blake;
A bill (H. R. 3538) granting a pension to Mrs. Amy A. Hurst;
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.

FUNERAL EXPENSES OF VICE-PRESIDENT HENDRICKS.

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 Chief 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 funeral expenses of the late Vice-President Thomas A. Hendricks, which were incurred at Indianapolis, Ind., payment to be made upon vouchers satisfactory to and approved by the Committee to 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 Contingent Expenses.

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 and regulate the counting of the votes for President and Vice-President and the decision of questions arising thereon.

Mr. HOAR. I now 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.

The CHIEF CLERK. 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. —. 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 such State to be made and certified under the great seal of the State, and to be delivered to the electors on or before the day on which they are required by the preceding section to meet."

Mr. HOAR. If I can have the attention of the Senate I think I can state in ten or fifteen minutes the argument in favor of this bill as it will read if amended according to the proposition just read from the desk.

Mr. LOGAN. Will the Senator allow me? Before the Senator proceeds I should like merely to have an understanding about the bill in reference to the admission of Dakota, whether or not the Senator desires to go on to-day until this bill, that is now called up, shall be finished?

Mr. HOAR. I should like to do that. I think we can finish it to-day.

Mr. LOGAN. And have an understanding that the Dakota bill will then be the regular order?

Mr. HOAR. I understand that will be the regular order after this.

Mr. LOGAN. Will that be the regular order, Mr. President?

The PRESIDING OFFICER. The Chair is informed by the Chief Clerk that the Dakota bill will be the next business in order on the Calendar.

Mr. LOGAN. I merely wished to know, so that we could have it understood.

Mr. HOAR. I hope we may be able to finish this bill to-day. I shall endeavor to secure that result, and I think we can.

This bill is the result of more than twelve years' consideration and discussion in this body. The debate may almost be said to have been in progress during the whole time since the December session of 1875. The bill has passed the Senate three times, I believe, almost unanimously.

The object of the bill is to remove, as far as it is possible to be done by legislation and without an amendment of the Constitution, a difficulty which grows out of an imperfection in the Constitution itself; and I think I may say as a matter now settled by a pretty long experience that the arguments which are made against the bill almost all proceed from supposing that it is an attempt to amend a defect which is due to the Constitution itself and criticising it in that respect, and not reflecting that the bill while it does not of course undertake to intrench upon the provisions of the Constitution, reduces the difficulties which the Constitution has left to a minimum.

Two things we must consider, I think, settled for this generation; first, that the President of the Senate is not clothed by the Constitution with the power to count the electoral vote, that the determination of the grave questions of law and fact which must be decided in order to determine how many electors have been appointed or who has the majority of the votes of those electors has not been committed to any single officer; and, second, that the power to decide these questions and count the vote is not vested exclusively in the House of Representatives. Each of these views has had some advocates. Neither of them, as it seems to me, with great respect to those who entertain them, has ever borne the weight of a constitutional discussion, and neither of them is entertained by any considerable number of persons either in this or the other House. It seems to me that we must take as practical legislators considering the expression of opinion both these propositions as conclusively settled and determined for the present generation.

It is very difficult to any person who remembers the prevalent opinion, the jealousy, the purpose which occupied the mind of the framers of the Constitution, to any person who reads their debates, to suppose that they intended to intrust this vast power to the President of the Senate. Throughout the whole of the history of the formation of the Constitution appears the jealousy of its framers of the usurpation of executive power. The discussions in the Madison Papers and the press of that time, the other discussions which are less celebrated but still are preserved from that generation to ours, all show that the first object of the framers of the Constitution in making it, and their chief stress and labor in commending it to the people, was to show that usurpation or prolongation of power by the Executive of the United States had been rendered impossible in the form of government they had framed.

The contemporaneous State constitutions, established ten or eleven of them between the year 1775 and the close of the year 1787, had, with the only exception of New York—and it may be that there were one or two others—had committed the power of determining who was chosen to the chief executive office to the two houses of the State Legislature.

Of course it will not be forgotten that the Constitution provided for a vote for two candidates for President, one of whom became Vice-President. The President of the Senate would almost always be and would be expected to be one of the chief candidates for the Presidential office. He would have been one of the two principal candidates four years before, and it was the fashion of those days very much more than of these to continue the same person in public trusts and in political candidacy, and several times in our history the Vice-President of the United States has succeeded to the Presidency, Adams to Washington, Jefferson to Adams, Van Buren to Jackson. The conferring upon this officer of the power to determine these great questions would have been a transgression, would have been seen by the framers of the Constitution to be a transgression of that maxim so fundamental that Lord Coke says it is not even in the power of the British Parliament to transgress it—that is, to make a man a judge in his own case—in the most important case of personal interest which could ever be submitted to a human judgment.

When this subject began to assume very important practical shape as the determination of the Presidential election of 1876 approached, a leading member of the Senate, then representing the State of New York, said in his place here that every member of the Senate, except four, stood recorded and committed on his oath against the proposition of the right of the President of the Senate to count the vote, and he further said that the then Senator from California, Mr. Sargent, was the only known advocate of that doctrine on the floor of the Senate.

Taking that, without further discussing it, as practically determined for our guidance as legislators, I think we may further assume with the same confidence that no legislation can be adopted here for a generation which proceeds on the principle that the power to determine this result is lodged in the House of Representatives. The doctrine upon which that claim is based, it seems to me, will not bear discussion. That doctrine is that as the House of Representatives are to exercise a certain function if a certain condition of the vote appears, of course it must follow that that body is to determine upon the state of things which requires the exercise of that function.

I submit that the opposite of that proposition is much more nearly a general truth; that is, that when an official function or duty is lodged in any person or public body, that person or public body is never the judge of the question whether its own power exists or if the case for the exercise of its power has arisen. Neither of these propositions would be universally true; but the latter, it seems to me, most usually is. The Vice-President of the United States, who is to succeed to the Presidential office in case of the inability of the incumbent, surely can not be the sole and exclusive judge of the question whether the time has come for him to exercise that function or whether the House has chosen or has not chosen the President. The persons who are to exercise a power under the forms of a limited, written, and free constitution are almost invariably the persons who are not to determine whether they have got it. The question who is chosen to the Senate or the House is determined by the body to whom that trust is committed, not by the individual claimant, and so on.

Now, sir, if the President of the Senate gets no power in the beginning from the clause which has been so often read and discussed, it seems to me equally clear that he can not get it afterward without legislation. If he have it in the absence of legislation, he has it in spite of legislation. If the Constitution confer on him the power to open the certificates alone, and leaves either to the two Houses or to an officer provided by law the power to count, I can not see any reason, and I never have heard one stated, which, in the failure to exercise that legislative power or in the failure of the two Houses to act, justifies the conclusion that the powers of the President of the Senate should be extended to include a subject not committed to him by the Constitution in the beginning.

This bill assumes—and I do not propose to go over this argument for the hundredth time—that the framers of the Constitution, according to the universal fashion of those days, meant, as the English constitution commits to the two houses of Parliament in case of an abdication as it had been recently settled in the instances of James II and William of Orange, as the State constitutions almost without exception in that day permitted in case of a popular election the right to determine the title to the executive office to be exercised by the two legislative houses—meant to intrust this power to two bodies corporate, the Senate and the House of Representatives. The failure of the Constitution, the *casus omissus* is the failure to provide an arbiter when these two bodies dis-

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 foregoing powers, and all other 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 law-making power, and that has been the attempt of the statesmanship 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 a Congress whose two Houses would 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 1824; 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 of 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; but I suppose it would be impossible to expect an agreement on that official as an arbiter between the two branches in the present state of political and public sentiment in this country. But certainly whoever is taken, it is a person who is taken for the purpose of exercising 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 existing 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 thinks best for the public interest. 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 into 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 now 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 as to the result; a body of men whose personal interests, whose success 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 share or be excluded from the councils of the Executive whose election is to be ascertained by this process—a body I say therefore more likely than any other which could be imagined to be excited by the very disturbing cause which it should be the policy of our legislation to exclude.

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 which belongs to his personal character and quality, but the reflected honor and respect which come to him from being a member of this great legislative body which has existed from the beginning of the Government and is to exist until time 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 be trusted for the sake of the preservation of an official and a personal character which is so to survive the chances or the desires or the excitements of a single Presidential election, to do what is right, not what is desired by their party for the time being; and so of the House 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 permanance 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 of the proposition of my honorable friend from Ohio could be stated 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 merits, as 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 by State Legislatures where they vote in joint ballot. But that is a provision 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 under the Constitution to the States, and that it was intended 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 possible this bill remands everything to the State, and simply 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 single case of dual State governments.

The bill provides that where the State has created a tribunal for the determination of these questions the proceedings of that tribunal shall be conclusive; that where the State has created no tribunal and there is 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 created 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 implies an existing civil war, or, if not a civil war, a state of civil 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 at the close of a civil war, before the relation of the different parties 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 of the vote just what the Supreme Court of the United States held in Luther *vs.* Borden was required for the determination of which was the lawful State government in regard to all the rest of its relations to the National Government, that is, the recognition of the two Houses of Congress. In Luther *vs.* 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 *prima 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, moved as it will be by political passions, the power of rejecting the vote of a State. I 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 Government, unless he holds to the theory that the President of the Senate has this right (which has been rejected by so large a 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 unless the power were to be usurped or seized upon by the President of the Senate.

In other words, instead of conferring upon one House of Congress the power to reject the vote of a State coming here duly authenticated or 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

claiming each to represent the will of a people, as I said before, I think there are very strong reasons why there should be a concurrence of both Houses before the State should be permitted, when law does not prevail, to take part in this supreme constitutional act—electing the Chief Magistrate for the whole country.

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 more rejected when you not only exclude the votes of the persons whom it has duly authorized to represent it, but in addition to that permit others whom it has not chosen to cast its vote and express its will without its authority or consent. The vote of a State may be rejected when it is not counted in making up the constitutional result, but the vote of the State is still more rejected when the true vote is cast out and a false vote is counted in its stead.

I believe, 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 to authenticate the certificate, to a particular body of electors, the vote of that body of electors is to be counted unless both Houses of Congress concur in its rejection; when 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, determine, or remand to the State to determine, any case in which any friction or difficulty can grow out of the mechanism here provided, except in the case of dual State governments, and in regard to that the power of one House to reject the vote is 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 involves 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 Massachusetts introduces another dangerous element, probably as dangerous 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 as under the present bill that it shall require the assent of both Houses to count the vote 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 tribunal 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 Senator seeks to 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 Statutes 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, meeting together and claiming to represent the majority of the votes in the State, send their returns, as they can do 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 and presented before the two Houses of Congress. Instead of leaving that to be decided by the concurrent action of the two Houses, or by the objection of either House, the amendment proposed by the Senator from Massachusetts 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 parties 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 governor 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 mortal man?

Mr. MAXEY. Mr. President——

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

Mr. SHERMAN. Certainly.

Mr. MAXEY. I suggest 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 may be two men claiming to be governor in the same State, as there were in Rhode Island once, and as 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 provided for by the bill. That is a case left where it requires the concurrent votes of both Houses to count, as I submit it is now. We can not get rid of that. That has been always the difficulty where there were two governors.

Mr. SHERMAN. But I come back to the point, waiving the question proposed by the Senator from Texas, which is a pregnant one, where there are two governors, and when the very election of electors may disclose 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 now adopted the mode of conducting the State elections at the same time that the Presidental election is held. The State of Ohio has been the last to abandon its old mode of electing the governor and State officer on a different day from that provided for 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 governor and who was elected governor at that particular time is involved. But suppose the governor is admitted to be duly elected, representing one of the parties of the State, especially of a great State, you leave to him the question of deciding this most dangerous and difficult 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 leave the question in dispute to be decided by the governor of a State, it seems to me only involves this matter in greater difficulty. In cases which may arise where honesty of opinion and sincerity of conviction may exist in both parties, where there is a real dispute as to who have been elected electors for a particular 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 arguments which the Senator has used to show that the presiding officer of the Senate ought not to decide the question arise also as against the authority 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 difficulty, 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 before the two Houses, with all the formalities that can surround this grave political event, "the votes shall then becounted," the Senator from Massachusetts turns around and says that the votes certified to by the governor shall be counted. It seems to me 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 concurrent vote 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 grave 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 unless both Houses agree that it shall not be counted. Now I would far rather apply that principle to the case put. On the contrary, the Senator 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 from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted 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.

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 concurring 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 from the count, 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 a rejection of the vote. As the bill stands, 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 election of a President. In the amendment I proposed I provided for at least one rehearing of the question in case the two Houses disagree, when the Senate mingling with the House in joint convention might to some extent control or affect the vote. I admitted that it was not a sufficient remedy; I did not like to see the Senate merged in the House; still it gave an additional 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 still more dangerous the difficulties that surround this count. It leaves 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 either House to decide. It would be far better to take the expedient proposed by me than to take this, because it is certainly better to leave to the two Houses of Congress, two great political bodies representing all the people of the United States and who are to a large extent entirely disinterested, to decide this local controversy in a State, rather than to leave it to a governor of a State, who himself is necessarily a party to that controversy, to decide it.

The proposition of my friend from Massachusetts violates the very rule that he has quoted here as laid down by Lord Coke, that even Parliament can not make any man a judge in his own case. Yet this amendment provides that the governor of a State is the judge of the election 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 now be forced to vote upon propositions that are not satisfactory to the Senate. I would very much rather let the bill go over for a while, so that we may look into it and see whether some provision can not be agreed on for fixing upon a tribunal. I would rather take the Supreme Court of the United States, as much as I object to drawing that great tribunal into this controversy, because that court would at least give a decision; it would say which of two returns should be counted; but if the amendment of the Senator from Massachusetts is adopted it will be placed beyond the power of the two Houses to overrule the interested mandate of the governor of a State. If no other expedient can be adopted, I would say that some vote should be counted, that the Constitution should be obeyed, "that the votes shall then be counted," rather than to say that either House may by its arbitrary veto reject the vote, or, in other words, exclude it from being counted.

I therefore respectfully submit to my honorable friend from Massachusetts that he has not helped the matter any by his amendment, but 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, month 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 twelve years' debate, three times adopted by the Senate of 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 fit to deal with any question, and that it is not a case for recommitments or dreams overnight; it is a case for the judgment and decision of the Senate.

My honorable friend says it is a great inconsistency to deny the President of the Senate a power which you permit to the executive of a State. In the first place, it is the Constitution which denies that power to the President of the Senate, not the bill, in the judgment of most persons who have reflected upon this subject. In the next place, the cases are very different.

If the President of the Senate is to count the vote he is to decide who is chosen President of the United States, and there is to be given to him the full and final control of controversies which in our ordinary political history are to be controversies between him and one other man, the question whether he himself is chosen to the foremost office on the face of the earth, a choice more an object of ordinary human desire than any coronet, or crown, or star.

The belief that the Constitution, framed by men so jealous of executive power and executive usurpation, denied to a man interested in that question the function of being the sole judge to decide it the Senator likens to the case where the executive of a single State is permitted to certify whom that State has chosen for Presidential electors, having no relation to any of the rest of the elections in the country, and to have the certificate *prima facie*.

In the first place, I suppose the Senator agrees with me that this is a matter for the State; that the State ought to decide, should decide, and should be respected in deciding the question for itself; and that that bill is the best which remands that decision entirely to the State.

Now, 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 other words, the bill only gives this *prima facie* authority to the State executive when the State itself chooses to repose that authority in him.

Will the Senator from Ohio himself deny that if the State of Ohio puts upon its statute-book, "It is hereby enacted that the votes for Presidential electors shall be counted and certified by the governor, and that count and certificate shall be conclusive," that would be something which we could not and should not go behind? The bill does nothing but that in substance, saying to the State: "Appoint your own judicature in your own fashion to determine this question; if you do not do it, we shall assume that you desire that the certificate of your governor shall determine it," and that is all the bill says.

The same authority is given to the certificate of the governor of a State in a thousand other cases. The governor's certificate comes here to the Senate to the credentials of a Senator, and although the Constitution gives the Senate a final judgment in that case, that is usually all that is required and the Senator takes his seat. It is a *prima facie* case; he sits in the Senate and votes and acts; at any rate, he is in his place. But a still stronger case is the election of the delegation to the House of Representatives. The New York or Ohio or Pennsylvania delegation comes up with the certificate of their governor, changing the entire control of the legislative power in one branch of the Congress of the United States, and those Representatives are put on the roll by the Clerk, they take part in the organization of the House, in the election of a Speaker, which involves 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 itself desires it shall be reposed there, and it is only following the analogies and precedents which in all other like cases from the foundation of the Government have prevailed.

Mr. GEORGE. I desire to ask the Senator from Massachusetts a question.

The PRESIDING OFFICER. Does the Senator from Massachusetts yield?

Mr. HOAR. Certainly.

Mr. GEORGE. Is there any constitutional objection to the Legislature of a State authorizing the governor himself to appoint the electors?

Mr. HOAR. Not the slightest. It is perfectly within the power of the Legislature of a State.

Mr. TELLER. Or for the Legislature themselves to elect the electors?

Mr. HOAR. Or for the Legislature to elect them themselves. But the point of the question of the Senator from Ohio relates to the executive of the State. If he will pardon me, he seems not to reflect. We find here a constitutional difficulty never to be cured without a constitutional amendment. Congress after Congress, from 1800 down to the present time, have wrestled and labored with that difficulty. This is the only solution which seems likely ever to be agreed upon. I should unite with the Senator in agreeing to have either the Supreme Court or the senior justice of the court come in as an arbiter between the two bodies, but the Senator knows as well as I do that it is perfectly hopeless to expect to get any legislation to that effect.

In regard to this bill the Senator says, in other words, here are a hundred difficulties; you have cured ninety-nine of them—at any rate he does not submit any argument to the Senate to show that we have not done so well and properly—but the hundredth still remains; and because you do not to my satisfaction deal with that I shall not join you in the measure which at least disposes of the ninety-nine. That seems to be the substance of the argument of the Senator from Ohio.

Mr. SHERMAN. The Senator from Massachusetts himself admits that the bill, which has been the result of thirteen years' deliberation, is not satisfactory; that it is weak in the most vital point.

Mr. HOAR. The Senator will pardon me; I do not admit any such thing.

Mr. SHERMAN. The Senator by introducing this amendment admitted it.

Mr. HOAR. If the Senator means that a little amendment of detail is an admission of anything——

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

Mr. HOAR. If the Senator will pardon me, when I say the bill is not satisfactory, I do not mean to say that it is not the most satisfactory legislation that either I or any man can frame. I think it is. I say that what is not satisfactory is the condition of the constitutional provision on this subject, which commits a question to the decision of two bodies politic and does not provide for any common arbiter. That is the unsatisfactory thing.

Mr. SHERMAN. I commence again as I started a moment ago. The Senator admits it by introducing an amendment entirely foreign to the bill, which no one heretofore has proposed in the thirteen years of debate to try this initial point, this governing point of the whole contro-

versy, 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 other House of Congress. So the governor does, purely as 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 or turned aside even without being sworn in. That 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 can not overrule that decision, because it expressly provides that the two Houses when met together for the express purpose of counting the vote shall not count any paper except that certified to by the governor. In other words, it is conclusive 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 *cognovit*, a confession, that the plan heretofore, 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 peace or war, the existence of the United States, the election of a President, I do think that this measure ought to be surrounded with greater guards. If, going a little step further, he would provide that the return shall be received which shall be approved or certified after a trial before the supreme court of the State itself, and that the court shall decide between two opposing returns, I can see that there might be a solution of the difficulty. For ninety years, or whatever has been the period of our history, the certificate of the governor has been sent to us, but it was simply the certificate of the governor in the performance of an administrative duty, not binding upon either House, disregarded time and time again in our history, even in the election of a single Representative, and especially in the election of a Senator. But now, in the election of a President it is proposed to give the executive of a State the power to control that vote, when before that power is exercised the governor will know that the vote of that State may decide the election of a President.

It seems to me, therefore, that this is not a sufficient remedy, and that after our thirteen years' debate we have not reached a point where the other House or the Senate can be satisfied with the solution that is proposed of this most difficult problem. The Senator himself, it seems to me, concedes that by offering the amendment at this time.

I do not wish to prolong this debate, because I have said all that I desire to say on the subject, and I am willing to abide by the judgment of the Senate; but I believe it would be wiser to let this matter go over for further consideration or to recommit it and let us have the opinion of the Committee on Privileges and Elections as to whether the amendment now proposed, so vital and important, is the best that they can offer. Then we could decide—certainly not now. The Senator proposes to dispose of this matter to-day, when a proposition is made more decisive, more summary, more powerful in the hands of a single man than any that has yet been proposed. I am not prepared to consider it in a hurry. I hope therefore that this measure will go over until some further light can be thrown upon it, and let us see if it is the best of all the wisdom of the Senate of the United States that this matter should be committed to the governor of a State, not by the consent of the State or by the law of the State, because the law of the State would probably not leave to the governor this decisive action. I doubt whether the Legislature of any State would give to the governor the power either to appoint the electors or to decide finally and conclusively who have been chosen electors in the State.

Mr. HOAR. Where do you find that in the bill?

Mr. SHERMAN. The amendment expressly provides that no vote shall be counted in the case of a double return except the vote certified by the governor.

Mr. HOAR. It is only where the State leaves it to him. It provides before that that the State may appoint its own tribunal.

Mr. SHERMAN. Mr. President——

Mr. HOAR. Will my friend allow me, in order that we may understand each other? I do not like to interrupt him, but I should like to understand him and I should like to have him understand me. I put to him this direct question: Suppose the State of Ohio by her Legislature enacts that her governor shall count the vote for electors, and that his certificate shall be conclusive, are you not in favor of making it conclusive yourself under those circumstances?

Mr. SHERMAN. In the first place, if the Senator has got through, no State would repose that power in the executive. The Senator is supposing *if* it would do it, *if* Ohio would do it. Ohio would never do it.

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 thinks it is improbable it will happen, because that is as good an argument 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?

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 governor of a State shall decide all these controversies in case of double returns or in case of single returns, then, as a matter of course, there is no need for all the magnificent ceremony that is provided for by the Constitution. The intendment of the Constitution, as the Senator has reasoned over and over again, is that the two Houses shall count the vote; and now we propose to tie the hands of the two Houses and to say that they shall not count the vote, but they shall only count conclusively those votes which are certified to by the governors of the States. If that is to be the law, and that is the end of it all, then what is the use of having a law? Why not say "the vote shall then be counted as certified by the governors of the respective States," if that is the construction you propose to give to the Constitution?

But, on the other hand, the Constitution provides some other mode of dealing with it. It provides that the returns shall be received and held by the presiding officer of the Senate; that they shall be presented to the two Houses of Congress; and an imposing array is made there to see it done. Does the Constitution say that the governor of a State shall then count the votes, or that the votes certified by the governors shall then be counted? Not at all. If a State chooses to repose in its chief executive magistrate the power to decide these questions, that is quite a different thing. I may perhaps admit that in certain cases the State itself might invest the governor with powers of choosing electors, as the State may impose upon the Legislature that power; but that has never been done since the foundation of the Government. The executive officer of the State simply returns what appears upon the face of the record, and we, the two Houses of Congress, pass upon the validity of those returns.

We say, according to the doctrine of the honorable Senator from Massachusetts, which of those votes shall be counted; and now, as the end of this controversy, it is proposed to turn it over and take the report and decision of the governor of a State as final and conclusive. If so, then it does not make any difference about the two Houses meeting, it does not make any difference about the custody of the electoral returns, which are so safely guarded; all we have got to do is to receive a polite note from the governor of the State of Ohio, for instance, that such and such men were electors, and such and such men did vote so and so; and that is to be final and conclusive, even though both Houses may be of opinion that the governor has usurped authority and has falsely certified returns or manufactured them. So I submit that after all the Senator has not solved the problem.

Mr. HOAR. Mr. President, one word only. The Senator from Ohio seems to me to entirely overlook the constitutional purpose of the founders of our Government. They meant to take away from Congress, from executive, from national officers, as far as they possibly could, as far as the wit of man could contrive, any control over this matter at all. They said that the electors should not come to the national capital, but should meet at the capitals of their States and vote, and that they should all vote on the same day, so that one State should not be affected by the act of another; that no one holding an office of trust or profit under the United States should have anything to do with the selection of the President of the United States. It is the one place in the Constitution where State right, State authority, State independence was carefully preserved to the exclusion of any national or central authority whatever.

To that we all agree. And they were so confident that this thing would come to the seat of government from the States settled that they said the President of the Senate shall open these votes, and they supposed almost that they would count themselves, that "the votes shall then be counted," the mere arithmetical enumeration of those votes being in their eyes so unimportant and so a matter of course that it did not occur to them even to say in words who should do it.

That being the case, what does the bill do? The bill says to the State, "Questions have arisen in our historical experience in regard to your voice. Now, you may do one of two things. You may create another tribunal with express authority to settle that question, in which case the decision of that tribunal shall prevail, or you may leave it on your governor's certificate, just as you please." The bill says, therefore, that in case the State declines to appoint any other tribunal and chooses to leave it on the governor's certificate, we will leave it where the State has left it.

That being the condition of the bill, I put this question to my honorable friend from Ohio when he was up just now, Will you take the responsibility of saying yourself in argument, while you are attacking this bill, that you are opposed to doing exactly that thing; and will you say that if the State of Ohio or any other says, "I wish this thing

to be settled by my governor's certifiate," 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 say that he would not, but he met it by saying he does not think it is very probable that the State could 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, "It is not likely the State will ever do it."

Mr. SHERMAN. Let me ask the Senator——

Mr. HOAR. Let me finish my proposition, and then I will answer the Senator. It may be true that it is not likely that the State will do that; but if in that improbable case, however, of the State doing it, the Senator would not object to it, and thinks it ought to be permitted, does not his whole argument against the bill as proposed to be amended fail? If it is not likely that the State would do it, then the contingency 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. SHERMAN. This is the question I wish to ask: The bill does not propose that the State shall confer upon its governor this power. That is one thing. The bill proposes to confer that power by act of Congress, and I doubt very much whether it can confer any such power.

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

Mr. SHERMAN. I ask that question, whether Congress can confer upon a governor of a State a power of this kind which has not been granted by the State?

Mr. TELLER. The bill does not do that.

Mr. HOAR. The bill does not do that. That, it seems to me, is a mere question of phraseology. 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 refraining to create any other tribunal after 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 on 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 the governor of a State. The electors send their votes directly to the President of the Senate.

Mr. HOAR. 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 governor of a State is 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 to the electors' certificate of their votes. One of them is sent 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. Those are the 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. HOAR. Now, my honorable friend misunderstands me.

Mr. SHERMAN. Wait until I get through.

Mr. INGALLS. Where am I?

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 governor has nothing to do with the electors. He is not a member of the electoral college; he has nothing to do with it. The electors meet and send their proceedings not to the governor. The governor may not know even who the electors are. He certifies here that the electors met and voted, and sends it to the presiding officer of the Senate, and they are never opened except in the presence of the two Houses, when "the vote shall then be counted." The interposition of this amendment would require the electoral vote to be certified to the governor and then by the governor to the presiding officer of the Senate. It would change the whole character of our electoral college.

Mr. HOAR. Mr. President, one minute.

The PRESIDING OFFICER. Does the Senator from Kansas yield?

Mr. INGALLS. Certainly.

Mr. HOAR. The Senator from Ohio certainly has not read the bill and amendment. The present law authorizes the governor, as the Senator states, to deliver to the electors his certificate. The electors annex their votes to it and send it here. The bill provides not that there shall be a certificate by the governor after the vote of the electors, but that the vote of those electors to which the governor's previous certificate of their election is annexed shall be the one *prima facie* to be counted. Now, if the learned Senator supposes that this proposition requires any submission of the vote of the electors to the governor after they have voted, it shows that he has not read or comprehended the bill.

Mr. INGALLS. Mr. President, I move to commit the bill to the Committee on Privileges and Elections. In support of that motion I venture to suggest the surprise I felt at the impatience with which the Senator from Massachusetts appeared to resent the suggestion of the Senator from Ohio that there should be further deliberation upon this measure, which he said had already engaged the attention of the Senate for more than thirteen years, the inference being, I assume, that the perfection of human wisdom had been reached, and that any attempt to reach higher excellence could not result in advantage to the Senate or in any wiser solution of the confessed difficulties by which this question is surrounded.

When I reflected that this bill from the Committee on Privileges and Elections, which had been thrice passed by the Senate by a vote, as the Senator informs us, practically unanimous, had been by his own motion within forty-eight legislative hours proposed to be amended by a provision that would have given two of the votes of Oregon in 1877 to Mr. Hayes and one to Mr. Tilden—a provision that the certificate of the governor of the State should be conclusive upon this great tribunal—I confess I was still more amazed at the Senator's unwillingness for further deliberation.

When I remembered that within ten days we have passed a measure dealing with one branch of this important subject, the succession by inheritance to the Presidential office, a bill, prepared by that Senator, and passed with such haste through this body that there was insufficient opportunity for consideration, so that a defect has already been discovered so obviously in violation of what was intended that an amendment is suggested, I confess that my surprise was increased to hear that procrastination or delay would result in some fatal disaster in the solution of this great problem.

Under the bill providing for the Presidential succession it is now admitted that in case the President and Vice-President elect should die before they were installed into office the out-going Secretary of State would hold that term for the four years for which the President and Vice-President were elected, a result that never was contemplated, an event provision for which never would have been omitted had the Senate had opportunity of considering whether it was one of the issues that was to be made effectual by the enactment of that statute.

So, Mr. President, I think we may not lose by delay. This matter has been debated since 1789. It will continue to be debated, no matter what action may be taken by the Senate, until there is a constitutional amendment, a change in the organic law that shall entirely take the subject out of its present attitude and place it where it should be placed, in accordance with the predetermined will of the American people. So the Senator need not comfort or console himself by the expectation that by any piece of legislative patchwork we can adopt here debate upon this great question is to come to an end.

The Senate seems to be in this matter in a mood of self-abnegation. As I understand the Constitution, each of the individuals and each of the constituent bodies composing this great electoral tribunal are charged with the responsibility of assuming jurisdiction of whatever parts of constitutional duty may fall upon them, which no law can affect. When the Constitution imposes a duty upon an officer he must be the judge of the time and method of discharging that duty, subject to his final responsibility to the people.

The Electoral Commission of 1877 was a contrivance that will never be repeated in our politics. It was a device that was favored by each party in the belief that it would cheat the other, and it resulted, as I once before said, in defrauding both. The Democratic majority in the House of Representatives at that time never would have consented to the creation of that tribunal had they not supposed that the fifteenth member of the commission, under the provisions of that statute, was in favor of the election of Samuel J. Tilden. We all know the providential interposition by which that great and good man 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 bench of the Supreme Court to the Senate of the United States 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 measure and renouncing the Presidency, but I venture to say that could they have foreseen in December, 1876, 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 Representatives in the enactment of the electoral commission bill. It was a fatal 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 Commission.

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 that we may adopt now or at any time can in any manner whatever bind 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 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 constituent bodies of the powers that they possess and which they are directed to exercise under and by virtue of the twelfth article of the amendments to the Constitution.

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. That officer must decide this question for himself; and, although I disapproved the declaration made by the Senator from Vermont [Mr. EDMUNDS] in his capacity as President *pro tempore* of this body in February last, although I believe it was an unnecessary act of renunciation on behalf of the Senate, a practical abdication of a power that might reasonably be inferred to belong to this body or to its presiding officer, and which many believed did so belong to it, I admit that he had the right to make it, because the duty was 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.

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 competent authority, that the phrase "the vote shall then 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 votes, having the right to open them, had also 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 pernicious 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 Alabama [Mr. MORGAN] on a previous day speak, I thought with something like idolatry, of the wisdom of the framers of this Government in the devices that they had contrived for determining the election of President and Vice-President, and he warned us with something of pathetic admonition against the dangers, the sacrilege, the impiety of venturing to offer any amendment to this system that was so near the perfection of human wisdom. Mr. President, the memory of those great men who formed our Constitution is venerated and revered. They made a sublime innovation in government that has formed an epoch in the upward progress of the human race. They had no precedents for their experiment, whose success has been one of the great wonders and marvels of the politics of the world. But they were human, and if their statesmanship and their wisdom has no stronger foundation on which to rest than the contrivance they devised for electing a President and Vice-President of the United States and determining the questions arising thereunder, the tenure, the succession by inheritance, the question of inability, then, sir, their reputation rests upon a very fragile and insecure and insubstantial foundation, for public attention can not be too frequently nor too forcibly directed to the dangers which threaten not only the peace but the perpetuity of this Government from the defective and uncertain state of the law governing the question of Presidential elections, succession, and inheritance.

Twice already in our brief history, once in 1801 by the possible failure to elect a President at all, and again in 1877 by the possible failure to determine the result of a disputed Presidential election before the close of the preceding term, we have been brought to the very verge and brink of revolution. The first crisis resulted in what is now known as the twelfth article of amendments to the Constitution, and the second, as I have before said, was averted by the invention of the Electoral Commission, which had no precedent and will have no successor.

In further illustration of the organic defects in the Constitution on this general subject, let me refer for a moment to the condition of the law upon the question of Presidential inability. In case of the removal, resignation, death, or inability of the President the Vice-President is to succeed to the powers and duties of that office. Who is to decide when inability 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 inability 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 inability of President Garfield was absolute under the Constitution in the full meaning of that term? He was sequestered for eighty days, in a seclusion as silent as the tomb to which he was so soon to be consigned. He was as incapable of performing any executive act as his marble effigy in the Hall of Statues, that is to transmit to posterity 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. Here was a case of absolute inability under the Constitution. The event contemplated by the Constitution had occurred. And I believe that under that instrument, when James A. Garfield sank to the floor of the railroad station penetrated by the bullet of the assassin, the powers and duties of the Presidential office devolved, under the Constitution, upon Chester A. Arthur. Fortunately, sir, difficulty was averted. The world was at peace. The composure 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 had there 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 in the body of James A. Garfield would have precipitated a convulsion in our politics that would have been pregnant with unknown disasters and perils to the Republic.

One thing further, sir:

> The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

As has been observed, the silence as to the person, or the body, or the tribunal by whom that computation is to be made is absolute. It is left entirely to inference, to be decided by the persons upon whom that duty may devolve under the Constitution. It can not be made any more certain, it can not be made any more positive, nor can it be abrogated or removed by anything that we can do in the premises; and we can pass 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 may next 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 Representative shall choose immediately, by ballot, the 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 heretofore? Take the case of 1877. Supposing there had been no Electoral Commission, if those certificates had been opened, if the votes 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 three candidates on the list were those having the highest votes, and 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, to bridge over apparent difficulties, 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 adopting some system that shall remove the perils in which it is now environed.

A casual survey of the debates in the convention which formed our Constitution discloses a singular condition of doubt and uncertainty upon this subject. No less than ten methods of choosing a President were 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 before 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 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 a pope, and then in the deliberations of their councils canvass 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 parties were organized and a Presidential caucus was held, and from that time to this the electoral system has been *débris;* it is rubbish. 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 they were deprived 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 these 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 unalterably 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, to plaster over its deformities, by any means of 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 their 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 this 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 inevitably in giving the result of that election in favor of the 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 the Republicans and one, Cronin, I think was the name, was declared to have been chosen by the Democrats, and thereupon 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. INGALLS. The certificate of the governor of Oregon was that two of those electors were chosen by the Republicans and one was chosen 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 so far as a statute could have any effect on this subject at all in a similar case there would be no possibility on the part of the tribunal passing upon these matters to review that decision, then I should like to hear what the Senator from Massachusetts has to say by way of explanation; 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, pregnant with such momentous consequences, I am very sure that he will not feel that I have been wanting in any respect to him in moving to recommit this bill.

Mr. EVARTS. Mr. President, I propose to offer a few remarks upon the matter now before the Senate, but at this hour 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 go on to-morrow.

Mr. HOAR. If the Senator from New York will yield to me for one moment I will move an executive session, but I wish to say one word before moving 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 Congress. It confers no authority whatever in the letter of the Constitution 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 anybody be supposed to be within the legislative power, by looking at what the Constitution is supposed to have meant rather than at its letter, then unquestionably the bill covers that case, not as the Senator supposes the case of dying after the election and before the 4th of March, because if after election and before the ascertainment of the result here on the second Wednesday of February the two persons die, we find that no living person has been elected and the House of Representatives would proceed to exercise its constitutional functions. But it is true that if between the middle of February and the 4th of March 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 of course 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 hope it will happen next time.

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 Jefferson; when Monroe succeeded Madison; 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, the possibility of imposing the Presidential office on an officer who all the time has to be presiding in the Senate or the House, and in providing this new and vast security for the life of the President of the United States which is to attend him through the whole four years, we were prevented by a difficulty absolutely insuperable from providing for a possible contingency which may happen within the space of ten days, but which will not happen once in ten thousand years. That is the whole of that criticism.

Mr. INGALLS. Mr. President, I supported the bill to which reference has been made believing it to be just in that it retained as far as possible in the hands of the party to whom the people had confided power executive functions during the constitutional term for which the President was elected; and I thought it was wise also because to that extent it removed the danger of a disputed Presidential succession, which is always so fatal to the repose and peace of this country. But still I think the criticism that I made is justified by the observations the Senator has just made. He admits that between the middle of February and the 4th of March in case of the exigency or emergency occurring which has been defined the result follows, the outgoing Secretary of State would exercise executive functions for the ensuing four

years. He justifies the bill by saying that the period is so brief, the *interim* is so short that probably it never will occur; but the fatalities of the past twenty years have familiarized the public mind with the dangers that attend this subject. The people of this country are no longer prepared to disregard death as a factor in the great dramas of political supremacy in this country, and I therefore think that in leaving this crevice, this fissure, there has been a fatal defect in the bill. It is like the little pin that bores through the castle wall, and then farewell king. Of course if a President does not die and if a Vice-President does not die, then there will be no difficulty; but inasmuch as Presidents and Vice-Presidents are mortal, and as no one can tell when fatalities may occur, the difficulty to which I have referred is one that exists, and to that extent justifies the observations that I have made.

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

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After one hour and twenty-four minutes spent in executive session the doors were reopened, and (at 5 o'clock and 50 minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

MONDAY, *February* 1, 1886.

The House met at 12 o'clock m. Prayer by the Chaplain, Rev. W. H. MILBURN, D. D.

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

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES.

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

To the Senate and House of Representatives:

I transmit herewith a communication of the 25th instant from the Secretary of the Interior, submitting, with accompanying papers, a draught of a proposed amendment to the first section of the act ratifying an agreement with the Crow Indians in Montana, approved March 11, 1882, requested by said Indians for the purpose of increasing the amount of the annual payments under said agreement and reducing the number thereof, in order that sufficient means may be provided for establishing them on their individual allotments. The matter is presented for the consideration and action of Congress.

GROVER CLEVELAND.

EXECUTIVE MANSION, *January* 28, 1886.

LEAVE OF ABSENCE.

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

To Mr. SMALLS, for ten days, on account of important business.

To Mr. WARNER, of Ohio, for four days.

To Mr. IKE H. TAYLOR, indefinitely, on account of important business.

To Mr. CABELL, of West Virginia, for four days from Tuesday next, on account of important business.

To Mr. GIBSON, of West Virginia, for this day, on account of important business.

WITHDRAWAL OF PAPERS.

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.

QUESTION OF PRIVILEGE.

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 TELEPHONE SCANDAL.

The Hartford Times does not help the Democratic party by its plea in justification of the Pan-Electric Telephone stock ownership, any more than it disturbs The World by attributing its exposure and condemnation of the unfortunate business to a desire to create a sensation.

No plainer or more regrettable duty has ever been imposed upon The World than that of censuring the Attorney-General and other public men—in whose honor and integrity we have had the utmost confidence—for their association with this enterprise.

Mr. BRECKINRIDGE, of Arkansas. Mr. Speaker, I rise to a point of order.

The SPEAKER. The gentleman will state his point of order.

Mr. BRECKINRIDGE, of Arkansas. My point is that this matter the Clerk is reading does not raise a question of privilege.

The SPEAKER. The Chair does not yet know the contents of the paper. It may be that it contains some reflection upon the gentleman from Kansas [Mr. HANBACK] in his representative capacity. If so, it would be a proper basis for a question of privilege.

Mr. BRECKINRIDGE, of Arkansas. But, Mr. Speaker, ought not the gentleman first to state his question of privilege before he introduces a paper to be read?

The SPEAKER. The Chair supposes that the gentleman desires to have this paper read as the basis of his remarks. As soon as the paper is read or its substance stated the Chair can tell whether it involves a question of privilege or not.

Mr. BRECKINRIDGE, of Arkansas. But I insist, Mr. Speaker, upon my point of order, that the gentleman must first state his question of privilege. He has not stated it.

The SPEAKER. The Chair thinks the practice has been for a gentleman who rises to a question of privilege and asks to have a paper read to at least state that there is something in the paper which involves a question of that character. The Chair does not yet know what is contained in the paper which the gentleman from Kansas [Mr. HANBACK] has sent to the desk.

Mr. HANBACK. Mr. Speaker, am I entitled to have my question of privilege presented to the House now?

The SPEAKER. The Chair desires the gentleman from Kansas [Mr. HANBACK] to state whether or not there is anything in this paper which in his judgment involves a question of personal privilege on 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 after the 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 involved, so far as the Chair can see.

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

Mr. BRECKINRIDGE, of Arkansas. 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 [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 House, and upon that ground, as one of the members of this body, entitled to the highest privilege, I ask that the article be read.

The SPEAKER. The gentleman from Kansas states that this article, as he understands it, reflects upon the House of Representatives itself, and he raises this 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 should so rule. From the paper itself this proposition must appear. If there is nothing in the paper itself to show it matter of privilege, no ingenuity can torture it into such. So I submit that the Speaker of this House ought to judge before the article is read, and without allowing it to go into the RECORD, whether or not there is a question of personal privilege presented.

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 so well said. I submit 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