HOUSE OF REPRESENTATIVES.

WEDNESDAY, *January* 29, 1890.

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

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

USELESS PAPERS, TREASURY DEPARTMENT.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, recommending legislation relative to the disposition of useless papers in the files of the Treasury Department; which was referred to the Committee on Expenditures in the Treasury Department, and ordered to be printed.

BUILDINGS FOR GARRISON PURPOSES.

The SPEAKER also laid before the House a letter from the Secretary of the Treasury, transmitting an estimate from the Secretary of the Interior of appropriations for buildings for garrison purposes; which was referred to the Committee on Military Affairs, and ordered to be printed.

EXPENSES ELEVENTH CENSUS.

The SPEAKER also laid before the House a letter from the Secretary of the Treasury, transmitting an estimate from the Secretary of the Interior of appropriations for expenses of the Eleventh Census; which was referred to the Committee on Appropriations, and ordered to be printed.

FORT MYER, VIRGINIA.

The SPEAKER also laid before the House a letter from the Secretary of the Treasury, transmitting an estimate from the Secretary of War of appropriations for Fort Myer military post, Virginia; which was referred to the Committee on Military Affairs, and ordered to be printed.

APPROACHES OF MARINE HOSPITAL, CHICAGO.

The SPEAKER also laid before the House a letter from the Secretary of the Treasury, recommending an appropriation for the completion of approaches to the United States marine hospital at Chicago, Ill., in excess of the annual estimate; which was referred to the Committee on Appropriations, and ordered to be printed.

MILITARY ACADEMY.

The SPEAKER also laid before the House a letter from the Secretary of the Treasury, transmitting an estimate from the Secretary of War of appropriations for the Military Academy; which was referred to the Committee on Military Affairs, and ordered to be printed.

CHANGES OF REFERENCE.

On motion of Mr. LAIDLAW, by unanimous consent, the Committee on Claims was discharged from the further consideration of the joint resolution (S. 28) for the relief of the Venezuelan Steam Transportation Company, and the same was referred to the Committee on Foreign Affairs.

On motion of Mr. CUTCHEON, the Committee on Military Affairs was discharged from the further consideration of bills of the following titles; which were referred as follows, namely:

The bill (H. R. 1257) to remove the charge of desertion against Richard Weller and authorize his honorable discharge—to the Committee on Naval Affairs.

The bill (H. R. 3811) to provide for the sale of Fort Sedgwick military reservation, in the States of Colorado and Nebraska, to actual settlers—to the Committee on the Public Lands.

On motion of Mr. CUTCHEON, the Committee on Military Affairs was also discharged from the further consideration of communications of the following titles; which were referred to the Committee on Appropriations, namely:

A letter from the Secretary of War, recommending the passage of the bill amendatory of the act of March 3, 1889, relative to the burial of indigent ex-Union soldiers who died in the District of Columbia; and

A letter from the Secretary of War, transmitting a report submitted by the Major-General commanding the Army, recommending legislation authorizing the purchase abroad of certain instruments necessary in heavy-artillery practice.

D. C. STITH.

Mr. EZRA B. TAYLOR. Mr. Speaker, I am directed by the Committee on the Judiciary to report back favorably the bill (H. R. 5181) to remove the political disabilities of D. C. Stith, a citizen of Texas, and I desire action upon it at the present time.

The SPEAKER. The bill will be read.

The bill is as follows:

Be it enacted, etc., That all legal and political disabilities imposed by the fourteenth amendment of the Constitution of the United States by participation in the late rebellion be, and the same are hereby, removed from D. C. Stith, a citizen of the State of Texas.

Mr. EZRA B. TAYLOR. The committee recommend the striking out of the words "legal and;" so it will read "that all political disabilities," etc.

The amendment was agreed to.

The bill as amended was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed, two-thirds voting in favor thereof.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. MCCOOK, its Secretary, announced the passage of bills of the following titles; in which concurrence was requested:

A bill (S. 3) to release the Treasurer of the United States from the amount now charged to him and deposited with the several States;

A bill (S. 4) authorizing the establishing of a public park in the District of Columbia;

A bill (S. 172) to credit and pay to the several States and Territories and the District of Columbia all moneys collected under the direct tax levied by act of Congress approved August 5, 1861;

A bill (S. 209) to authorize the Secretary of War to cause to be mustered William P. Atwell;

A bill (S. 230) for the relief of the heirs of Charles B. Smith, deceased; and

A bill (S. 1397) to aid the State of Colorado to support a school of mines.

EQUALIZATION OF GRADES OF OFFICERS, MARINE CORPS.

Mr. RUSK, by unanimous consent, introduced a bill (H. R. 6102) to equalize the grades of officers in the Marine Corps; which was read a first and second time, referred to the Committee on Naval Affairs, and ordered to be printed.

JUNIOR OFFICERS, NAVY.

Mr. RUSK, by unanimous consent, also introduced a bill (H. R. 6103) for the relief of junior officers of the Navy; which was read a first and second time, referred to the Committee on Naval Affairs, and ordered to be printed.

ADDITIONAL LAND DISTRICTS, COLORADO.

Mr. PAYSON. Mr. Speaker, I am directed by the Committee on the Public Lands to report back favorably the bill (S. 1098) to establish additional land districts in the State of Colorado, and ask its immediate consideration.

The SPEAKER. The Clerk will report the bill.

The bill was read, as follows:

Be it enacted, etc., That all that portion of the State of Colorado bounded and described as follows: Commencing at the northeast corner of the State of Colorado; thence west along the north boundary line of said State to a point at the intersection of said line with the west line of range 59 west; thence south along said west line of said range to its intersection with the first corrected line north in said State of Colorado; thence east along said first corrected line north to the eastern boundary line of said State of Colorado; thence north along the eastern boundary line of said State to the place of beginning, be, and is hereby, constituted a new land district, to be called the Sterling land district.

SEC. 2. That all that portion of the State of Colorado bounded and described as follows: Beginning at the point where the first corrected line north in the said State intersects the eastern boundary line thereof; thence west along said corrected line north to its intersection with the seventh guide meridian west in said State; thence south along said seventh guide meridian to the point of its intersection with the first corrected line south in said State; thence east along said first corrected line to the point of its intersection with the eastern boundary line of said State; thence north along said eastern boundary line of said State to the place of beginning, be, and is hereby, constituted a new land district, to be called the Akron land district.

SEC. 3. That all that portion of the State of Colorado lying east of the seventh guide meridian west, south of the first corrected line south, and north of the third corrected line south, be, and is, constituted a new land district.

SEC. 4. That the President shall designate the place in each district at which the land office for that district shall be located.

SEC. 5. That the President, by and with the advice and consent of the Senate, is hereby authorized to appoint a register and a receiver for each of the said land districts hereby created, who shall discharge like and similar duties and receive the some amount of compensation therefor as other officers discharging like duties in the said land offices of the State of Colorado; and said land districts shall be subjected, as other land districts are, under the laws, to be changed or consolidated with any other district or districts, and the land offices may be changed to any other location by order of the President.

The SPEAKER. The question is upon the engrossment of the bill for a third reading.

Mr. HOLMAN. Mr. Speaker, is this measure before the House for consideration?

The SPEAKER. It is before the House for consideration; and the Chair understands that there is public necessity for it, which the gentleman from Illinois [Mr. PAYSON] will explain.

Mr. HOLMAN. It is not subject to the point of order that it should be considered in Committee of the Whole?

The SPEAKER. It is not subject to the point of order. That has been decided by the House.

Mr. PAYSON. I desire to say that the bill is regarded as an urgent one by the Secretary of the Interior, and also by the Commissioner of the General Land Office. Its urgency is manifested by very many letters from settlers upon the public lands in that portion of the Union.

I do not know whether the map which I hold in my hand will be apparent to the gentleman from Indiana. These three districts comprise nearly one-third of the State of Colorado on its eastern side. The land office to which all settlers must go under existing law is at present at Denver, which is situated from some portions of the district nearly 225 miles. It has been deemed desirable for settlers and those going on the public lands to give them the facilities which will be afforded by the passage of this bill. No expense is involved further than the salaries of the office, except the preparation of the tract books for each district; and we are assured by the Commissioner of the General Land Office that that can be done at a trifling expense. There has been an urgent

demand for the last two years for the passage of this bill, and the Committee on Public Lands, and all were present except the gentleman from Indiana [Mr. HOLMAN] and one other member, recommended the passage of the Senate bill.

Mr. HOLMAN. This bill, I believe, creates two land offices.

Mr. PAYSON. Three.

Mr. HOLMAN. Three! I wish to say a word in regard to the bill. A proposition was made during the last Congress to create two land districts in that portion of the State of Colorado. My recollection is that the Commissioner of the General Land Office, and perhaps the Secretary of the Interior, recommended that the bill should not pass. There were remonstrances against the passage of the bill even to create the two additional land offices; and it was shown, I think abundantly, that the land office at Denver would furnish better facilities for the entering of public lands than would be really furnished if two new land offices were established and that no public reason existed for additional land offices in that part of Colorado.

There is no necessity whatever for a party desiring to enter the public lands to go to the land office except for a single purpose; slight additional and very proper legislation would remove all necessity for his attending at the land office at all; and even now the most that he has to do in perfecting his entry can be done at the county seat of the county in which he lives. So that the creation of these additional land offices, at an expense of some $2,000 each per annum, in the absence of a real necessity, I think, ought not to be allowed. There are pending bills for the creation of land offices in all sections of the country where there are public lands remaining, and there is remonstrance after remonstrance against the creation of these additional land offices, the creation of some of which will be an actual source of inconvenience instead of a benefit to the settler.

I take it for granted, however, the bill not being subject to the point of order that it shall receive its first consideration in Committee of the Whole and subject to the previous question whenever I shall yield the floor, it will be passed, and it will be followed, I fear, by an army of bills of the same kind, notwithstanding the prudence and conservative policy of the gentleman at the head of the Public Lands Committee [Mr. PAYSON]. Yet I venture to say that the statement made to the House last Congress that these land offices were not necessary will be found in practice to be correct. I regret very much that there is to be such a large increase of the land offices under the impression that it will be beneficial to the settler. I think the evidence is to the contrary. The facts submitted to the House and to the Committee on Public Lands last session tend thoroughly to show that the interests of the settlers are not promoted by this multiplying of land offices.

Mr. PAYSON. On the question of expense attending the administration of the business at these new land offices spoken of by the gentleman from Indiana as following their creation, I would say that every dollar of the expense and the salaries is paid out of the fees that are paid by the patrons of the office, with the exception of the preparation of the tract book, which expense is very inconsiderable, as we are advised by the General Land Office.

And, secondly, as to the protests against the establishment of these and other land offices which have been proposed, almost universally the protests come from the patrons of or inhabitants of the locality where the present land office is located or from rival towns to those at which it is proposed to establish them. That is true in almost every instance which has come under my observation.

Now, as to one of the counties which is involved in these districts—the county of Arapahoe, in Colorado. It is 150 miles across that county, and it goes without saying that the settler who goes upon the public lands in the eastern part of that county ought to be afforded such facilities as can be given by having the land office within a reasonable proximity to his new home, especially where he pays the expense.

Mr. HOLMAN. I hope my colleague will allow me a couple of questions.

Mr. PAYSON. Certainly.

Mr. OATES. We can not hear what is being said.

The SPEAKER. The House will come to order. Gentlemen will take their seats and cease conversation.

Mr. HOLMAN. Mr. Speaker, the question which I wish to ask my friend from Illinois is, whether it is not correct that the Committee on Public Lands has been informed by the General Land Office that the cost of establishing a land office and keeping it up is about $2,000 a year?

Mr. PAYSON. From one to two thousand dollars a year.

Mr. HOLMAN. The statement made, I think, by the Commissioner of the General Land Office was that it was $2,000 or along about that. The second question I desire to ask is, whether we would not get rid of the difficulty by a single enactment, and whether it would not be to the public interest that all papers required to be executed in connection with entering public lands and the final proof might be made before the clerk of a court of record in a county in which the lands are located.

Mr. PAYSON. I agree with the gentleman from Indiana that that would be a very excellent proposition in law; but the trouble is that it is not the law now, and the settlers who go upon the public lands are compelled under existing law to transact their business with the register and receiver.

Mr. HOLMAN. To make up final proof.

Mr. PAYSON. And to make out the declaration.

Mr. HOLMAN. Would it not be far better to make that slight amendment to the law and to enable the settler to transact his business at the county seat of the county in which the lands are situated?

Mr. PAYSON. As an amendment to the law, that would do, but it would not obviate the difficulty that is presented as to the necessity of having a land office that is reasonably convenient to the settlers on the public lands for the transaction of such business as necessarily calls them there. As I intimated when I had the floor before, the business of the Denver land office is nearly four years behind. Owing to the large number of entries made upon the public lands in that part of the Union the business has accumulated to such an extent and the office has got so far behind that in the case of any entry or contest no one can say when, under existing conditions, it will be reached. As I stated at the outset, the Commissioner of the General Land Office and the Secretary of the Interior earnestly recommend the passage of this bill, and I move the previous question upon its third reading.

The previous question was ordered.

The bill was ordered to a third reading; and it was accordingly read the third time.

The question was taken on the passage of the bill; and the Speaker declared that the ayes seemed to have it.

Mr. HOLMAN. I ask for a division.

The House divided; and there were—ayes 116, noes 74.

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

The yeas and nays were ordered.

The question was taken; and it was decided in the affirmative—yeas 187, nays 98, not voting 43; as follows:

YEAS—187.

Adams,	Cummings,	Lacey,	Rowell,
Allen, Mich.	Cutcheon,	La Follette,	Rusk,
Anderson, Kans.	Dalzell,	Laidlaw,	Russell,
Andrew,	Dargan,	Lansing,	Sawyer,
Arnold,	Darlington,	Lawler,	Scranton,
Atkinson,	De Haven,	Laws,	Scull,
Baker,	De Lano,	Lehlbach,	Sherman,
Banks,	Dingley,	Lind,	Shively,
Bartine,	Dolliver,	Lodge,	Simonds,
Bayne,	Dorsey,	Mason,	Smith,
Beckwith,	Dunnell,	McCarthy,	Smyser,
Belden,	Dunphy,	McComas,	Snider,
Belknap,	Elliott,	McCord,	Spinola,
Bergen,	Evans,	McKenna,	Spooner,
Bingham,	Ewart,	McKinley,	Springer,
Bland,	Farquhar,	McRae,	Stephenson,
Bliss,	Flick,	Miles,	Stewart, Vt.
Boatner,	Flood,	Milliken,	Stivers,
Boothman,	Flower,	Moffitt,	Stockbridge,
Boutelle,	Frank,	Moore, N. H.	Stockdale,
Bowden,	Gear,	Morey,	Stone, Mo.
Brewer,	Geissenhainer,	Morgan,	Struble,
Brosius,	Gest,	Morrill,	Tarsney,
Brower,	Gifford,	Morrow,	Taylor, Ill.
Browne, Va.	Greenhalge,	Morse,	Taylor, Tenn.
Buchanan, N. J.	Grimes,	Niedringhaus,	Taylor, E. B.
Burrows,	Grout,	Nute,	Taylor, J. D.
Burton,	Hall,	O'Neill, Pa.	Thomas,
Butterworth,	Hansbrough,	Osborne,	Thompson,
Caldwell,	Harmer,	Owen, Ind.	Tillman,
Candler, Mass.	Haugen,	Parrett,	Townsend, Colo.
Cannon,	Hayes,	Payne,	Townsend, Pa.
Carter,	Heard,	Payson,	Turner, Kans.
Cate,	Hemphill,	Pendleton,	Vandever,
Cheadle,	Henderson, Ill.	Perkins,	Van Schaick,
Cheatham,	Henderson, Iowa	Pickler,	Wade,
Clark, Wis.	Hermann,	Post,	Walker, Mass.
Coleman,	Hill,	Pugsley,	Walker, Mo.
Comstock,	Hitt,	Quackenbush,	Wallace, Mass.
Conger,	Hopkins,	Quinn,	Wallace, N. Y.
Connell,	Houk,	Raines,	Watson,
Cooper, Ohio	Kelley,	Randall, Mass.	Wheeler, Mich.
Covert,	Kennedy,	Ray,	Williams, Ohio
Craig,	Kerr, Iowa	Reed, Iowa	Wilson, Ky.
Crain,	Ketcham,	Rife,	Wright,
Culberson, Tex.	Kinsey,	Robertson,	Yardley.
Culbertson, Pa.	Knapp,	Rogers,	

NAYS—98.

Abbott,	Cobb,	Lee,	Price,
Alderson,	Cooper, Ind.	Lester, Va.	Rowland,
Allen, Miss.	Cothran,	Lewis,	Sayers,
Anderson, Miss.	Cowles,	Mansur,	Seney,
Barnes,	Crisp,	Martin, Ind.	Skinner,
Barwig,	Davidson,	Martin, Tex.	Stahlnecker,
Blanchard,	Dibble,	McAdoo,	Stewart, Ga.
Blount,	Dockery,	McClammy,	Stewart, Tex.
Breckinridge, Ark.	Edmunds,	McClellan,	Stone, Ky.
Breckinridge, Ky.	Ellis,	McCreary,	Stump,
Brickner,	Enloe,	McMillin,	Tracey,
Brookshire,	Fithian,	Montgomery,	Turner, Ga.
Brunner,	Forman,	Moore, Tex.	Turner, N. Y.
Buchanan, Va.	Fowler,	Mutchler,	Venable,
Bunn,	Goodnight,	Norton,	Wheeler, Ala.
Bynum,	Hare,	Oates,	Whiting,
Candler, Ga.	Haynes,	O'Ferrall,	Wike,
Carlisle,	Herbert,	O'Neil, Mass.	Willcox,
Carlton,	Holman,	Outhwaite,	Williams, Ill.
Caruth,	Hooker,	Owens, Ohio	Wilson, Mo.
Catchings,	Jackson,	Paynter,	Wilson, W. Va.
Chipman,	Kerr, Pa.	Peel,	Wise,
Clancy,	Kilgore,	Penington,	Yoder.
Clarke, Ala.	Lane,	Perry,	
Clements,	Lanham,	Pierce,	

NOT VOTING—43.

Bankhead,	Finley,	McCormick,	Sweney,
Biggs,	Fitch,	Mills,	Tucker,
Browne, T. M.	Forney,	O'Donnell,	Turpin,
Brown, J. B.	Funston,	O'Neall, Ind.	Washington,
Buckalew,	Gibson,	Peters,	Wilkinson,
Bullock,	Grosvenor,	Phelan,	Whitthorne,
Campbell,	Hatch,	Randall, Pa.	Wickham,
Caswell,	Henderson, N. C.	Reilly,	Wilber,
Clunie,	Lester, Ga.	Richardson,	Wiley,
Cogswell,	Magner,	Rockwell,	Wilson, Wash.
Compton,	Maish,	Sanford,	

So the bill was passed.

The following-named members were announced as paired until further notice:

Mr. WILBER with Mr. RANDALL, of Pennsylvania.

Mr. FINLEY with Mr. BIGGS.

Mr. ROCKWELL with Mr. HATCH.

Mr. KNAPP with Mr. JASON B. BROWN.

Mr. BANKHEAD with Mr. O'DONNELL.

Mr. MILLS with Mr. COGSWELL.

Mr. ALLEN, of Michigan, and Mr. RICHARDSON were announced as paired for the remainder of this week.

Mr. THOMAS M. BROWNE and Mr. FORNEY were announced as paired on this vote.

Mr. MCCORMICK and Mr. FITCH were announced as paired for this day, except on the Smith-Jackson election case.

Mr. HENDERSON, of North Carolina, and Mr. GROSVENOR were announced as paired for this day.

Mr. KILGORE. Mr. Speaker, I wish to announce that my colleague, Mr. MILLS, is absent on account of sickness.

Mr. BYNUM. Mr. Speaker, my colleague, Mr. J. B. BROWN, is absent from the House on account of illness.

Mr. BLAND. I move to reconsider the vote by which the bill was passed.

Mr. PAYSON. And I move to lay that motion on the table.

Mr. BLAND. On that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and it was decided in the affirmative—yeas 181, nays 101, not voting 46; as follows:

YEAS—181.

Adams,	Crain,	Knapp,	Russell,
Andrew,	Culberson, Tex.	Lacey,	Sanford,
Arnold,	Culbertson, Pa.	Laidlaw,	Scranton,
Atkinson,	Cummings,	Lansing,	Scull,
Baker,	Cutcheon,	Lawler,	Simonds,
Banks,	Dalzell,	Laws,	Smith,
Bartine,	Dargan,	Lehlbach,	Smyser,
Bayne,	Darlington,	Lind,	Snider,
Beckwith,	De Haven,	Lodge,	Spooner,
Belden,	De Lano,	Mansur,	Springer,
Belknap,	Dingley,	McCarthy,	Stephenson,
Bergen,	Dolliver,	McComas,	Stewart, Vt.
Bingham,	Dorsey,	McKenna,	Stivers,
Bliss,	Dunnell,	McKinley,	Stockbridge,
Boatner,	Dunphy,	McRea,	Stockdale,
Boothman,	Elliott,	Miles,	Struble,
Boutelle,	Ewart,	Milliken,	Sweney,
Bowden,	Farquhar,	Moffitt,	Tarsney,
Brewer,	Finley,	Morey,	Taylor, Tenn.
Brosius,	Flick,	Morgan,	Taylor, Ill.
Brower,	Flood,	Morrill,	Taylor, J. D.
Browne, Va.	Flower,	Morrow,	Thomas,
Browne, T. M.	Frank,	Morse,	Thompson,
Buchanan, N. J.	Funston,	Niedringhaus,	Tillman,
Buckalew,	Gear,	Nute,	Townsend, Colo.
Burrows,	Geissenhainer,	O'Neill, Pa.	Townsend, Pa.
Burton,	Gest,	Osborne,	Tracey,
Butterworth,	Gifford,	Owen, Ind.	Turner, Kans.
Caldwell,	Greenhalge,	Parrett,	Vandever,
Candler, Mass.	Grimes,	Payne,	Van Schaick,
Cannon,	Grout,	Payson,	Wade,
Carter,	Hall,	Perkins,	Walker, Mass.
Cate,	Harmer,	Peters,	Walker, Mo.
Cheadle,	Haugen,	Pickler,	Wallace, Mass.
Cheatham,	Hayes,	Post,	Wallace, N. Y.
Chipman,	Henderson, Ill.	Pugsley,	Watson,
Clark, Wis.	Henderson, Iowa	Quackenbush,	Wheeler, Mich.
Cogswell,	Hill,	Quinn,	Wickham,
Coleman,	Hitt,	Randall, Mass.	Williams, Ohio
Compton,	Hopkins,	Ray,	Wilson, Ky.
Comstock.	Houk,	Reed, Iowa	Wilson, Wash.
Conger,	Kelley,	Rife,	Wright,
Connell,	Kennedy,	Robertson,	Yardley.
Cooper, Ohio	Kerr, Iowa	Rogers,	
Covert,	Ketcham,	Rowell,	
Craig,	Kinsey,	Rusk,	

NAYS—101.

Abbott,	Buchanan, Va.	Crisp,	Hermann.
Alderson,	Bullock,	Davidson,	Holman,
Allen, Miss.	Bunn,	Dibble,	Hooker,
Anderson, Miss.	Bynum,	Dockery,	Jackson,
Bankhead,	Candler, Ga.	Edmunds,	Kerr, Pa.
Barnes,	Carlisle,	Ellis,	Kilgore,
Barwig,	Carlton,	Enloe,	Lanham,
Blanchard,	Caruth,	Fithian,	Lee,
Bland,	Clancy,	Forman,	Lester, Ga.
Blount,	Clarke, Ala.	Fowler,	Lester, Va.
Breckinridge, Ark.	Clements,	Goodnight,	Maish,
Breckinridge, Ky.	Cobb,	Hare,	Martin, Ind.
Brickner,	Cooper, Ind.	Haynes,	Martin, Tex.
Brookshire,	Cothran,	Hemphill,	McAdoo,
Brunner,	Cowles,	Herbert.	McClammy,
McClellan,	Owens, Ohio	Skinner,	Wike,
McCreary,	Paynter,	Stahlnecker,	Wilkinson,
McMillin,	Peel,	Stewart, Tex.	Willcox,
Montgomery,	Penington,	Stewart, Ga.	Williams, Ill.
Moore, Tex.	Perry,	Stone, Ky.	Wilson, Mo.
Mutchler,	Pierce,	Stump,	Wilson, W. Va.
Norton,	Price,	Turner, Ga.	Wise,
Oates,	Reilly,	Turner, N. Y.	Yoder.
O'Ferrall,	Rowland,	Venable,	
O'Neil, Mass.	Sayers,	Wheeler, Ala.	
Outhwaite,	Seney,	Whiting,	

NOT VOTING—46.

Allen, Mich.	Grosvenor,	Mills,	Shively,
Anderson, Kans.	Hansbrough,	Moore, N. H.	Spinola,
Biggs,	Hatch,	O'Donnell,	Stone, Mo.
Brown, J. B.	Heard,	O'Neall, Ind.	Taylor, E. B.
Campbell,	Henderson, N. C.	Pendleton,	Tucker,
Caswell,	La Follette,	Phelan,	Turpin,
Catchings,	Lane,	Raines,	Washington,
Clunie,	Lewis,	Randall, Pa.	Whitthorne,
Evans,	Magner,	Richardson,	Wilber,
Fitch,	Mason,	Rockwell,	Wiley.
Forney,	McCord,	Sawyer,	
Gibson,	McCormack,	Sherman,	

So the motion to reconsider was laid on the table.

The following additional pairs were announced:

Mr. MCCORD with Mr. SHIVELY, for this day.

Mr. O'DONNELL with Mr. FORNEY, until further notice.

The result of the vote was announced as above stated.

ELECTION CONTEST—SMITH VS. JACKSON.

Mr. DALZELL. By the direction of the Committee on Elections, I offer the resolution which I send to the desk, and ask the immediate consideration of the election case of Smith *vs.* Jackson.

Mr. CRISP. I understand the gentleman from Pennsylvania [Mr. DALZELL] to call up the contested-election case of Smith *vs.* Jackson.

Mr. DALZELL. Yes, sir.

Mr. CRISP. I raise the question of consideration against that.

The SPEAKER. The Clerk will read the resolution.

The Clerk read as follows:

Resolved, That James M. Jackson was not elected as a Representative to the Fifty-first Congress from the Fourth Congressional district of West Virginia, and is not entitled to the seat; and

Resolved, That Charles B. Smith was duly elected a Representative from the Fourth Congressional district of West Virginia to the Fifty-first Congress, and is entitled to his seat.

The SPEAKER. Against this resolution the gentleman from Georgia [Mr. CRISP] raises the question of consideration. The question before the House is, Will the House consider the resolution?

The SPEAKER (having put the question) said: The "ayes" seem to have it.

Mr. CRISP. I call for a division.

The question being again taken, there were—ayes 136, noes 124.

Mr. CRISP. I demand the yeas and nays.

The question having been put on ordering the yeas and nays,

The SPEAKER said: In the opinion of the Chair, there is a sufficient number; the yeas and nays are ordered.

The question was taken; and there were—yeas 162, nays 3, not voting 163; as follows:

YEAS—162.

Adams,	Culbertson, Pa.	Laidlaw,	Sanford,
Allen, Mich.	Cutcheon,	Lansing,	Sawyer,
Anderson, Kans.	Dalzell,	Laws,	Scranton,
Arnold,	Darlington,	Lehlbach,	Scull,
Atkinson,	De Haven,	Lind,	Sherman,
Baker,	De Lano,	Lodge,	Simonds,
Banks,	Dingley,	Mason,	Smith,
Barton,	Dolliver,	McComas,	Smyser,
Bayne,	Dorsey,	McCord,	Snider,
Beckwith,	Dunnell,	McCormick,	Spooner,
Belden,	Evans,	McKenna,	Stephenson,
Belknap,	Ewart,	McKinley,	Stewart, Vt.
Bergen,	Farquhar,	Miles,	Stivers,
Bingham,	Finley,	Milliken,	Stockbridge,
Bliss,	Flick,	Moffitt,	Struble,
Boothman,	Flood,	Moore, N. H.	Sweney,
Boutelle,	Frank,	Morey,	Taylor, Tenn.
Bowden,	Funston,	Morrill,	Taylor, Ill.
Brewer,	Gear,	Morrow,	Taylor, Ezra B.
Brosius,	Gest,	Morse,	Taylor, Joseph D.
Brower,	Gifford,	Niedringhaus,	Thomas,
Browne, Va.	Greenhalge,	Nute,	Thompson,
Browne, T. M.	Grout,	O'Neill, Pa.	Townsend, Colo.
Buchanan, N. J.	Hall,	Osborne,	Townsend, Pa.
Burrows,	Harmer,	Owen, Ind.	Turner, Kans.
Burton,	Haugen,	Payne,	Vandever,
Butterworth,	Henderson, Ill.	Payson,	Van Schaick,
Caldwell,	Henderson, Iowa	Perkins,	Wade,
Candler, Mass.	Hermann,	Peters,	Walker, Mass.
Cannon,	Hill,	Pickler,	Wallace, Mass.
Carter,	Hitt,	Post,	Wallace, N. Y.
Cheadle,	Hopkins,	Pugsley,	Watson,
Cheatham,	Houk,	Quackenbush,	Wheeler, Mich.
Clark, Wis.	Kelley,	Raines,	Wickham,
Cogswell,	Kennedy,	Randall, Mass.	Williams, Ohio
Coleman,	Kerr, Iowa	Ray,	Wilson, Ky.
Comstock,	Ketcham,	Reed, Iowa	Wilson, Wash.
Conger,	Kinsey,	Rife,	Wright,
Connell,	Knapp,	Rogers,	Yardley.
Cooper, Ohio	Lacey,	Rowell,	
Craig,	La Follette,	Russell,	

NAYS—3.

Buckalew,	Covert,	Cowles.

NOT VOTING—163.

Abbott,	Crisp,	Lester, Ga.	Robertson,
Alderson,	Culberson, Tex.	Lester, Va.	Rockwell,
Allen, Miss.	Cummings,	Lewis,	Rowland,
Anderson, Miss.	Dargan,	Magner,	Rusk,
Andrew,	Davidson,	Maish,	Sayers,
Bankhead,	Dibble,	Mansur,	Seney,
Barnes,	Dockery,	Martin, Ind.	Shively,
Barwig,	Dunphy,	Martin, Tex.	Skinner,
Biggs,	Edmunds,	McAdoo,	Spinola,
Blanchard,	Elliott,	McCarthy,	Springer,
Bland,	Ellis,	McClammy,	Stahlnecker,
Blount,	Enloe,	McClellan,	Stewart, Ga.
Boatner,	Fitch,	McCreary,	Stewart, Tex.
Breckinridge, Ark.	Fithian,	McMillin,	Stockdale,
Breckinridge, Ky.	Flower,	McRae,	Stone, Ky.
Brickner,	Forman,	Mills,	Stone, Mo.
Brookshire,	Forney,	Montgomery,	Stump,
Brown, J. B.	Fowler,	Moore, Tex.	Tarsney,
Brunner,	Geissenhainer,	Morgan,	Tillman,
Buchanan, Va.	Gibson,	Mutchler,	Tracey,
Bullock,	Goodnight,	Norton,	Tucker,
Bunn,	Grimes,	Oates,	Turner, Ga.
Bynum,	Grosvenor,	O'Donnell,	Turner, N. Y.
Campbell,	Hansbrough,	O'Ferrall,	Turpin,
Candler, Ga.	Hare,	O'Neall, Ind.	Venable,
Carlisle,	Hatch,	O'Neil, Mass.	Walker, Mo.
Carlton,	Hayes,	Outhwaite,	Washington,
Caruth,	Haynes,	Owens, Ohio	Wheeler, Ala.
Caswell,	Heard,	Parrett,	Whiting,
Catchings,	Hemphill,	Paynter,	Whitthorne,
Cate,	Henderson, N. C.	Peel,	Wike,
Chipman,	Herbert,	Pendleton,	Wilber,
Clancy,	Holman,	Penington,	Wiley,
Clarke, Ala.	Hooker,	Perry,	Wilkinson,
Clements,	Jackson,	Phelan,	Willcox,
Clunie,	Kerr, Pa.	Pierce,	Williams, Ill.
Cobb,	Kilgore,	Price,	Wilson, Mo.
Compton,	Lane,	Quinn,	Wilson, W. Va.
Cooper, Ind.	Lanham,	Randall, Pa.	Wise,
Cothran,	Lawler,	Reilly,	Yoder.
Crain,	Lee,	Richardson,	

[The votes of Mr. COVERT and Mr. COWLES, who voted in the negative, and of Mr. ROGERS, who voted in the affirmative, were subsequently withdrawn, as will appear later in the proceedings.]

Mr. FINLEY (when his name was called) said: Mr. Speaker, I am paired, but I wish to vote "ay" with the view to making a quorum. In the event there is no quorum, I will withdraw my vote.

The roll-call having been concluded,

Several members whose names had not been recorded asked to vote, and, upon the Speaker directing their names to be called, they voted.

Mr. McCORD. Mr. Speaker, for this day I am paired with the gentleman from Indiana, Mr. SHIVELY, upon all questions except a quorum. I regard this as such a question, and therefore I vote "ay."

Mr. COWLES. I desire to withdraw my vote. I believe I am recorded as voting in the negative.

Mr. BAYNE. I object, Mr. Speaker.

Mr. TAYLOR, of Illinois, addressed the Chair.

The SPEAKER. The gentleman from Illinois.

Mr. COWLES. Does the Speaker rule on my request?

The SPEAKER. The gentleman's vote can not be withdrawn now. The gentleman from Illinois.

Mr. COWLES. I appeal from the decision of the Chair.

Mr. TAYLOR, of Illinois. I ask whether I am recorded as voting?

Mr. COWLES. Mr. Speaker——

The SPEAKER. The gentleman from Illinois is not recorded. The Clerk will call his name.

The name of Mr. TAYLOR, of Illinois, being called, he voted "ay."

Mr. ROGERS. I desire to withdraw my vote.

Mr. DALZELL, Mr. BAYNE, and others objected.

Mr. ROGERS. Does the Chair rule——

The SPEAKER. The Chair does not rule at all.

Mr. ROGERS. Then I direct the Clerk to take my name off.

Mr. DALZELL. The Clerk has no right to do it.

Mr. WILSON, of Washington, addressed the Chair.

The SPEAKER. The gentleman from Washington.

Mr. WILSON, of Washington. I desire to have my vote recorded.

The SPEAKER having directed the name of Mr. WILSON, of Washington, to be called, he voted "ay."

The SPEAKER. The Clerk will recapitulate the vote.

Mr. SWENEY. I raise a point of order upon the request of the gentleman on the other side, on the ground that it requires the consent of the House, or its affirmative action, to do what is termed correcting the record.

The SPEAKER. The gentleman will suspend for a moment. The Clerk will recapitulate the vote.

During the recapitulation of the vote by the Clerk the name of Mr. COWLES was called.

Mr. COWLES. Mr. Speaker, I desire to withdraw my vote.

Mr. FARQUHAR. I object.

Mr. COVERT (when his name was called). I desire to change my vote.

The SPEAKER. The gentleman from New York desires to change his vote.

Mr. COVERT. Let my name be called.

Mr. COVERT's name was called.

Mr. COVERT. I will vote later. [Laughter and applause on the Democratic side of the House.]

Mr. ROGERS. I see the Clerk still recapitulates my name. I ask to withdraw my vote.

The SPEAKER. The gentleman from Arkansas withdraws his vote.

Mr. COWLES. I desire to change my vote.

The SPEAKER. The gentleman wishes to withdraw it; perhaps that is the better way.

Mr. COWLES. I withdraw my vote.

The SPEAKER. On this question the yeas are 161, the nays 2.

Mr. CRISP. No quorum.

The SPEAKER. The Chair directs the Clerk to record the following names of members present and refusing to vote: [Applause on the Republican side.]

Mr. CRISP. I appeal—[applause on the Democratic side]—I appeal from the decision of the Chair.

The SPEAKER. Mr. BLANCHARD, Mr. BLAND, Mr. BLOUNT, Mr. BRECKINRIDGE, of Arkansas Mr. BRECKINRIDGE of Kentucky.

Mr. BRECKINRIDGE, of Kentucky. I deny the power of the Speaker and denounce it as revolutionary. [Applause on the Democratic side of the House, which was renewed several times.]

Mr. BLAND. Mr. Speaker—— [Applause on the Democratic side.]

The SPEAKER. The House will be in order.

Mr. BLAND. Mr. Speaker, I am responsible to my constituents for the way in which I vote, and not to the Speaker of this House. [Applause.]

The SPEAKER. Mr. BROOKSHIRE, Mr. BULLOCK, Mr. BYNUM, Mr. CARLISLE, Mr. CHIPMAN, Mr. CLEMENTS, Mr. CLUNIE, Mr. COMPTON.

Mr. COMPTON. I protest against the conduct of the Chair in calling my name.

The SPEAKER (proceeding). Mr. COVERT, Mr. CRISP, Mr. CULBERSON of Texas [hisses on the Democratic side], Mr. CUMMINGS, Mr. EDMUNDS, Mr. ENLOE, Mr. FITHIAN, Mr. GOODNIGHT, Mr. HARE, Mr. HATCH, Mr. HAYES.

Mr. HAYES. I appeal from any decision, so far as I am concerned.

The SPEAKER (continuing). Mr. HOLMAN, Mr. LAWLER, Mr. LEE, Mr. McADOO, Mr. McCREARY.

Mr. McCREARY. I deny your right, Mr. Speaker, to count me as present, and I desire to read from the parliamentary law on that subject.

The SPEAKER. The Chair is making a statement of the fact that the gentleman from Kentucky is present. Does he deny it? [Laughter and applause on the Republican side.]

Mr. McCREARY. The ruling of the Chair the other day contained the following statement [cries of "Order!"]:

This House, then, is governed by the general parliamentary law such as has been established in the same manner that the common law of England was established, by repeated decisions and the general acquiescence of the people in a system which governs all ordinary assemblies.

May's Parliamentary Practice states as follows:

A call is of little avail in taking the sense of the House, as there is no compulsory process by which members can be obliged to vote.

[Cries of "Order!" and applause.]

The SPEAKER. The gentlemen will be in order. [Laughter.] The Chair is proceeding in an orderly manner. [Renewed laughter and applause on the Republican side.] Mr. MONTGOMERY, Mr. MOORE, of Texas, Mr. MORGAN.

Mr. MORGAN. I beg leave to protest against this as unconstitutional and revolutionary.

The SPEAKER (continuing). Mr. OUTHWAITE.

Mr. OUTHWAITE. [Cries of "Regular order!"] I wish to state to the Chair that I was not present in the House when my name was called, and the Chair is therefore stating what is not true. [Applause and cries of "Order!"] It is not for the Chair to say whether I shall vote or not or whether I shall answer to my name when it is called. [Laughter and applause.]

The SPEAKER (continuing). Mr. OWENS of Ohio, Mr. O'FERRALL.

Mr. O'FERRALL. I protest against the assumption of power by the Speaker.

Mr. COOPER, of Indiana. I ask by what right or by what rule of parliamentary law the Speaker of this House declares men present and voting who have not voted?

The SPEAKER. The Chair does not declare men voting who have not voted.

Mr. CRISP. I appeal from the decision——

Mr. BRECKINRIDGE, of Kentucky. It is disorderly; the House has ordered a vote, and the Speaker has no more right to state that fact from the Speaker's chair than he would have from the floor of the House. It is a disorderly proceeding on the part of the Speaker. [Applause on the Democratic side.]

The SPEAKER. Mr. STEWART of Texas, Mr. TILLMAN——

Mr. COOPER, of Indiana. Will the Chair answer the parliamentary inquiry?

The SPEAKER. Mr. TURNER of Georgia——

Mr. COOPER, of Indiana. I demand an answer to the parliamentary inquiry. By what rule of parliamentary law or by what right does

the Chair undertake to direct that men shall be recorded as present and voting?

The SPEAKER. The Chair will answer the gentleman, if he will be in order, in due time.

Mr. CRISP. I appeal from the decision of the Chair.

The SPEAKER. The Chair will now make a statement to the House, and the matter can proceed in orderly fashion if gentlemen will only be in order.

Mr. ENLOE. But the Speaker has undertaken to state who were present and not voting. Now, the Speaker has furnished only a partial list. There were other gentlemen present. The Speaker says he states the facts. Let him state all the facts.

The SPEAKER. The Chair will, in due time, allow any member an appeal to the House.

Mr. COOPER, of Indiana. I demand an answer to the parliamentary inquiry.

The SPEAKER. The gentleman must not be disorderly.

Mr. WHEELER, of Alabama. Must the representatives of the people remain silent in their seats and see the Speaker of this House inaugurate revolution?

Mr. CRISP. I understood the Speaker had concluded his statement.

The SPEAKER. The Chair had not completed the statement when the gentleman from Georgia rose.

Mr. CRISP. If the Speaker has not completed his statement now, I trust that I will be recognized for the purpose of taking an appeal.

The SPEAKER. The Chair will state the question.

The question of quorum was raised, and the Chair treats this subject in orderly fashion, and will submit his opinion to the House, which, if not acquiesced in by the House, can be overruled on an appeal taken from the decision.

Mr. CRISP. By brute force.

Mr. COOPER, of Indiana. Mr. Speaker, I insist upon my appeal.

The SPEAKER. The gentleman must not mistake his situation. He is not to compel the Chair to do certain things. The Chair must proceed in regular order, and the gentleman as a member of this body will undoubtedly permit the Chair to proceed.

Mr. ENLOE. If the gentleman is not in order, will the Chair state what rule is being violated?

Mr. COOPER, of Indiana. Do I understand that the Chair is about to answer my parliamentary inquiry?

The SPEAKER. There is no occasion for disorder.

Mr. COOPER, of Indiana. I understood the Chair——

The SPEAKER. The occupant of the chair does not know what the gentleman understood, but if the House will be in order the Chair will proceed in an orderly way.

Mr. BLOUNT. Mr. Speaker, may I make an inquiry?

The SPEAKER. Will the gentleman from Georgia permit the Chair to proceed?

Mr. BLOUNT. But the inquiry I wished to make was in view of the statement of the Chair.

I understood the Chair to say that the Chair was stating a fact. I had understood that the Chair had directed the names to be put on the roll by the Clerk.

The SPEAKER. Put on the record by the Clerk. They will be recorded as present.

Mr. FLOWER. I desire to be recorded as present and not voting.

Mr. COWLES. Mr. Speaker——

The SPEAKER. The Chair will proceed in order if gentlemen will take their seats.

Mr. COWLES. Will the Speaker permit me——

The SPEAKER. The yea-and-nay vote has been reported by the Clerk as follows——

Mr. COWLES. Mr. Speaker——

The SPEAKER. Will the gentleman have the kindness to take his seat? If he will do so, the Chair will be greatly obliged.

The Clerk announces the members voting in the affirmative as 161 and 2 who voted in the negative. The Chair thereupon, having seen the members present, having heard their names called in their presence, directed the call to be repeated, and, gentlemen not answering when thus called, the Chair directed a record of their names to be made showing the fact of their presence as bearing upon the question which has been raised, namely, whether there is a quorum of this House present to do business or not, according to the Constitution of the United States; and accordingly that question is now before the House, and the Chair purposes to give a statement accompanied by a ruling, from which an appeal can be taken if any gentleman is dissatisfied therewith.

Mr. CRISP. In advance I enter an appeal. [Laughter and applause on the Democratic side.]

The SPEAKER. There has been for some considerable time a question of this nature raised in very many parliamentary assemblies. There has been a great deal of doubt, especially in this body, on the subject, and the present occupant of the chair well recollects a proposition or suggestion made ten years ago by a member from Virginia, Mr. John Randolph Tucker, an able constitutional lawyer as well as an able member of this House. That matter was somewhat discussed and a proposition was made with regard to putting it into the rules. The general opinion which seemed to prevail at that time was that it was inexpedient so to do, and some men had grave doubts whether it was proper to make such an amendment to the rules as would count the members present and not voting as a part of the quorum as well as those present and voting. The evils which resulted from the other course were not then as apparent, and no such careful study had been given to the subject as has been given to it since.

That took place in the year 1880. Since then there have been various arguments and various decisions by various eminent gentlemen upon the subject, and these decisions have very much cleared up the question, which renders it much more apparent what the rule is. One of the first places in which the question was raised was in the senate of the State of New York. The present governor of New York was the presiding officer and upon him devolved a duty similar to that which has devolved upon me to-day. He met that duty in precisely the same manner. The question there raised was the necessity, under their constitution, of three-fifths constituting a quorum for the passage of certain bills, and he held that that constitutional provision as to a quorum was entirely satisfied by the presence of the members, even if they did not vote, and accordingly he directed the recording officer of the senate to put down the names as a part of the record of the transaction; that is, to put down the names of the members of the senate who were present and refused to vote, in precisely the manner in which the occupant of this chair has directed the same thing to be done. That decision would be regarded as in no sense partisan, at least as the Chair cites it.

There has also been a decision in the State of Tennessee, where the provisions of the law require a quorum to consist of two-thirds. The house has ninety-nine members, of which two-thirds is sixty-six. In the Legislature of 1885 the house had ninety-nine members, of which two-thirds was sixty-six. A registration bill was pending which was objected to by the Republican members of the house. Upon the third reading the Republicans refused to vote, whereupon the speaker, a member of the other party, directed the clerk to count as present those not voting and declared the bill as passed upon this reading.

These two decisions, made, the first, in 1883, and, the other, in the year 1885, seem to the present occupant of the chair to cover the ground; but there is an entirely familiar process which every old member will recognize, which, in the opinion of the Chair, is incontestable evidence of the recognition at all times of the right to regard members present as constituting a part of a quorum. It has been almost an every-day occurrence at certain stages of the session for votes to be announced by the Chair containing obviously and mathematically no quorum; yet if the point was not made the bill has always been declared to be passed. Now, that can only be upon a very distinct basis, and that is, that everybody present silently agreed to the fact that there was a quorum present, while the figures demonstrated no quorum voting.

Mr. SPRINGER. We did not silently do it.

The SPEAKER. There is no ground by which under any possibility such a bill could be passed constitutionally, unless the presence of a quorum is inferred. It is inferred from the fact that no one raised the question, and the presence was deemed enough.

Now, all methods of determining a vote are of equal value. The count by the Speaker or Chairman and the count by tellers or a count by the yeas and nays are all of them of equal validity. The House has a right, upon the call of one-fifth of the members, to have a yea-and-nay vote, and then upon that the question is decided; but the decision in each of the other cases is of precisely the same validity.

Again, it has always been the practice in parliamentary bodies of this character, and especially in the Parliament of Great Britain, for the Speaker to determine the question whether there is or is not a quorum present by count. It is a question that is a determination of the actual presence of a quorum, and the determination of that is intrusted to the presiding officer in almost all instances. So that when a question is raised whether there is a quorum or not, without special arrangement for determining it, it would be determined on a count by the presiding officer. Again, there is a provision in the Constitution which declares that the House may establish rules for compelling the attendance of members. If members can be present and refuse to exercise their function, to wit, not be counted as a quorum, that provision would seem to be entirely nugatory. Inasmuch as the Constitution only provides for their attendance, that attendance is enough. If more was needed the Constitution would have provided for more.

I feel very much disposed to cause to be read the action of the present governor of the State of New York, then lieutenant-governor and presiding officer of the senate.

Mr. TRACEY. Read it.

Mr. FLOWER. Let it be read.

The SPEAKER. The action of the senate was this:

The president put the question whether the senate would agree to the final passage of said bill, and eighteen senators voted in favor thereof, and Messrs. Allen, Bowen, Evans, Holmes, F. Lansing, Lord, Lynde, Pitts, Russell, and Thomas, being present, refused to vote.

Then come the votes; for the affirmative, for the negative. Also the following, pursuant to direction of the president:

Mr. ALLEN: Present and not voting.

And so on down the list.

The result having been announced, the president thereupon ruled as follows:

The action of the senate just taken requires a ruling from the Chair, and an explanation of that ruling is eminently proper at this time.

The parliamentary question presented is, Whether this bill has been duly passed. It has received the votes of a majority of all the senators elected to the senate. It has received all the affirmative votes which the constitution requires to pass such a bill. This bill, so far as the affirmative vote necessary to its passage is concerned, is controlled by section 15 of article 3 of the constitution, which only requires a majority of all the senators elected.

It is, however, a bill by the provisions of which, it is claimed, a debt or charge is made against the State, and is, therefore, subject to the provisions of section 21 of the same article of the constitution. That section is substantially as follows: "On the final passage in either house of the Legislature of any act which * * * creates a debt or charge * * * or makes any appropriation * * * of public money, the question shall be taken by yeas and nays, which shall be duly entered on the journals, and three-fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein."

This section is peculiarly and carefully worded. It does not provide that three-fifths of all the senators elected shall vote for the bill or that such a member shall vote at all upon the bill, but simply that such a member must be present in order "to constitute a quorum" when such a bill is upon its final passage. If it had been intended that more than a majority should vote for such a bill to secure its passage or that there should be three-fifths voting evidenced by the yeas and nays, it could have been easily so expressed. The plain and only object of this section of the constitution was to provide that there should not only be a majority vote in favor of bills of such importance, which create debts or appropriate public moneys for public purposes, but that when they are finally voted upon in the Legislature there should be more than a bare majority present, to wit, three-fifths of all the members elected.

If three-fifths are in fact present, they need not necessarily vote upon either side. The constitutional requirement is fully complied with by the fact of their presence. There need not be three-fifths voting, but three-fifths must be present to constitute a quorum when the majority pass the bill. The ayes and noes as entered upon the Journal may be the evidence of the votes given upon either side, but it is nowhere made the evidence, much less the only evidence, of the passage of a constitutional quorum. There may be a full senate present, and a majority may vote for such a bill, and the balance for good reasons may be excused from voting, yet nevertheless the bill is legally passed, although the record of the ayes and noes will not show that three-fifths voted. Such record is not the sole and only criterion from which to determine who were present. Neither the constitution, the statutes, nor the rules of this senate make it so.

The presence or absence of senators is a physical fact known to the president and the clerk of the senate. It requires only the exercise of their senses to determine the question. If a stranger should intrude himself into a senator's seat and insist upon responding to that senator's name when it is called, it would be the clear duty of the clerk not to record the vote and the duty of the president of the senate to see that it was not recorded. The presence or absence of a response, when the clerk calls the roll, is not therefore absolutely conclusive. Whether the senator is in truth present, or does himself respond, is a question for the observation of the officers of the senate, who are expected honestly and truthfully to determine it.

In fact to-day there are present over three-fifths of all the senators elected. They sit in their seats before me. Rule XIV of the senate requires each senator to vote when his name is called, but a number—more than enough to constitute the requisite three-fifths—refuse to vote at all, either for or against the bill, and remain silent. It is claimed that, therefore, they are to be deemed absent and can not be counted as constituting a quorum. They are not absentees within the meaning of the rules, because they are in fact present. There can be no "call of the house" or other proceedings instituted to compel their attendance, because they are not absent. Their action is in defiance of the rules of this body, factious and revolutionary.

[Applause on the Republican side.]

The SPEAKER. The House will be in order. This was not said of Democrats. [Laughter and applause on the Democratic side.]

The SPEAKER (reading):

If, because they refuse to respond to their names when called, they are thereby to be deemed absent, of what use are the rules of this body and the law which gives this body authority to send its sergeant-at-arms for its absent members and forcibly bring them into this chamber, if, when brought in, they can still refuse to vote and still be deemed absent? It would show that all such provisions in the rules and in the statutes were entirely nugatory and of no force or effect. There is no principle of parliamentary law which permits a senator to be present in his seat and refuse to respond to his name, and then be allowed to insist that he is not present. If he does not want to be regarded as present he must remain away from the chamber. This is common sense, and it is not antagonistic to parliamentary law.

If a senator is in fact present, his refusal to vote, which is a violation of his duty, does not make him absent in a parliamentary sense. He can be counted by the clerk and the president as one of the three-fifths necessary to constitute a constitutional quorum. It is peculiarly the duty of the president to see whether or not there is present a requisite quorum. It is made his duty by Rule 6 of this senate to certify the passage of all bills and to certify the fact whether they are passed by the required vote and with the constitutional quorum present. His certificate is evidence of those facts to the governor, the secretary of state, and to all the world. He is the party held responsible for the truth or falsity of that certificate. He may obtain the information as to the number of senators who are actually present when a bill is passed, either from his own observation, or from the tally-list if that shows it, or from the journal kept by the clerk.

There is no precise or prescribed method laid down either in the constitution or law, or in the rules of this body, as to how the presiding officer shall ascertain what number of senators were present. He is bound to know the fact, and certify accordingly, the same as he is required to know how many days senators have attended the senate before he gives the certificate which entitles them to draw their pay. There is no law which makes the tally-list showing who voted the only evidence as to the number of senators present when a bill is voted upon.

Mr. FLOWER. Mr. Speaker, have you in that book the protest of the Republican senators against that ruling?

The SPEAKER. That does not seem to have been permitted to get in here.

Mr. SPRINGER. I would like to hear that protest read.

The SPEAKER. I will ask the Clerk to read the rest of the ruling.

The CLERK (reading):

The president of the senate is bound to know and to certify as to whether there was present the requisite quorum, and as his certificate is the evidence of such fact the question presented is peculiarly within his province. It is very proper that the journal should show who were present when a bill was passed, not only for the protection of the presiding officer and as evidence corroborative of his certificate, but sometimes for his information. He may have called a senator temporarily to the chair, and a bill like the one in question may have passed in his absence and upon his return to the chair he may be called upon to sign the certificate of the passage of the bill. It is well in all such cases and for other reasons that the clerk should always keep a record as to what senators are present when a bill is passed.

If they vote he is bound to make a record of it, and if they are present and refuse to vote, he sees and knows the fact and should make record of that fact also. Then the record will show the exact truth and will harm no one. The presiding officer can make up his certificate to the bill, not only from his own observation, but, in addition thereto from the journal kept by the clerk. It is very clear that this course will answer every requirement of the law and the constitution. The assertion that whether a constitutional quorum is present on the passage of a bill is only to be determined by whether or not a constitutional quorum voted, and by that fact alone and without reference to anything else, has no substantial foundation on which to stand.

The *jurat* or certificate which the presiding officer of each house has always signed to such bills from time immemorial is that the bill received a majority of the votes of all the senators elected, "three-fifths being present;" not three-fifths voting. The question as to how many voted in addition to a majority is wholly immaterial so long as three-fifths are present. Their presence is not to be determined solely and only by the yeas and nays.

I have accordingly directed the clerk as he called the names of the senators who are present, but who refuse to vote, to mark opposite their names on the tally-list kept by him, and which is to be entered in the Journal, the words, "Present, but refused to vote," and he has done so in each case. Therefore, in accordance with the record so made, which shows that there are present over three-fifths of all the senators elected, and which agrees with my own observation, I do hereby declare that this bill, having received the votes of a majority of the senators elected, three-fifths being present, has been duly and legally passed.

Ordered, That the clerk return said bill to the assembly with the message that the senate have concurred in the passage of the same with amendments.

The SPEAKER. The Chair thereupon rules that there is a quorum present within the meaning of the Constitution——

Mr. CRISP. Mr. Speaker——

The SPEAKER. And the gentleman from Georgia appeals from the decision of the Chair.

Mr. HATCH. Pending the appeal——

The SPEAKER. One moment. The gentleman from Georgia appeals from that decision, and the question before the House now is, Shall the decision of the Chair stand as the judgment of the House?

Mr. CRISP. I desire to be heard on that.

Mr. PAYSON. I move to lay the appeal on the table.

The SPEAKER. The gentleman from Illinois [Mr. PAYSON] moves to lay the appeal on the table.

Mr. CRISP. I claim the right to be heard.

The SPEAKER. The motion of the gentleman from Illinois is one which he had a right to make.

Mr. CRISP. Not while I am on the floor.

The SPEAKER. The Chair did not recognize the gentleman for that purpose.

Mr. CRISP. I submit to the Chair that it is unfair, unjust, and unmanly to refuse to us an opportunity of presenting our case to our fellow-members. [Applause on the Democratic side.] Mr. Speaker, when you decided a few days ago a question upon which an appeal was taken——

Mr. WILLIAMS, of Ohio. I rise to a question of order.

The SPEAKER. The gentleman from Ohio rises to a question of order and will state it.

Mr. WILLIAMS, of Ohio. The motion is that the House lay the appeal on the table, and discussion of that question is out of order.

Mr. BLAND. The Speaker argued his side of the case to the House; why should we not be allowed to present our side?

Mr. CRISP. Mr. Speaker, I appeal to your fairness as a man; gentlemen [addressing the Republican side of the House], I appeal to your fairness as men, to give us simply an opportunity to reply to the argument which the Speaker has seen proper to make. Are you afraid to hear the rulings that have been made in this House for a hundred years?

Mr. BUTTERWORTH. Mr. Speaker——

Mr. CRISP. Are you afraid to permit the country to judge between you and us?

Mr. BUTTERWORTH. I hope the gentleman from Illinois will withdraw his motion to lay on the table. This is an important question and gentlemen have a right to be heard. [Applause on the Democratic side.]

Mr. PAYSON. I withdraw the motion.

The SPEAKER. The gentleman from Illinois withdraws his motion. The gentleman from Georgia will proceed.

Mr. CRISP. Mr. Speaker——

Mr. MCMILLIN (to Mr. CRISP). I would not address an unwilling Chair.

Mr. BURROWS. Mr. Speaker, as I understand, the gentleman from Illinois has withdrawn his motion to lay on the table.

The SPEAKER. The motion is withdrawn.

Mr. BURROWS. So I understood. That is right.

Mr. CRISP. Mr. Speaker——

Mr. HATCH. Will the gentleman yield a moment while I state a question of personal privilege to the Speaker? I do not desire to interrupt the gentleman from Georgia, but I wish to state to the Speaker that he has called my name as a Representative from the State of Missouri as being present and declining to vote on this question, when the record shows that for a week past I have had an honorable pair with

the gentleman from Massachusetts, Mr. ROCKWELL, who is confined to his room by sickness. I have declined, though in my seat, to vote when my name was called, or by rising, or by word of mouth. This shows the bad faith and unsoundness of the position——[Applause on the Democratic side.]

The SPEAKER. One moment. The gentleman from Missouri has a right in defense of himself to make any explanation he sees fit; but the proprieties require that it shall also be said that there is no recognition of the question of pairs in an assembly of this sort except by courtesy, and no one can know anything about it except the individuals concerned. [Applause on the Republican side.]

Mr. HATCH. My pair was announced from the desk this morning.

The SPEAKER. In announcing that the gentleman was present and refused to vote the Chair made only a statement of fact. The reason which the gentleman gives would exonerate him in the opinion of any gentleman, if he feels that it is a question where it is necessary for him to do so. [Applause on the Republican side.]

Mr. HATCH. It is beyond the power of the Chair and it is beyond the power of a majority of this House to force me to break an honorable pair with a member.

The SPEAKER. That is a question which is in process of determination.

Mr. ALLEN, of Michigan. I rise to a question of privilege.

The SPEAKER. The gentleman will state it.

Mr. ALLEN, of Michigan. The question of privilege is this: That the pair of the gentleman from Missouri [Mr. HATCH] explicitly says that he is paired upon all questions except that of a quorum. That is what the pair says. [Applause on the Republican side.]

Mr. CRISP. If I can have the attention of the House for a short time, I desire to present not so much my own views upon the question raised by the appeal as to call to your attention the rulings on the same question of distinguished gentlemen who have occupied the chair now occupied by the gentleman from Maine, and to read to you the opinions of distinguished members of the majority party on the same question, so that you may understand that when you vote to sustain the ruling of the Chair you will not only overturn the uninterrupted practice of one hundred years in this House, but you will vote directly in opposition to the views of many of your most distinguished leaders.

Mr. Speaker, the yeas and nays being demanded and being ordered, the roll-call discloses 162 members present.

A MEMBER. One hundred and sixty-three.

Mr. CRISP. One hundred and sixty-three, I am corrected. It is conceded by all that number is less than a quorum of this House. In that condition of the vote the Speaker of the House announces that Mr. A, Mr. B, and Mr. C, and fifteen or twenty—I do not know how many—gentlemen are in their seats and have not voted on the roll-call and directs the Clerk to enter their names upon the Journal as present. This, Mr. Speaker and gentlemen, being the first time in the history of this House when such a course has been taken, although there have been numerous occasions when the Speaker has been asked so to decide, I entered an appeal from that decision, and now ask your attention to the precedents, to the authorities on the question, that you may vote with full information, so that you may know what has been the practice of the House and what is the requirement of the Constitution we have sworn to support.

The Constitution says:

> Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members.

A MEMBER. May be authorized.

Mr. CRISP. There is the distinct statement in the Constitution itself that a majority shall be required to do business.

Then, Mr. Speaker, there is this further provision:

> Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the Journal.

There, Mr. Speaker, is the constitutional provision that one-fifth of the members present may require the vote to be entered upon the Journal. For the first time in our history the occupant of the chair decides that he can go beyond the vote provided for by the Constitution and declare a presence of members that the responses to the roll-call do not show.

This is something more than a question of rules. The right to have the yeas and nays entered on the Journal is a constitutional right. It follows necessarily, when the Constitution says you must enter the yeas and nays on the Journal, the yeas and nays so entered must determine the presence or absence of a quorum. They can not be added to or taken from, but must be taken as conclusive of the question.

This view has been held and acted on from the organization of the first Congress until the present day. In 1875, during the pendency of what was commonly called the force bill, the Speaker of the House was the distinguished gentleman from Maine, now Secretary of State, Mr. Blaine. No question can be raised in the mind of any man as to Mr. Blaine being an earnest, consistent Republican. There can be no question of his approving all great measures of that party which were adopted in caucus. I say this to show you that he was in sympathy with the proposition then pending before the House.

A MEMBER. He was not in favor of the force bill.

Mr. CRISP. I know nothing of that. He was the presiding officer of the House. No man questions his ability as a presiding officer; no man questions his ability as a statesman; and no matter how highly the present members of the House may value the character or capacity of the gentleman who now occupies the chair, certainly not one of them would claim for his opinion on a question of parliamentary or constitutional law any greater weight of authority than he would accord to that of the distinguished gentleman who is now Secretary of State. That distinguished gentleman, when in the chair, had this question repeatedly brought to his attention.

During the deadlock on the force bill, after repeated calls of the House and efforts to get a quorum recorded as voting, Mr. Donnan rose to a parliamentary inquiry. I read from the RECORD:

> Mr. DONNAN. My parliamentary inquiry is this: Is the declared vote the only means by which a quorum can be determined when it is within the cognizance of every man here, the Speaker included, that there is within the Hall a sufficient number of members who have not voted to make a quorum?
>
> The SPEAKER. The Speaker would be glad to hear from the gentleman from Iowa [Mr. Donnan] any practicable mode in which his point can be enforced.
>
> Mr. DONNAN. Is it not within the power of the Speaker, he having cognizance of the fact, to declare that a quorum is present?
>
> The SPEAKER. But the Speaker's declaration will not make members answer "ay" or "no."
>
> Mr. RANDALL. I move a call of the House.
>
> The SPEAKER. If any gentleman raises the question that business is proceeding without the presence of a quorum, it is within the competence of the Chair to decide that a quorum is present, and he will not allow the business of the House to be interrupted by any dilatory proceeding. He assumes the responsibility for that purpose of declaring that a quorum is present, because no business can proceed without a quorum. Even a gentleman speaking is entitled to have a quorum present. If the point be raised, a gentleman addressing the Chair may be taken off the floor by any member raising the point that no quorum is present. The question being so raised, the Chair, according to his judgment and on his responsibility, can rule that a quorum is present. But when the roll-call is resorted to, that is the last mode of certification, from which there is no appeal. Now, that the rules absolutely require gentlemen to vote is undeniable; but how the gentleman from Missouri, on whom the point has been made, can be compelled to stand up and pronounce his vote "ay" or "no" the Chair does not know.

That is the language of the then Speaker of this House. Now, when that ruling was made by Mr. Speaker Blaine there existed rules for the government of this body. The only way these rules affect this question at all is that in them was embodied a provision that it should be the duty of every member of the House to vote. In the absence of any such rule now, there is no legislative declaration that it is the duty of the members to vote.

Throughout that great struggle this question was repeatedly raised. I will not take the time of the House to read all the rulings. There are some, however, in the RECORD which I wish to call to your especial attention, so that you may see they were not decisions made on the spur of the moment and without consideration, but were carefully considered and were in accordance with the precedents and practice of the House.

Mr. Coburn rose to a question of order. I read from the RECORD:

> Mr. COBURN. I rise to a point of order. It is simply as to the manner of making a record of members present. One way of making the record is to have the roll called and the names of members marked as present upon the roll-call, whether upon the yeas and nays or upon a call of the House. That makes the record; but there is another way in which the House can make its record as positively, as absolutely, as undeniably as that, and that is by a member rising in his place and saying there is present another member who has not answered to his name, mentioning his name to the House, and asking that it be recorded. The record can be made, and that man is present and voting.

Now, I ask the attention of the House particularly to the language used by Speaker Blaine in reply:

> The SPEAKER. The Chair never heard of that being done. He begs to remind the House, whereas that might and doubtless would be true that there is a quorum in the Hall, the very principle enunciated by the gentleman from Indiana has been the foundation probably for the greatest legislative frauds ever committed.

[Applause on the Democratic side.]

I say to you, gentlemen, on the authority of Mr. Blaine, that the decision just made by Mr. Speaker REED, if sustained by your votes, will lay the foundation for the greatest legislative frauds ever committed in this country. [Applause on the Democratic side].

But Mr. Speaker Blaine goes further and uses the following language:

> Where a quorum, in the judgment of the chair, has been declared to be present in the house against the result of a roll-call, these proceedings in the different legislatures have brought scandal on their name.

[Applause on the Democratic side.]

You are now invited by Mr. Speaker REED to sustain him in a ruling which the most eminent of living Republicans to-day states will have a tendency to bring scandal upon your name.

Mr. BOUTELLE. We will take care of that.

Mr. CRISP. Now, Mr. Speaker, Mr. Hawley, of Illinois, addressed the Chair as follows:

> Mr. HAWLEY, of Illinois. But suppose the roll-call had disclosed the presence of two hundred members; I have the right, and every member has the right, to demand that every other member present shall vote.

In response to that Mr. Speaker REED said——

A MEMBER. Mr. Speaker Blaine.

Mr. CRISP. I thank you; there is a marked distinction. [Applause on the Democratic side.]

Here is what Mr. Blaine says in reply to Mr. Hawley:

No. The Chair denies that utterly. If that were the case, the House could do no business. The House would be a mere mob if that should be entertained.

Again, Mr. Negley made an inquiry:

Mr. NEGLEY. I would inquire if on the last vote a quorum was not present?
Mr. Speaker BLAINE. On the roll-call there were 142 members answered to their names. The Chair begs to state that no gentleman has, under the rules, brought to him any suggestions whatever as to the mode of forcing a minority to respond to their names.

Again, Mr. Coburn, in speaking to his proposition that the Speaker should go outside of the roll-calls to determine the presence of a quorum, said it would be a record made by the House.

Now, I call your attention to Speaker Blaine's reply:

There can be no record like the call of the yeas and nays, and from that there is no appeal.

Will you listen to these rulings of Mr. Speaker Blaine?

Mr. BOUTELLE. We have read that years ago.

Mr. CRISP. I read further:

The moment you clothe your Speaker with power to go behind your roll-call and assume that there is a quorum in the hall, why, gentlemen, you stand on the very brink of a volcano.

This is Mr. Speaker Blaine, talking to a Republican House of Representatives.

Mr. LA FOLLETTE. In what Congress was that?

Mr. CRISP. It is in volume 3, part 3, Forty-third Congress, second session.

Now, Mr. Speaker, these rulings of Mr. Speaker Blaine were in accordance with the uninterrupted precedents of this House. He tells you not only that it has always been the ruling made here, but he tells you that wherever that ruling has been departed from it has brought upon the legislative body which departed from it scandal and contempt. Yet you are invited—you are invited here and now—to depart from this ancient and salutary rule. Your remedy in this exigency is just what the remedy was in the case that I have just referred to. All through that debate Mr. Blaine made frequent responses upon being asked by members "What is our remedy?" and his reply invariably was, "The majority of the House of Representatives can do business."

If you have got a majority you can do business without violation of the Constitution; you can do business without acting in defiance of the precedents of a hundred years by simply bringing your members here and keeping a quorum in the House. It is no reply to say, "Some of our men are absent," "Some are sick." We say to you we simply insist upon our constitutional right to have the yeas and nays entered upon the Journal and to have the responses to the roll-call determine the presence or absence of a quorum.

Mr. ADAMS. Would it interrupt the gentleman from Georgia if I were to ask him a question there?

Mr. CRISP. Not at all.

Mr. ADAMS. About that very constitutional right, the gentleman seemed to me to say that he was using his constitutional right, and it would be nugatory if the ruling was adhered to; and he spoke of the intention of the provision of the Constitution. Would the gentleman please be a little fuller in stating what, in his opinion, the intention and purpose was of the constitutional provision in regard to the yeas and nays?

Mr. CRISP. Without, Mr. Speaker, having very carefully looked into that question, I assume that the intention was this: That it should be in the power of one-fifth to have the vote entered upon the Journal, so that the country might know who voted "ay" and who voted "no" on any given proposition——

Several MEMBERS. Or who did not vote.

Mr. ADAMS. Was there any further proposition in it?

Mr. CRISP. And who did not vote. Of course, at this day, the gentleman from Illinois does not insist here that there is any way, or ever was a way, to make a member vote.

Mr. ADAMS. But the gentleman spoke of the intention, and he will pardon me my interruption if it is annoying. The gentleman spoke of the intention.

Mr. CRISP. It simply discloses the vote, who voted for it and who voted against and, if you please, who did not vote.

Now, Mr. Speaker, the great contest in the Forty-third Congress called specially to the attention of the House and country the particular question now before the House, and gave rise to a subsequent proposition. I propose now to call your attention to that.

In the fortieth volume of the RECORD, containing the proceedings of the Forty-sixth Congress, second session, beginning at page 575, you will see that Mr. Randolph Tucker, of Virginia, introduced in the House a proposition to amend the rules as follows:

That whenever a quorum fails to vote on any question, and objection is made for that cause, there shall be a call of the House, and the yeas and nays on the pending question shall at the same time be ordered; the Clerk shall call the roll and each member as he answers to his name or is brought in under the preceding call of the House, shall vote upon the pending question. If those voting on the question and those present and declining to vote shall constitute a majority of the House, the Speaker shall declare that a quorum is constituted, and the pending question shall be decided as the majority of this vote shall appear.

This rule, proposed by the gentleman from Virginia, Mr. Randolph Tucker, came up for consideration in the House on the 28th of January, 1880, and you see it presents the express question that is now submitted to the House. Upon the discussion of that resolution very distinguished gentlemen, some now dead, some now living, submitted remarks to the House. I shall first call your attention to the remarks of Mr. Garfield, afterward President of the United States.

Mr. GARFIELD. Mr. Chairman, I regret very much that this proposition is offered as a part of a body of rules that we have all with great unanimity expressed our desire to see enacted into formal rules of the House. I should have greatly preferred that the Committee of the Whole, following the example of the Committee on Rules, would have left out controverted and certain partisan questions from any part of this codification. It was in deference to that spirit that precisely this amendment was not pressed even to a vote in the Committee on Rules when we had the subject under discussion, although there were members of the committee who desired just such a rule as this.

He denounces the proposed rule as partisan.

I call attention to the first phase of the question, and ask my friend from Virginia, without any regard to its partisan bearing, to see into what a strange and vague condition this House would be left if this were adopted. Whenever the question arises whether there is a quorum or not present, it is to be determined according to what he calls "ocular demonstration."

The same kind of evidence alluded to by our present distinguished Speaker, "ocular demonstration."

The Chairman of the Committee of the Whole or the Speaker of the House is to see with his own eyes that there is a quorum present.

And now he asks a pertinent question:

Who is to control his seeing?

Now, I ask you, who is to control the seeing of the distinguished Speaker of the House?

How do we know but that he may see forty members more for his own purposes than there are in the House?

Mr. OUTHWAITE. If the gentleman will permit me to interrupt him at that point, I want to state in the presence of this House that the Speaker has announced myself as being present at the time the roll-call was taken, when in fact I was not in my seat. I was not on the floor of this House after the beginning of the calling of the roll until the end of the same, yet I am put upon the record as being present and refusing to vote!

Mr. CRISP. Mr. Speaker, I ask again, in the language of Mr. Garfield, "Who is to control his seeing?"

Mr. LA FOLLETTE. The majority, in sustaining or refusing to sustain his decision.

Mr. CUTCHEON. Will the gentleman from Georgia permit a question?

Mr. CRISP. I want to finish these remarks of Mr. Garfield. Mr. Speaker, the statement just made by the distinguished gentleman from Ohio [Mr. OUTHWAITE], whose statement no man will question——

Mr. KERR, of Iowa. I question his statement.

The SPEAKER. The House will be in order. The gentleman from Georgia [Mr. CRISP] is entitled to proceed without interruption.

Mr. CRISP. The statement just made by the distinguished gentleman from Ohio [Mr. OUTHWAITE] illustrates at once the force and clearness of the argument of Mr. Garfield when he asks in this debate:

Who is to control his seeing? How do we know but that he may see forty members more for his own purposes than there are in the House? And what protection have gentlemen if the Speaker says he sees a quorum if he can not convert that seeing into a list of names on the call of the roll by the Clerk? I think my friend from Virginia [Mr. Tucker] will see that he lets in the one-man power in a far more dangerous way than ever occurred before in any legislative assembly of which he and I have any knowledge.

Mr. Tucker then asked a question—and I call the attention of the House to this—Mr. Tucker asked, just as the present Speaker asked when he was deciding this point, whether there were not times when the Speaker had at last to decide questions of numbers by his own count.

Mr. TUCKER. I will ask my friend if the Speaker does not count upon a rising vote?

Mr. GARFIELD. Yes; but we always have the opportunity to correct that count by means of a new count by tellers appointed from both sides.

It probably never occurred to the distinguished gentleman from Ohio [Mr. Garfield] that there would come a time in the history of this House when there would be a Speaker who would deny the right to have tellers. [Applause on the Democratic side.]

In reply to the gentleman from Virginia, Mr. Garfield says that the one man power can always be supervised and overruled by having tellers from both sides of the House; and then he says:

Before anything can pass we can have the yeas and nays taken and the names of those voting recorded. Aside from the insuperable objections that I have raised to this proposition as a thing that ought not to be tried because of its vagueness, its uncertainty, and the danger that members of the House may be imposed upon by an unscrupulous Speaker that may come hereafter—I say that, aside from all that and beyond that, I ask members to consider one fact.

And I ask you, gentlemen, notwithstanding your present party exigency, to consider the view which Mr. Garfield presented on that occasion. He says:

This has been a House of Representatives since 1789. This has been the theater of all sorts of political storms and tempests. We have lived through the times of great wars, of a great civil war, when there were excitements hardly paralleled in the history of parliamentary annals; yet during all these years no man before, so far as I know, no party before, has ever thought it necessary to introduce a rule that gives the power of declaring the presence of members by the single voice of one person, a power that will enable him to bring from his sickbed a dying man and put him down in the Hall, so that the Speaker shall count him and make his presence, against his will and perhaps in his delirium,

count in order to make a quorum, so that some partisan measure may be carried out over the body of that dying man. Sir, the moment you get over the line, the moment you cross the boundary of names, the moment you leap over the iron fence of the roll, that moment you are out in the vague, and all sorts of disorders may come in.

Mr. Speaker, has there been anything in the decision of the Speaker to-day or in the decisions read by the Speaker to-day which combats successfully the reasoning of Mr. Garfield on that occasion?

Mr. CUTCHEON. Will the gentleman yield to me for a question?

Mr. CRISP. I will, if it is on this point.

Mr. CUTCHEON. It is directly on this point. I desire to call to the gentleman's attention the provision of the Constitution of the United States in Article I, section 5, defining the powers of this House.

Mr. CRISP. I have read that.

Mr. CUTCHEON. We all acknowledge the weight of the authority which the gentleman has just read; but this is higher.

Mr. CRISP. I read it.

Mr. CUTCHEON (reading):

Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members in such manner and under such penalties as each House may provide.

Now, the question I desire to ask is this: Of what avail is this constitutional provision for compelling the attendance of absent members if, after their attendance has been compelled, they may sit mute and refuse to vote, and can not be counted as constituting part of the quorum of the House?

Mr. CRISP. Mr. Speaker, I reply to the gentleman in the language of one much more distinguished than myself, for whose opinion, I doubt not, the gentleman from Michigan would have much more respect than for that of almost anybody on this floor. I refer to the distinguished gentleman from Maine, who is now the Secretary of State. When that question was propounded to him in the celebrated "dead-lock"—the very question which the gentleman now presents—his reply was that a majority of the House could transact business. [Applause on the Democratic side.] If you have a majority elected by the people, if they will come here and attend the sessions of the House, they can transact business.

Now, Mr. Speaker, in this debate from which I am reading Mr. Conger, at that time a member from the State of Michigan, afterward a Senator, participated. He said:

Mr. Chairman, the introduction of this proposition can not give ground to any particular political charge against either party. For many years gentlemen upon the other side of the House have availed themselves of the power which is sought here to be circumscribed. At times this power has been exercised almost daily. It never entered into the mind of the gentleman from Kentucky or the gentleman from Virginia that such a rule as this would be either constitutional or proper. Remarks made upon the question in this Hall from year to year will justify this assertion. I do not believe that a just construction of the Constitution would authorize the adoption of this proposition.

If I looked merely to party effect—if I looked to a time when I would like to have such a rule as this to hold down the unruly Democracy, as I have in former years desired to have such a rule—I would to-day join the gentleman from Virginia (if I thought it right) in advocating and voting for this rule; I would endure it for this session and the next session; and thereafter, during the long years of Republican control which are coming, I would enforce it in this House upon the malcontents on the other side.

But, sir, while the Constitution declares what shall constitute a quorum to do business in this House, this rule declares that when there shall be ascertained by one man a quorum present, a rule shall do the business of the House, a rule shall legislate, a rule shall determine the voice and wish of the Representatives of the people; so that on the passage of a bill, although there may be but fifteen voting in the affirmative and five in the negative, yet by virtue of this rule, if there be a majority present by compulsion or otherwise, the bill shall be declared passed on the vote pro and con of but twenty members.

Do you catch the point made by Mr. Conger? On the question of consideration raised by me there might have been but twenty men voting, fifteen in the affirmative and five in the negative; and yet under the ruling of the Speaker of the House he can declare that there are one hundred and fifty others present not voting, and that the yeas have it, and the House determines to consider the contested-election case, thus making twenty voting members a quorum to do business, when the Constitution says a majority of those elected shall constitute a quorum to do business.

Mr. CUTCHEON. Will the gentleman allow me again, just for a moment?

Mr. CRISP. Not right here.

Mr. CUTCHEON. I merely want to ask this question: If the other one hundred and fifty members sit mute and refuse to vote, can they complain? Are their rights violated?

Mr. CRISP. Oh, this is not a question of complaint. You may complain because I do not vote; but Mr. Blaine, when Speaker, denied utterly that you have any right to complain; and he further said that if you adopt the rule which is sought to be enforced to-day you make this House a mob and not a legislative body.

Then says Mr. Conger, addressing himself to the gentleman from Virginia:

Does the great expounder of the State of Virginia claim that such a result would be arrived at by any constitutional means?

Mr. Speaker, I commend this to our friends on the other side:

Does the great expounder of the State of Virginia claim that such a result would be arrived at by any constitutional means?

Sir, I, in common with every member of this House, demand that there shall be a public exhibition of presence—a public record of votes; that there shall be tellers; that there shall be yeas and nays; that the yeas and nays shall determine how you and I and every other member of this House may have voted and would vote.

The point made by my friend from Ohio [Mr. Garfield] is a good one—that we are committing to the Speaker of this House or the Chairman of the Committee of the Whole the right first to determine who are present and to determine when there is a quorum. It is useless to say that there may not be times when in such an emergency as would require the exercise of this power the presiding officer would not be partisan.

Certainly our friends do not claim that we have arrived at a period when the presiding officer might not be partisan. [Applause on the Democratic side.]

Shakespeare foretold this when in one of his plays he said:

"Get thee glass eyes;
And, like a scurvy politician, seem
To see the things thou dost not."

[Applause on the Democratic side.]

Such politicians will come here on either or any side. The force of circumstances, the impetuous passions of members which would produce such an occasion, will influence men to see that which they see not, with or without "glass eyes."

I have no fear that this amendment will be adopted in this House, because it would be wrong in itself; it would be unconstitutional; it would be violently partisan. I have no fear that the fair-minded men of this House on either side will adopt so violent and partisan a measure.

Mr. HOOKER. That was said when the House was Democratic.

Mr. CRISP. To the credit of our party, be it said that this distinguished gentleman confidently asserted that because such a rule would be unconstitutional, because it would be partisan, therefore he knew that a Democratic House would not adopt it. [Applause on the Democratic side.]

Those are the views of the gentleman who lately represented the State of Michigan in the Senate of the United States. The question was further debated by Mr. SPRINGER, Mr. Stephens, of Georgia, Mr. Hunton, of Virginia, and Mr. HAWLEY, of Connecticut. Mr. HAWLEY, speaking of Parliament, said:

They have the roll called when there is a call of the house, somewhat as we do; but in the case of ordinary divisions they go out, the ayes at one door and the noes at another, and they are counted as they come in again.

Now, the evil, if there be one, in the existing system, that of which gentlemen complain, is simply this, that we of the minority claim a right, by sitting silent, to prevent less than a majority of the members elected from passing a bill. The worst that can be done by a factious minority, if that be the term applied to it, is to fight until the actual majority of the members elected shall pass the bill. When they are present that friendly majority constitute a quorum of themselves; they do not require the assistance of the minority; they run the House themselves and pass their bills. In case of what you call factious resistance we drive them only to that.

All that we can do, Mr. Speaker and gentlemen of the majority, is to sit silent and refuse to vote; then what happens to you? No great calamity. You are still able to do business by simply securing the attendance of your majority. There is the great evil which is so much dreaded, that the majority of the House are asked to trample upon and break down the precedents of a hundred years.

Mr. HAWLEY says further:

The modern State constitutions are all tending in that direction. I have not looked at them with this in view, but I know from a casual inquiry of gentlemen near me that the new constitutions of California, Minnesota, and Pennsylvania require that a bill shall not be regarded as passed unless an actual majority of the members elected shall vote for it.

And I may add that is the provision of the constitution of the State of Georgia. The tendency of modern thought is to require the affirmative vote of the majority of members elected to secure the passage of a bill.

Mr. Speaker, in the debate to which I have alluded, besides the distinguished gentlemen whom I have already quoted, there appeared the distinguished gentleman who now occupies the Chair. I allude to the distinguished gentleman from Maine [Mr. REED]. I have read the arguments of Mr. Garfield, Mr. Conger, and Mr. HAWLEY, of Connecticut, and I now present you the argument of the distinguished gentleman from Maine [Mr. REED], now the Speaker of this House.

Mr. REED. Mr. Chairman, if it was my purpose to reply to the gentleman who has just taken his seat [Mr. Phister] it seems to me that it would be a suitable and proper reply to say to him that the constitutional idea of a quorum is not the presence of a majority of all the members of the House, but a majority of the members present and participating in the business of the House.

[Applause on the Democratic side.]

It is not—

And I read, Mr. Speaker, from you. [Laughter and applause on the Democratic side.]—

It is not the visible presence of members—

[Renewed laughter and applause.]

Mr. ROGERS. Now you see it and now you don't. [Laughter.]

Mr. CRISP. "It is not the visible presence of members, but their judgment and their votes the Constitution calls for." [Applause.]

I appeal, Mr. Speaker, from Philip drunk to Philip sober. [Laughter and applause.]

The SPEAKER. The House will have the kindness to be in order. [Laughter and applause.]

Mr. CRISP. Mr. Speaker, so forceful and so effective were the arguments of the gentleman from Ohio [Mr. Garfield] and the gentleman from

Connecticut [Mr. HAWLEY] and the gentleman from Michigan [Mr. Conger] and the distinguished gentleman from Maine [Mr. REED] that Mr. Tucker withdrew his proposition and never asked for a vote on it. [Renewed laughter and applause.]

I have not read all of the remarks of the distinguished gentleman from Maine [Mr. REED], but I think I have read enough to show it is a conclusive reply to the argument of the Speaker from Maine to-day. It is a terse and well put statement of the case. "A majority of the members present and participating in the business of the House. It is not the visible presence, but their judgment and votes, which the Constitution calls for." Could it be more tersely stated? What reason has the distinguished Speaker, in deciding the question to-day, given for his change of conviction? He has presented to you a decision of a presiding officer in the senate of New York. I say, in reply to that decision, in the language of the distinguished gentleman from Maine, the present Secretary of State, that in all legislative assemblies wherever that custom has prevailed it has given rise to scandal. It has been the cause of more legislative fraud and scandal than any other rules that have ever obtained in legislative history. When you adopt it, says Mr. Blaine, you stand on the brink of a volcano.

Mr. COMSTOCK. What was the result of that ruling in New York?

Mr. CRISP. I am not familiar with the rulings in that State. I am not just now to be led into any partisan discussion. I present the opinions of your distinguished leaders, men you have delighted to honor and follow, who tell you when you depart from the old, time-honored custom you are embarking on an unknown sea that will result in scandal to your party. Will you do it?

Mr. Speaker, I have not been able to examine all the precedents on this question.

Mr. SPRINGER. The gentleman from Wisconsin asked what was the result in the decision in the State of New York to which reference was made. I have been examining the record, and can state it if the gentleman from Georgia will yield to me for that purpose.

Mr. CRISP. Certainly.

Mr. SPRINGER. All the Republican members, including the honorable Mr. LANSING, at present a member on the floor of this House, denounced the action of Governor Hill as unconstitutional and revolutionary. [Laughter and applause on the Democratic side.]

Mr. LANSING. I desire to say that I was entirely converted by Governor Hill's argument. [Laughter and applause on the Republican side.]

Mr. SPRINGER. But Governor Hill's argument was delivered before you denounced it as unconstitutional and revolutionary. It seems not to have converted you until this time.

Mr. CRISP. Mr. Speaker, the question——

Mr. COVERT. Will the gentleman yield to me for a moment? If I may be allowed, Mr. Speaker, a moment or two in connection with the suggestion that has been made with regard to the opinion or decision of Governor Hill——

The SPEAKER. Does the gentleman from Georgia yield the floor?

Mr. CRISP. Not the floor. I am willing to yield to the gentleman if I may be permitted to do so and still retain the right to the floor under general parliamentary law.

The SPEAKER. If the gentleman yields the floor the Chair will recognize——

Mr. CRISP. Mr. Speaker, I do not yield. General parliamentary law is an unknown system to me. [Laughter].

Now I present to this House on this appeal the decision of Republican Speakers, of Democratic Speakers, and the arguments of distinguished gentlemen on both sides of the House, and I submit respectfully that these successfully combat the reasoning of the Speaker in delivering his decision.

The Chair seems to rest confidently on a decision made in the senate of the State of New York, but I submit that it is questionable, to my mind at least, whether the Speaker of this House would have much respect for the decision of that presiding officer if it did not happen to conform to what he intended to rule in this case. [Applause on the Democratic side.]

Now, a word or two as to why this question of consideration was raised, if I may be indulged in it—just a word or two. The case called up is a contested-election case. This is the 29th day of January. The House of Representatives has been in session for nearly two months. We have not been furnished with any code of rules to regulate our proceedings. I am informed that there was not even a meeting of the Committee on Rules until the 23rd day of January. A little more than three weeks ago the question of rules was brought forward in this House on a motion then pending, and the recognized leader of the Republican party on this floor, the distinguished gentleman from Ohio [Mr. MCKINLEY], said what I shall read now from the RECORD:

Mr. MCKINLEY. It is well, Mr. Speaker, I think, that the House should consider the real question which is before it. The Committee on Rules, for reasons satisfactory to themselves, have not yet reported any code of rules Therefore the question of rules is not now before the House and can not properly be until the committee having the subject in charge has made its report.

Mr. CRISP. Will the gentleman allow me to ask him a question there?

Mr. MCKINLEY. Certainly.

Mr. CRISP. Has the Committee on Rules had any meeting for the purpose of considering the general rules of the House?

Mr. MCKINLEY. The Committee on Rules has had no meeting to consider any general plan of rules for the House; but I have no doubt that in good time—and that will be a reasonable time—the committee will report a code of rules for consideration and action upon the part of the House. But the point I make is that in that the committee has made no report we have got no code of rules before us for consideration. The committee is not ready yet to make any report, and may not be for several days; and therefore the question is, shall we, because the committee is not ready to make its report, suspend all business?

That is the real question, and the only question, before this House.

Mr. BLAND. Can the gentleman state to the House some definite time when the Committee on Rules will be prepared to report?

Mr. MCKINLEY. I can not, of course, tell the gentleman when the Committee on Rules will be ready to report, but I can say this to the gentleman, it will not be a very long time.

Mr. BLAND. What would the gentleman from Ohio call a very long time?

Mr. MCKINLEY. Well, I would call five or six or seven days a reasonable time, and my own judgment is that within that period the Committee on Rules will be ready to make its report. I certainly hope so.

That was, I repeat, on the 8th day of January. The first meeting of the Committee on Rules did not take place until the 23d day of January.

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

Mr. CRISP. I will yield to my colleague, certainly.

Mr. ROWELL. The question I wish to ask the gentleman is, what special rule is demanded on the hearing of a contested-election case, unless it be a rule to prevent its hearing?

Mr. CRISP. Now, my friend has asked me that question and I wish to reply to it. He asked that I should give a reason for raising the question of consideration on the election case. That is, as I understand it, his question.

There are two or three reasons. One is that in the history of the House of Representatives——

The SPEAKER. The Chair thinks the gentleman from Georgia should confine himself to the pending question.

Mr. CRISP. Mr. Speaker, the House seems willing to indulge me and I hope the Chair will also. I would ask if there is any rule which prohibits me from referring to this question?

The SPEAKER. The Chair thinks that the gentleman from Georgia does not question the opinion of the Chair in that regard.

Mr. CRISP. I ask unanimous consent to answer the question of the gentleman from Illinois. I make this request, if it is necessary to do so, in order to have an opportunity of replying. I ask ten minutes of the House.

The SPEAKER. The Chair thinks the gentleman should go on and discuss the pending proposition.

Several MEMBERS. Let him go on.

Mr. KERR, of Iowa. I object.

Mr. CRISP. The gentleman from Illinois wanted to know how and in what way rules will affect the question of consideration of this case and what rule is demanded for that purpose.

Now, if I am permitted by the Speaker, I shall go on to show why and how we think it will affect it and why we raise the question of consideration.

Mr. ROWELL. I hope consent will be given to the gentleman.

Mr. KERR, of Iowa. Mr. Speaker, I object.

Mr. MILLIKEN. Don't do that.

Mr. KERR, of Iowa. Mr. Speaker——

Mr. STEWART, of Vermont, and others. Let him go on.

Mr. BLAND. I rise to a parliamentary inquiry. There were certain gentlemen who did not vote upon the roll-call——

The SPEAKER. For what purpose does the gentleman rise?

Mr. BLAND. I wish to submit a parliamentary inquiry.

The SPEAKER. The gentleman can not take the gentleman from Georgia off the floor.

Mr. CRISP. What was the decision of the Chair on my request?

Mr. MCKINLEY. I beg the gentleman from Iowa to withdraw his objection. It occurs to me that the gentleman from Georgia should be permitted to answer the question propounded to him by the gentleman from Illinois. [Applause on the Democratic side.]

The SPEAKER. The Chair thinks that gentlemen should not to indulge in demonstrations of this kind on the floor. [Renewed applause on the Democratic side.]

Mr. KERR, of Iowa. Mr. Speaker, I make the point of order——

The SPEAKER. The gentleman from Iowa will desist. The House will be in order. (After a pause.) The gentleman from Iowa will proceed.

Mr. KERR, of Iowa. The point that is before the House is as to the correctness of the ruling of the Speaker upon the question of what constitutes a quorum, and the political reasons for the other side opposing the present consideration of the measure are not in issue at all.

The SPEAKER. Does the gentleman withdraw his objection?

Mr. KERR, of Iowa. Well, in accordance with the request of my side of the House, I do.

The SPEAKER. The gentleman from Georgia will proceed.

Mr. CRISP. I want to answer my friend from Illinois candidly and frankly.

Mr. BAYNE addressed the Chair.

The SPEAKER. For what purpose does the gentleman from Pennsylvania rise?

Mr. BAYNE. I rise for the purpose of objecting to the discussion of anything except the question involved in this appeal.

A MEMBER. Good.

Mr. BAYNE. I do not do it because I wish to stop the gentleman from Georgia at all, but simply for the purpose of confining our deliberations to one subject, and not one involving a contested-election case and outside subjects in this discussion.

A MEMBER. That is right.

Mr. BAYNE. Let us keep this thing separate and distinct, and I shall object——

Mr. ROWELL. If objection is made, I want to withdraw the question.

Mr. CRISP. One of the considerations which moved the minority to raise this question at this time was that never in the history of this body, as I stated just now, had there been determined a contested-election case without rules for the orderly government of this House.

Nevertheless, notwithstanding we have no rules, notwithstanding there has been this great and unexplained delay in the presentation of the rules, up to last Tuesday morning (yesterday morning, Mr. Speaker), we had expected to proceed to the consideration of this contested-election case, simply protesting that it was unseemly in the majority to ask us to do so in the absence of rules.

Mr. KERR, of Iowa. I renew my objection.

[Cries of "Too late!" on the Democratic side.]

Mr. MCMILLIN addressed the Chair.

Mr. CRISP. Yesterday——

The SPEAKER. The gentleman from Georgia will see the propriety of confining himself to the discussion of the question before the House.

Mr. MCMILLIN. I would like to say that as the Speaker has cast reproach upon members of the House who failed to vote, is it not in order for one of the members to explain why they did not vote?

Mr. CRISP. I would like to suggest, Mr. Speaker ——

Mr. MCMILLIN. If the gentleman from Georgia will permit me——

Mr. CRISP. But the Chair holds that if I yield the floor I can not regain it.

Mr. MCMILLIN. I do not want to take the gentleman off the floor.

Mr. CRISP. The Speaker says he will so hold. If I can be permitted to proceed——

The SPEAKER. The Chair has no doubt that the gentleman from Georgia understands the propriety of confining himself to the subject under discussion; and the Chair has no doubt that he will comply with it.

Mr. CRISP. I suggest to you, Mr. Speaker, and to members of this House, that, this being an appeal from the decision of the Chair, it seems to me the Chair ought to be willing to allow great latitude in debate. It occurs to me that the Chair ought not to make the point that I am out of order. [Applause on the Democratic side.]

The SPEAKER. The Chair will advise the gentleman from Georgia—and the Chair thinks he has a right so to do—that his interference has reference only to his proceeding outside of the question of the appeal. That procedure out of that question the Chair has no personal interest in, if, indeed, the Chair has any personal interest in the other; and therefore the gentleman from Georgia will see the propriety of confining himself strictly within the rule on that subject. The Chair has no doubt that the gentleman from Georgia understands parliamentary law as suitable to the occasion, and has no doubt that he will obey it.

Mr. CRISP. When the Chair says that he has no doubt that I understand parliamentary law the Chair does me an honor that I am not entitled to, for I confess under general parliamentary law I do not know what is in order. [Laughter on the Democratic side.] I understand that when the Speaker makes a ruling and an appeal is taken, and the majority of the House sustains the Speaker, that is general parliamentary law; but until we shall have pursued that course no man knows what the Speaker will hold to be in order under general parliamentary law. I want to answer the gentleman from Illinois, and I want to say to him——

Mr. LA FOLLETTE. He withdrew his question.

Mr. CRISP. Ah, well, but gentlemen have not the right to ask a question, get half an answer, and then when they find——

Mr. ROWELL. My colleague will recognize the fact that the question was not asked about what he is now discussing.

Mr. CRISP. Mr. Speaker, I read in the Baltimore American of yesterday that—

A Republican caucus met to-night. Mr. HENDERSON, of Illinois, called the caucus, which was fully attended, to order——

Mr. KERR, of Iowa. I object.

Mr. BRECKINRIDGE, of Kentucky, and Mr. ROGERS. Suppress it.

Mr. CRISP. I will endeavor to read the remainder of this——

The SPEAKER. The Chair will endeavor to preserve order, and unless each member feels it incumbent upon him to keep the regulations which ordinarily govern parliamentary bodies no order can be kept; and among those regulations is one that the debate shall be confined to the subject under discussion. The matter rests very much in the hands of the gentleman from Georgia, and of course the Chair is sure that he will confine himself to the subject under discussion.

Mr. CRISP. Of course, if the Speaker puts it that way, I will have to confine myself to the question.

Mr. BLAND. Would it not be a partisan ruling, coming as a ruling from the Speaker, when an appeal has been made from the ruling of the Chair?

The SPEAKER. The gentleman from Missouri has not got the floor.

A MEMBER. The Speaker seems to hold the floor.

The SPEAKER. The gentleman from Georgia has the floor, and the Speaker has the right to address him in the interest of the orderly conduct of the House.

Mr. CRISP. I would ask the Speaker, because I do not wish intentionally to violate any decision of the Speaker, certainly not one involved in a question of this kind, as to whether I have a right to read. But I shall proceed to read, and the Speaker can decide whether I am out of order, and if he decides I am I shall have to accept his ruling.

The SPEAKER. The gentleman must not impose a duty of that particular kind upon the Chair.

Mr. MCMILLIN. The Chair assumed it.

The SPEAKER. The gentleman from Georgia very clearly understands what will be appropriate argument upon the question of an appeal from the decision of the Chair, and undoubtedly he will confine himself to that question in his argument. The Chair can do no more in regard to the matter than to call his attention to it, as a member of this House in the performance of his duty.

Mr. CRISP. I shall deal in perfect frankness and candor. I do not believe myself that what I was about to read would throw any light upon the question as to whether the appeal should be sustained or not.

But I do allege that it would throw a calcium light on the purposes of the majority, and that it would fully justify the minority here in resorting to any method rather than allow an unfair and unjust decision in this House. [Applause on the Democratic side.] Now, Mr. Speaker and gentlemen, I thank you for the attention you have given me. I have been earnest because I have felt earnestly on this question. It occurred to me that, under the stress of circumstances, feeling yourselves to be in a desperate situation, you were about to violate the precedents of a hundred years, you were about to take from us what many of your own distinguished statesmen have said was a high constitutional privilege, and I desired to present to you the decisions that have been made; I desired to call to your attention the arguments that have been urged by distinguished Republicans upon this floor; I desired to remind you that our failure to vote is only a temporary thwarting of your purposes if you have a majority of this House; I desired to appeal to you not, for the purpose of accomplishing this mere temporary object, not to disregard the precedents of the past, not to do that which you must feel is a doubtful act under the Constitution.

After the language of your own distinguished leaders which I have cited here, you can not but feel that there is some doubt as to the constitutional right of the Speaker to pursue the course that he has marked out for himself. You, gentlemen are in nowise bound to enter upon that same desperate course unless your consciences approve it, and I desire to appeal to you as fair-minded men, men regardful, as I know you are, of your obligations to protect and defend the Constitution, men who really believe in fair play and in justice—I desired to appeal to you to hesitate long before you should indorse this revolutionary and, as I think, unconstitutional ruling. Having done this, Mr. Speaker, to the best of my humble ability, having, I think, maintained the position that I have assumed, I leave the case with the House with the confident assurance that there are at least some Republican members of this body who can rise above partisan prejudice, who can respect and will respect the ancient usages and customs of the House, who will respect the opinions of the fathers, and who will be regardful of that Constitution whose sacredness we all acknowledge, and in which alone are secured the rights of the American people. [Prolonged applause on the Democratic side.]

Mr. CANNON. Mr. Speaker, the gentleman who has just taken his seat [Mr. CRISP], who appeals so vigorously for the observance of the Constitution according to his interpretation of it, meets in this legislative body with that non-partisan applause which is so unanimous on the other side. I want to say that I stand here to-day in the light of our surroundings, in the presence of almost every Republican Representative elected to the Fifty-first Congress, and also in the presence and hearing, as I have been all day, of almost every Democratic Representative elected to the Fifty-first Congress; and in talking to the question before the House for a few minutes I propose to be honest with myself and with this side and the other side, and talk and later on vote with the recollection of my oath ever before me to support and defend the Constitution.

The gentleman from Georgia has read at length the opinions of men formerly and now in public life touching the constitutional provision that he referred to. The opinions of great commoners and great constitutional lawyers, expressed from time to time, are entitled to respectful consideration. After all, however, we are to decide this question here and now in the light of our surroundings, and to decide the question now for the first time in fact presented, since the adoption of the Constitution, for decision.

Let us examine for a moment the exact question pending before the House for its determination. The gentleman from Pennsylvania [Mr. DALZELL] calls up for the consideration of the House the contested-

election case from West Virginia of Smith *vs.* Jackson. The Constitution provides, section 5, clause 1, that "each House shall be the judge of the elections, returns, and qualifications of its own members." Under the Constitution this is the highest possible question of privilege.

The Democratic side of the House raises the question of consideration as against the election case; in other words, objects to the consideration of the case; and the House proceeds to vote whether it will consider the case. On a roll-call 162 Representatives vote to proceed with the consideration of the election case and 2 Representatives vote against its consideration; whereupon a member, who was present during the roll-call and did not vote, arises in his place and makes the point that no quorum is present in the House to do business under the Constitution. In the mean while, the Speaker, who is the organ of the House, calling to his aid the Clerk, who is an official of the House, during the roll-call, notes as present in the Hall of the House, and as now present, and in the presence of us all, a number of members, 30 or 40, or more, who were and are present and who did not vote. The gentleman from Georgia [Mr. CRISP] appeals from the action and decision of the Chair, and makes an argument, and calls the House to witness that the action of the Chair is revolutionary; in other words, that the noting of the fact, under the direction of the Speaker, by the Clerk of the House, of the presence of various members in the House who are in the House, and that they did not vote upon the roll-call, is revolutionary.

Mr. BRECKINRIDGE, of Kentucky. Does it interrupt the gentleman for me to ask whether that is the decision from which an appeal is taken? I understand there is no appeal taken from the mere personal act of the Speaker, stating a fact in the presence of the House. The appeal is from the decision, the official act of the Speaker, ordering the Clerk to note on the Journal that a quorum is present, and that therefore the vote has passed.

Mr. CANNON. I have every disposition while I talk about this case to talk about it as it is. I speak of the facts in the case, which have not been, can not be, and will not be controverted upon the floor of the House: that these members were present and, being present and counted as present and not voting, added to those who voted, constitute far more than a quorum; and the decision of the Speaker was that, there being a quorum present and a majority voting in favor of considering the election case, the question of consideration was decided according to the majority vote; and from that decision of the Speaker the gentleman from Georgia, as is his right to do, takes an appeal to the House.

Now, should the appeal be sustained? The gentleman from Georgia [Mr. CRISP] may rise in his place and say that the ruling of the Speaker is revolutionary and receive great applause on that side. I may rise in my place and say that the decision of the Speaker is in the line of sound public policy and strictly in compliance with the requirements of the Constitution. There is his word for it on the one hand and my word upon the other; and, as we do not agree, let us turn and see what the constitutional provision is touching this matter. I read from the Constitution, section 5, clause 1:

> Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business.

Now, if we can ascertain how many members the House consists of, which, since the death of Judge Kelley, of Pennsylvania, is 329, we find that a majority of the members of the House is 165. I call attention to the fact that the Constitution does not require that a majority of its members shall vote for a measure in order to pass it. Not at all. It does not say that. It declares that a majority of each House shall constitute a quorum to do business, and if that majority is present and members see proper to withhold their votes and a majority of those voting vote for a proposition, the same is passed; passed, a quorum being present.

It is claimed, however, by the gentleman from Georgia [Mr. CRISP] that, under clause 3 of section 5 of the Constitution, which is as follows:

> Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the Journal,

in the case now presented, the yeas and nays were called, and that only 162 members voted yea and 2 voted nay; that the vote actually cast is one short of a quorum, and that the yea-and-nay vote as spread upon the Journal is the only evidence that can be resorted to to show the presence or absence of a quorum, and that this vote lacks one of a quorum.

In reply to this position, the presence of the gentleman himself, of Messrs. CARLISLE and BRECKINRIDGE, of Kentucky, and many others, while the vote was being taken, was noted upon the Journal, and that they did not vote, and the fact of their presence has not and will not be disputed; and the Speaker has held, and properly so, that by their presence, in fact, with those who were present and voted, the record discloses far more than a majority of all the members of this House; and that the letter and the substance of the Constitution are fully complied with, and that there is quorum, under the Constitution, present to do business; and that the gentleman from Georgia can not be present, refusing to vote, and at the same time be present to claim that there is not a quorum as fixed by the Constitution. If he be present for one purpose he is present for all purposes; and being present, a member of this House in fact, his presence with those voting, constitutes a majority of all the members of the House, which is a quorum.

In many State constitutions it is provided expressly that a majority of all the members elected shall be required to vote in favor of a bill to pass it. But there is no such provision in the Constitution of the United States, so that most of the decisions made under the express provisions of the State constitutions do not apply to the House of Representatives of the United States. Its existence and action are limited and controlled, touching all matters of legislation, by the provisions of the Constitution of the United States, and by those provisions alone; and, tried by this fixed law, the House has concluded to take up for consideration the contested-election case of Smith *vs.* Jackson, and the Speaker, in so ruling, should be sustained by a vote of the House.

The gentleman from Georgia, however, lays great stress upon the fact, as he claims, that the yea-and-nay vote entered upon the Journal only has been consulted heretofore in determining the presence or absence of a quorum, and has read from the ruling of Messrs. Blaine, CARLISLE, and others, and the opinions of various distinguished men who were members of former Congresses. In reply, I submit that it is the Constitution alone that determines what a quorum is, and not the opinion of any former or present Speaker. It is true the Speaker, as the organ of the House, decides all questions presented, but the House itself, upon appeal, confirms or overrules the decisions of the Speaker. And I submit that this question has never been presented for the decision of any Speaker until now.

You may search the precedents and I am quite sure that you will not find, until this vote was taken, that the names of members present in the House during the roll-call and not voting were noted, under the direction of the Speaker, by the Clerk, until this vote was taken. So that, for the first time, we have the question presented upon the record upon the Journal where a quorum did not vote in fact, but that enough members to make far more than a quorum were and are present while the House was voting and failed to vote.

Now, I want to be fair with the House. If a man had asked me three months ago, "Mr. CANNON, if a yea-and-nay vote, spread upon the Journal, fails to show a quorum voting, can you *aliunde* the vote to show a quorum present?" I should have answered off-hand, in the light of the precedent, "No, sir." But after a careful and honest examination of the Constitution itself, and of the discussions which were had at the time it was made and at the time of its adoption, and construing it in the light of sound reason and parliamentary usage, I must confess that I find myself standing to-day upon the Constitution and saying that if I am present in this House of Representatives, representing 150,000 people, I count, under the Constitution, one towards making a quorum, whether I vote or refuse to vote. Point out to me the line or sentence in the Constitution which contradicts the correctness of this position.

Mr. HEARD. Will the gentleman allow me a question?

Mr. CANNON. On this point?

Mr. HEARD. Yes, sir. The gentleman speaks about the changed condition which affects his interpretation of the law. I wish to ask him what change there has been in the condition of affairs since the last House was in session, when he and others on that side refused to vote when the case of Sullivan *vs.* Felton was repeatedly called up?

Mr. CANNON. Now, if the gentleman will allow me——

Mr. HEARD. I will.

Mr. CANNON. He does not do himself or me justice by that question.

Mr. HEARD. Well, answer it.

Mr. CANNON. The gentleman knows that in this popular body, the House of Representatives, members from time to time do, and perhaps always will do, under a supposed partisan necessity, that which lies in their power to do, and then, having done it, the desire to be sustained makes them claim a construction of the Constitution to justify that which nothing in sound sense or good morals can justify else. [Applause and laughter.]

Mr. HEARD. Now, my friend says that my question does not do him or myself justice. I ask him what is the difference between the case presented in the last Congress and the one now presented? That case had been reported by a majority of the Committee on Elections, the report being that Mr. Sullivan was entitled to the seat and the status bei g exactly the same as that of the case called up to-day.

Mr. CANNON. Mr. Speaker, a great many questions will be raised under the Constitution in the two Houses of Congress and in the courts when you and I are dead and gone; and they will have to be settled from time to time when they are raised. I say again, I have no recollection that at any time during my sixteen years' service in this House this question, which was raised and decided to-day, was ever before raised and decided. Certainly the Speaker never counted those who were present and directed that the fact of their presence be entered on the record; certainly an appeal was never taken from such action.

I therefore lay down this proposition, that the very object of this provision in the Constitution touching a yea-and-nay vote, as shown by the debates and as shown by the able speech made by perhaps the greatest constitutional lawyer who sat upon the other side of the House since I have had the honor to serve in Congress, was for another and different purpose than that for which it is invoked to-day. I refer to

Hon. J. Randolph Tucker, of Virginia. I read from the debates of the Forty-sixth Congress. He said:

If you will look at the debates on the Federal Constitution on this subject, you will find that the only danger the framers of that Constitution apprehended was the action of less than a majority of the House when more than a majority was absent from the House.

But there was no apprehension expressed in the debates and no apprehension felt that there would be any action by a majority of those voting if there were enough present to constitute a majority of the House, and so, sir, all our rules have looked to present and absent members.

And when on the single proposition to amend the rule to do exactly that which has been done under the Constitution to-day, the argument which Mr. Tucker made was quite as strong as the arguments of others read by the gentleman from Georgia during his remarks on the other side.

Mr. Speaker, I paused to hear the gentleman from Georgia [Mr. CRISP] read from that great leader of Democracy in former Congresses, Mr. Tucker; but the gentleman did not do so. [Laughter.]

Now, I have a great constitutional lawyer agreeing with Mr. Tucker on this question. He was a member of the House; now he is a member of the Senate. I refer to Senator BLACKBURN.

But, sir, I want to read a few sentences touching this matter from another Democratic Representative, a member of the Forty-sixth Congress and of this Congress. I read as follows:

A majority shall constitute a quorum to do business. That majority do not vote, but they must be here. If the majority is here the quorum is here, and if by the rules of the House we have determined that fact then we are a majority ready for business. How do we determine that fact? Each House may determine the rules of its proceedings. Therefore, if we have determined by the rules of our proceedings that a quorum is to be ascertained in this way, then a quorum is here, the majority is here and ready for business.

Therefore, you will find from this provision of the Constitution, Mr. Chairman, that a smaller number may adjourn from day to day, and it is authorized to compel the attendance of absent members. If we may compel the attendance of absent members what virtue is there in this provision of the Constitution at all; what use is it to us unless it is, as my friend from North Carolina says, to compel them to be here to constitute a quorum? What is the constitional provision for? What is it worth in the Constitution if, after having been exercised, it amounts to nothing at last and the man is not here? I wish to say by our legislative system our fathers understood that when this power was exercised the man was here, and all we have to do is to recognize that fact.

Mr. Speaker, those are the remarks, supporting Mr. Tucker's proposition, made by my honored colleague who is so industrious and so able a defender of the Democratic faith; I refer to Hon. WILLIAM M. SPRINGER, of the State of Illinois. [Laughter and applause on the Republican side.]

Mr. Speaker, the true rule is no doubt that the vote for and against a proposition on a roll-call entered upon the Journal is *prima facie* evidence of the presence or absence of a quorum, but *prima facie* only. And it is perfectly competent, in accordance with the fact, to note upon the Journal the actual presence of members in the Hall while a vote is being taken by entering their names upon the Journal, and that they do not vote. The highest parliamentary authority, I might say all parliamentary authority, is in favor of the proposition as laid down. I read from Principles of Procedure in Deliberative Bodies, by Hon. George Glover Crocker, president of the Massachusetts senate, and lately published, which is the most recent compilation touching parliamentary usages:

If a quorum is present, vote valid, though less than quorum votes.—It may be laid down as a general rule that it is the duty of every member of an organization not only to be present at its meetings, but also to vote upon the questions which arise. Hence it is that a vote is binding and valid upon an assembly if a quorum of the assembly is present, even if a quorum does not vote. If a quorum is present a motion is carried, if supported by a majority of those who actually vote. Any other course would enable a small minority, by neglecting their duty, to have more power than they would have if they voted. Thus, if 50 members constitute a quorum and 50 members are present, it would be obviously wrong to allow one member who is opposed to a pending motion to prevent the passage of the motion by abstaining from voting, when, if he voted, the motion would be carried by a vote of 49 to 1.

In all cases, however, where in a counted vote it appears that a quorum has not voted, the presumption is thereby raised that a quorum is not present; and unless this presumption is overthrown, the vote must be considered void. This presumption can be overthrown by proof that a quorum was actually present at the time the vote was taken, and, if it is so overthrown, then the vote is valid. If a quorum does not vote, but is in fact present, the secretary should make entry in the records that on a count of the assembly it was found that a quorum was present.

The gentleman from Georgia [Mr. CRISP] claims that the construction of the Constitution which enables the Clerk, under the direction of the Speaker, to note the presence of members who do not vote as present and not voting places it in the power of the Speaker to note as present members who are not in fact present, and he denounces such action as revolutionary. In reply to the gentleman, I call his attention to the fact that the Journal is always under the control of the House, and that if the Speaker, corruptly or by mistake, as sometimes happens on a roll-call, enters the name of a member as present or as voting when he is not in fact present or voting, the remedy is with the member and with the House when the Journal is read for approval or correction.

And to-day, when the Speaker directed the names of the gentleman himself [Mr. CRISP, of Georgia] and Messrs. CARLISLE and BRECKINRIDGE, of Kentucky, to be entered upon the Journal as present, in fact, in the hall of the House, but not voting, it was in their power then, is in their power now, and will be in their power and that of any other member to-morrow morning, when the Journal is read for approval, to have the Journal corrected if they were not, in fact, present in the House to-day at the time the vote was taken. So I submit that the gentleman has made a man of straw, and then, with great noise and declamation, has proceeded to demolish his man.

Mr. Speaker, the gentleman from Georgia lays great stress upon the fact that gentlemen present and not voting are now for the first time counted as present and not voting, and counted to make a quorum under the Constitution, and that precedents should not be overruled.

I want to give you a precedent which was followed for eighty years in this country, which grew hoary with age, touching what a majority of the House to constitute a quorum was. From the adoption of the Constitution until 1861 it was always held, after great discussion by all Houses and by all Speakers, that a majority to constitute a quorum was a majority of all the Representatives authorized by law, whether they had been elected or not.

By and by, when certain States of this Union said, "We will commit suicide and not elect Representatives and send them to Washington," then that ruling, which was honored by hoary age and precedent, crumbled like dirt: and the ruling was made, and it has been enforced from that day to this, that a quorum is a majority of all the members of the House *in esse*—in being. So when Judge Kelley died the other day a quorum of the House became, the day he died, 165 instead of 166, as it was before. Yet the learned and eloquent gentleman from Georgia can stand and read hour by hour from the discussions of former Congresses that such a ruling would be revolutionary.

Mr. Speaker, the very foundation of the Republic rests upon the control of the policy of the Government and the enactment of legislation by a majority, and the Constitution says what shall constitute that majority in the two Houses of Congress to do business. That majority is present now in fact, as ascertained by the record, but a minority of that majority says, "Yes, we are present, but we will compel the majority to say we are not present, unless the majority will assent to do only such business as we, the minority, choose to designate." In other words, legislation shall not proceed unless the majority will allow the minority to rule. And when the majority proceeds to note the actual presence of the minority according to the fact, there is a pandemonium of outcry from the minority that a noting of the actual fact is revolutionary.

In reply, I say that a majority under the Constitution is entitled to legislate, and that, if a contrary practice has grown up, such practice is unrepublican, undemocratic, against sound public policy, and contrary to the Constitution. And I am here to assist in upholding the Constitution. If the minority is to rule, the Republic has ceased to exist and in its place is an aristocracy.

Sir, everywhere, from farm and factory, from school and college, sixty millions of people in the Republic join in the demand that, a quorum of the House being present, the American House of Representatives shall perform its function. Therefore I shall vote to sustain the decision of the Speaker. [Great applause.]

Mr. CARLISLE. Mr. Speaker, I shall occupy the time of the House but a few minutes, and I feel compelled to ask the House to preserve order during the time I speak, for the reason that I am suffering from a very severe cold and ought not in fact to say anything this afternoon.

This is not, strictly speaking, a question of parliamentary law in any proper sense of the word; it is a question of constitutional law. For more than a hundred years no Speaker has ever sat in that chair and undertaken to hold that less than a majority of the members-elect could pass any bill or motion in this House. Until this morning no presiding officer in this House has ever held that it was competent to count members not voting, and by that means pass any motion or bill. No Speaker has ever held that it was sufficient simply for a majority of the members-elect to be present, but all have held, and uniformly held, from the beginning of the Congress down to this day, that a majority must not only be present to constitute a quorum, but that a quorum must participate in the legislation.

The Constitution provides that—

Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the Journal.

And in another section it provides:

Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

In the first place, it will be observed that the fifth section of the article which I have just read provides expressly that a majority of each House shall constitute a quorum to do business. But the framers of the Constitution did not stop even there. They went a step further, in order that there might be no room for controversy on the subject, and made this additional provision in the Constitution:

But a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

Mr. Speaker, the Constitution does not say that in order to transact business a majority of each House shall be present, but it does say in express terms that a majority of each House shall constitute a quorum

"to do business;" and then it proceeds to specify distinctly what the things are that less than a majority may do. I need not say to a body like this, composed in a large part of lawyers, that it is a well known and universally recognized rule of construction that when the Constitution or a statute enumerates certain things all other things are excluded. When, therefore, the framers of the Constitution had provided that a majority of the members-elect should constitute a quorum "to do business" they saw at once that if the Constitution stopped there less than a majority could do nothing; that, if the provision stopped at that point, less than a majority could not even compel the attendance of absent members, or take any other step as a legislative body, and, therefore, they proceeded to give power to less than a majority to do these things.

I submit to gentlemen on the other side, if the ruling made this morning is correct, that there was no necessity whatever for any provision in the Constitution defining what less than a majority might do. The rule of common law was that when an authority or power was delegated to any given number of persons, nothing else being said, all must act or the proceeding would be invalid. If a power was delegated to five or any other number of individuals, nothing more being said, all five of the individuals had to be present and all five had to act; but we have in our Constitution, and we often provide in our statutes creating boards or corporations, that less than a majority may act, and the number so specified takes the place of the whole body and may do the things which the whole number would otherwise be required to do.

If, therefore, this provision had not been in the Constitution and we had applied to that instrument the common-law rule as interpreted by the English courts and by most of the courts in this country, the presence and participation of every member would have been necessary in order to enable legislation to go on. But a different rule is prescribed and a majority of all members elected to the House constitute a quorum to do business. The words "to do business" are not in all our constitutions. They are not in that clause of the constitution of the State of New York upon which was based the ruling of Governor Hill read by the Speaker this morning. That provided that in the consideration of certain classes of bills three-fifths of the members should constitute a quorum, but it did not require three-fifths to pass the bills.

On the contrary, as was expressly stated by the presiding officer in that case and as will be seen by reference to his decision when it is read in the RECORD in the morning, it was expressly stated that this bill did pass by the vote which the constitution required to pass all bills, to wit, a majority of the members present. I am not saying this with a view to justify that decision, because I think it was wrong, and when the supreme court——

Mr. MCKINLEY. Will the gentleman permit me to interrupt him a moment?

Mr. CARLISLE. Certainly.

Mr. MCKINLEY. That bill requires three-fifths under the constitution.

Mr. CARLISLE. So I stated or intended to. The constitution provided that in the passage of that class of bills three-fifths shall constitute a quorum; but there was another provision in the constitution which allowed a majority to pass bills.

We have in the Constitution of the United States a provision that when a bill has been returned by the President to the House in which it originated, with his objections, it shall require a vote of two-thirds to pass it over his veto. In all other cases here a majority of a quorum can pass a bill, but a quorum must act by voting for or against it. I read the constitution of the State of New York, cited this morning; it made no provision as to the number of votes required to pass such a bill, but did require that three-fifths of the members present should constitute a quorum.

Mr. BAKER. And a majority vote.

Mr. CARLISLE. And it would pass by a majority vote. What Governor Hill decided was that if three-fifths were actually present a majority of all the members elect could pass the bill.

Mr. LANSING. The constitution of the State of New York provides that no bill can be passed without an affirmative vote of a majority of all the members-elect to either House.

Mr. CARLISLE. And that bill did actually pass by a majority of all the members elected to the senate.

Mr. LANSING. You are right.

Mr. CUTCHEON. But how was the quorum ascertained to be present?

Mr. CARLISLE. I say that I do not agree with Governor Hill that he had a right to count a quorum when it was not voting, but that is an entirely different question from the one now before the House; and I was about to say when the Republicans have to resort to Democratic precedents for their action in this House that it is to be regretted they should have taken the very worst ones they could find. [General applause and laughter.] There are a number of good Democratic precedents which you could have found. [Applause.]

Mr. Speaker, I have read the two provisions of the Constitution, one of which prescribes the number requisite to constitute a quorum "to do business"—and I will lay stress upon these words, because they mean something—and the other is the provision which requires the House to keep a Journal and allows one-fifth of the members to call for the yeas and nays and have them entered upon that Journal. I insist, Mr. Speaker—and in this I am sustained by the decisions of all the courts in this country, so far as they have had occasion to pass upon the question—that when the yeas and nays are called "the Journal is the only and conclusive evidence of the facts." This has been held everywhere in Illinois, in Indiana, in Virginia, in Ohio, in Maryland, and in the Supreme Court of the United States, passing upon a statute made by the State of Illinois. Everywhere it is held that this record imports absolute verity, and you can not go outside of it to contradict it or to explain it.

I remember reading a case not long ago where an attempt was made to show in a court that two members whose names appeared on the journal as having voted on the passage of a bill were not in fact present when the vote was taken. The court said that the journal was conclusive upon the question and could not be disputed; and in a recent case in the State of Virginia which was handed me a few moments ago the same rule was laid down. The constitution of that State required bills to be passed by a majority of two-thirds—that is to say, it required two-thirds of those present to pass a bill. A bill was passed, and its validity was assailed in the court. An attempt was made to show that there were two members present whose names did not appear on the journal, and that therefore the number of votes given for the bill was not two-thirds of those actually present. The court decided, in an elaborate opinion, citing a number of cases, that the journal was absolutely conclusive and could not be questioned.

And, Mr. Speaker, why should not this be so? I know it may be answered, according to the ruling of the Speaker this morning, that the members have been counted, and that the Journal will show that a certain number of gentlemen were present in their seats and refused to vote. But I deny absolutely the right of the presiding officer of this House to make the Journal. [Applause on the Democratic side.] The Journal is the record of the proceedings of the House itself; and it can not be made evidence of a fact simply because the Speaker sees proper to have it inserted. [Renewed applause on the Democratic side.] The Journal of this morning as made by the House itself on the call of the roll is the only and conclusive evidence of what occurred. The only official record is contained in the pages of that Journal, which shows the vote of the House and that 163 members only participated in the transaction of that business.

Suppose the Speaker is right; then one man can pass a bill here just as well as one hundred and sixty-six. [Applause on the Democratic side.] If the Speaker has a right to make the Journal and make a quorum, and have the Clerk of the House, under his direction, put upon the Journal the fact that there is a quorum present, then there is no longer any safety for the rights of the people in this House. [Applause on the Democratic side.]

The Journal is intended by the Constitution to be the Journal of the House. This is what the Constitution says: "Each House shall keep a Journal of its proceedings;" and when one-fifth of the members present desire it, the yeas and nays shall be entered upon that Journal. It is the Journal of the body; it is not the Journal of the Speaker, who is simply the organ of the House, and not its master. [Applause on the Democratic side.] When the House has directed the yeas and nays to be taken as provided for by the Constitution, when they have been taken and are entered upon that Journal, which the Constitution itself requires the House to keep, that is the only evidence of what transpires.

Why, sir, shall it be said that three gentlemen, or five gentlemen, or twenty-five gentlemen can pass upon the most important legislation that might come before this body? Unquestionably they can if this ruling be correct. It is not an answer to say that other Representatives were here and could have voted if they chose to do so. That is their business and the business of their constituents; not the business of the Speaker. [Applause on the Democratic side.] If I am not prepared to vote upon the question, I have the right to refrain from voting. It may be that a member has just stepped inside the Hall when the vote is being taken and is not prepared to vote. It may be that he has considerered the question thoroughly and maturely, but still his judgment has not been formed as to its merits.

It may be, on the other hand, that he simply refrains from voting for the purpose of breaking a quorum of the House. For that he is not responsible to this House or to the Speaker of this House, but to his constituents. [Applause on the Democratic side.] It has been stated by the Speaker in giving his decision this morning that the provision of the Constitution which allows less than a quorum to compel the attendance of absent members would be nugatory if the member is not to vote or could not be counted when he comes in. That may be so. So is that provision of the Constitution nugatory if the member deliberately from day to day absents himself from this House and conceals himself so that an officer of the House can not find him, and never makes his appearance here; but he is responsible not to this House or to the Speaker, but he is responsible to his constituents. So it is if he comes in here and refuses to vote. He must take the consequences, whatever they are, and the only question which we have to discuss is whether less than a majority of the members-elect of this House can

transact business, or, to use the language of the Constitution, "do business."

Why, sir, even in the exciting times of the war it was never claimed, so far as I know, that less than what was then determined to be a quorum could pass a bill or a motion in the House. Then for the first time in the history of this country, so far as I now remember, it was held that a majority of all the members actually elected to the House constituted a quorum to do business. The general rule theretofore had always been that a quorum consisted of a majority of all the members composing the House, supposing it to be full, but during the war many States declined to send Representatives, and it became an absolute necessity to adopt a different rule as to the number constituting a quorum; but when that number was once fixed by the rule of the House or the decision of the Chair it was never claimed, so far as I know, that less than that number could do business.

Now, I am not here to deal in epithets, but it is evident to every one that if this ruling stands it will work a complete revolution in the methods of transacting business in this House. For more than a hundred years the people of this country have rested secure in the conviction that no less than a majority of all the members elected here could pass laws binding upon them. During all that time the courts, whenever the question has come before them, have decided that they could look and would look to the Journals kept by the House as the final and the conclusive evidence upon which the question of fact as to whether or not there was a quorum present and participating must be determined. But now we are told for the first time that any number of men, however inconsiderable, may pass in this House upon the most important legislation that can come up for the consideration of the Representatives of the people, provided the Speaker, after looking over the House, determines that there are a certain number present besides those who vote and orders that fact to be entered upon the Journal.

I think, Mr. Speaker, that while some inconvenience results from the rule we have always had, as inconvenience must result sometimes from the operation of any rule you can have, still it is far more safe, it is far more in accordance with the character of our institutions, that we should stand by the old rule as laid down in the Constitution and allow no legislation here unless it is participated in by a majority of all the members elected to this House. It is the only safe rule, and it is the rule we ought to stand by hereafter as we have heretofore. [Prolonged applause on the Democratic side.]

Mr. MCKINLEY. Mr. Speaker, I had intended to ask the indulgence of the House upon this question this evening, but all around me gentlemen seem to desire an adjournment, and I therefore move that the House do now adjourn.

The motion was agreed to.

The SPEAKER. Before announcing the result of the vote the Chair desires to say that the name of the gentleman from Ohio [Mr. OUTHWAITE] was not upon the record held by the Chair; but in the confusion of the moment, which upon one side approached perhaps somewhat near to boisterousness, his name was pronounced by accident. [Jeers on the Democratic side.] The motion of the gentleman from Ohio [Mr. MCKINLEY] is agreed to, and the House accordingly [at 5 o'clock and 6 minutes p. m.] stands adjourned until to-morrow at 12 o'clock.

PRIVATE BILLS, ETC.

Under the rule, private bills of the following titles were introduced and referred as indicated below:

By Mr. ALLEN, of Michigan: A bill (H. R. 6104) for the relief of Dr. Karl Rückert—to the Committee on Claims.

By Mr. BAKER: A bill (H. R. 6105) for the relief of Mary Jane Waring and Sarah B. Waring—to the Committee on Claims.

By Mr. BRECKINRIDGE, of Arkansas: A bill (H. R. 6106) for the relief of W. H. Reynolds, late a private in Company B, Twelfth Regiment Kentucky Infantry Volunteers—to the Committee on Invalid Pensions.

By Mr. BUTTERWORTH: A bill (H. R. 6107) for the relief of Charles H. Nye—to the Committee on Naval Affairs.

By Mr. COMPTON: A bill (H. R. 6108) for the relief of Franklin Pennington—to the Committee on War Claims.

By Mr. CUTCHEON: A bill (H. R. 6109) granting arrears of pension to William W. Smith, late Company A, Twenty-fourth Michigan Infantry—to the Committee on Invalid Pensions.

Also, a bill (H. R. 6110) for increase of pension to Harvey T. Alcott, late of Company K, One hundred and twenty-sixth New York Infantry Volunteers—to the Committee on Invalid Pensions.

By Mr. DUBOIS: A bill (H. R. 6111) to amend the charter of the city of Lewiston, Idaho Territory—to the Committee on the Territories.

By Mr. ELLIS: A bill (H. R. 6112) for the relief of T. F. Brown—to the Committee on War Claims.

By Mr. EWART: A bill (H. R. 6113) for the relief of Benjamin F. Buckner and Taylor Bricker—to the Committee on War Claims.

By Mr. FOWLER: A bill (H. R. 6114) granting a pension to Elizabeth A. Saums—to the Committee on Invalid Pensions.

Also, a bill (H. R. 6115) granting a pension to Andrew Lewis—to the Committee on Invalid Pensions.

By Mr. HARE: A bill (H. R. 6116) to reimburse W. R. H. Mack for stores furnished to the Army during 1864—to the Committee on War Claims.

By Mr. HAYES: A bill (H. R. 6117) for the relief of Fred. Daut & Co.—to the Committee on Claims.

Also, a bill (H. R. 6118) granting a pension to Henry Winning—to the Committee on Invalid Pensions.

Also, a bill (H. R. 6119) granting a pension to Ole Jacobsen—to the Committee on Invalid Pensions.

By Mr. LODGE: A bill (H. R. 6120) for the relief of the officers and crew of the United States gunboat Isaac Smith—to the Committee on War Claims.

By Mr. MCCOMAS: A bill (H. R. 6121) granting a pension to John T. Walsh—to the Committee on Invalid Pensions.

Also, a bill (H. R. 6122) for the relief of the estate of Emily A. Trundle—to the Committee on War Claims.

Also, a bill (H. R. 6123) for the relief of Charles L. Cole—to the Committee on Military Affairs.

Also, a bill (H. R. 6124) to provide for paying certain advances made to the United States by the State of Maryland—to the Committee on Claims.

By Mr. MORGAN (by request): A bill (H. R. 6125) to amend the record of Robert Walter—to the Committee on Naval Affairs.

By Mr. PAYNE: A bill (H. R. 6126) granting a pension to Rueban Jenkins—to the Committee on Invalid Pensions.

Also, a bill (H. R. 6127) granting a pension to Electa A. McColly—to the Committee on Pensions.

Also, a bill (H. R. 6128) granting a pension to Newell F. Osterhout—to the Committee on Invalid Pensions.

Also, a bill (H. R. 6129) to relieve Luther Green from the charge of desertion—to the Committee on Military Affairs.

Also, a bill (H. R. 6130) granting a pension to Frederick Martin—to the Committee on Invalid Pensions.

Also, a bill (H. R. 6131) granting a pension to Dolphia S. Mead—to the Committee on Invalid Pensions.

By Mr. PAYNTER: A bill (H. R. 6132) granting a pension to Sarah A. Dixon—to the Committee on Invalid Pensions.

Also, a bill (H. R. 6133) for the relief of Samuel Raymond—to the Committee on War Claims.

Also, a bill (H. R. 6134) to remove the charge of desertion against Thomas Davenport—to the Committee on Military Affairs.

Also, a bill (H. R. 6135) granting a pension to Charlotte Meyer—to the Committee on Invalid Pensions.

Also, a bill (H. R. 6136) to remove the charge of desertion against Clark Colvin—to the Committee on Military Affairs.

Also, a bill (H. R. 6137) to remove the charge of desertion against Isaac W. Lykins—to the Committee on Military Affairs.

Also, a bill (H. R. 6138) to remove the charge of desertion against George Lews—to the Committee on Military Affairs.

Also, a bill (H. R. 6139) for the relief of B. C. Clayton—to the Committee on War Claims.

Also, a bill (H. R. 6140) granting a pension to Andrew M. Banister—to the Committee on Invalid Pensions.

By Mr. PHELAN: A bill (H. R. 6141) for the relief of John R. McDowell, administrator of John McDowell, deceased, of Fayette County, Tennessee—to the Committee on War Claims.

By Mr. RUSK: A bill (H. R. 6142) for the relief of Anna Schaap—to the Committee on Claims.

By Mr. SMITH, of Illinois: A bill (H. R. 6143) for the relief of Albert McConnell—to the Committee on Military Affairs.

Also, a bill (H. R. 6144) to compensate George K. Kirchner for his stock of goods taken by Federal soldiers in the year A. D. 1862—to the Committee on Claims.

Also, a bill (H. R. 6145) granting a pension to Mrs. Hattie E. Bolte—to the Committee on Invalid Pensions.

Also, a bill (H. R. 6146) to increase the pension of George C. Quick—to the Committee on Invalid Pensions.

Also, a bill (H. R. 6147) for the relief of Miriam Goodloe and others—to the Committee on Claims.

Also, a bill (H. R. 6148) granting a pension to Mrs. Mary J. Sanders—to the Committee on Invalid Pensions.

Also, a bill (H. R. 6149) for the relief of Noah W. Crane, late of Company F, Eighty-first Regiment of Illinois Volunteer Infantry—to the Committee on Military Affairs.

Also, a bill (H. R. 6150) for the relief of Mrs. Lousia Harrington, widow of Thomas Harrington, deceased—to the Committee on Claims.

By Mr. STEWART, of Georgia: A bill (H. R. 6151) for the relief of J. Frank Redd—to the Committee on Claims.

By Mr. STRUBLE: A bill (H. R. 6152) granting an increase of pension to Francis A. Parrott—to the Committee on Invalid Pensions.

By Mr. TRACEY: A bill (H. R. 6153) granting a pension to Elizabeth Bennett—to the Committee on Invalid Pensions.

By Mr. WILSON, of West Virginia: A bill (H. R. 6154) for the relief of the trustee of St. Joseph's Catholic Church at Martinsburgh, W. Va.—to the Committee on War Claims.

By Mr. ELLIS: A bill (H. R. 6155) for the relief of Elizabeth Fulwiler—to the Committee on War Claims.

PETITIONS, ETC.

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

By Mr. CARTER: Memorial of the House of Representatives of the State of Montana, favoring Chicago for the world's fair—to the Select Committee on the World's Fair of 1892.

By Mr. CARUTH: Remonstrance of the brewers of Louisville, Ky., against any increase of the duty on hops—to the Committee on Ways and Means.

By Mr. CHIPMAN: Petition of S. S. Stephenson, M. D., for a reward for discovery of a specific for sporadic pneumonia—to the Committee on the Library.

By Mr. COMPTON: Petition of Franklin Pennington, for relief—to the Committee on War Claims.

By Mr. ELLIS: Proofs and vouchers to accompany the claim of T. F. Brown—to the Committee on War Claims.

Also, proofs to accompany the claims of Mrs. E. Fulwiler—to the Committee on War Claims.

By Mr. GEAR: Affidavit in support of the claim of —— Dahlberg for pension—to the Committee on Invalid Pensions.

By Mr. HARE: Petition of sundry citizens of Montague County, Texas, asking payment of losses by Indian depredations—to the Select Committee on Indian Depredation Claims.

Also, petition of W. R. H. Mack, Bowie, Tex., for reimbursement for stores furnished the United States Army during 1864—to the Committee on War Claims.

By Mr. HARMER: Memorial of the Philadelphia Maritime Exchange, favoring a Governmental department of commerce—to the Committee on Commerce.

By Mr. KNAPP: Petition of 286 citizens of New York, in favor of a Sunday-rest law—to the Committee on the Judiciary.

By Mr. McCOMAS: Petitions of Maria Grove, executrix of Stephen P. Grove; Thomas Hilleary, John Hammond, C. R. Lamar, for the estate of Richard Lamar, and Hamilton A. Moore, that their claims be referred to the Court of Claims—to the Committee on War Claims.

By Mr. MILLIKEN: Memorial of the Board of Trade, Augusta, Me., favoring the location of the world's fair at New York City—to the Select Committee on the World's Fair.

By Mr. MORRILL: Petition of M. Krinnen and 62 ex-soldiers of Johnson County, Kansas, and of O. S. Deming and 30 ex-soldiers, asking passage of the Grand Army of the Republic pension bills—to the Committee on Invalid Pensions.

By Mr. MORROW: Petition of citizens of San Diego, Cal., in favor of the repayment of excess of $1.25 per acre paid on lands in railway limits, said lands having been restored to the public domain—to the Committee on the Public Lands.

By Mr. PAYNE: Petition of Knights of Labor, Oswego, N. Y., for act requiring census report of mortgage indebtedness—to the Select Committee on the Eleventh Census.

By Mr. PAYNTER: Petition of John T. Shepherd, to have refunded to him certain moneys paid out while postmaster at Grayson, Ky.—to the Committee on War Claims.

Also, petition of Isaac W. Lykens, for removal of charge of desertion—to the Committee on Military Affairs.

Also, petitions of Anderson M. Banister and Mrs. Charlotte Meyer, for a pension—to the Committee on Invalid Pensions.

Also petition of Nancy F. Erton, to remove charge of desertion against Thomas Davenport—to the Committee on Military Affairs.

By Mr. POST: Petition of J. E. Watson and 72 others, citizens of Peoria County, Illinois, in favor of pure lard—to the Committee on Agriculture.

By Mr. QUINN: Petition of silk-workers and residents of New York City, for duty on silk—to the Committee on Ways and Means.

By Mr. ROGERS: Petition of Samuel Cooper, that his claim be referred to the Court of Claims—to the Committee on War Claims.

By Mr. SENEY: Petition of Engel Post, No. 109, Grand Army of the Republic, Benton Ridge, Hancock County, Ohio, favoring a service and dependent pension bill—to the Committee on Invalid Pensions.

By Mr. SMITH, of Illinois: Memorial of Post No. 297, Grand Army of the Republic, Carbondale, Ill., relative to pension legislation—to the Committee on Invalid Pensions.

By Mr. STIVERS: Petition of 199 citizens of Schuyler County, New York, in favor of a Sunday-rest law—to the Committee on the Judiciary.

By Mr. STOCKDALE: Petitions of George E. Ewing and 16 others, citizens of Chatawa; of A. J. Whitemarth and 71 others, citizens of McComb City; of Hon. James C. Lamkin, mayor, and 70 others, citizens of Summit, and of S. B. Williams and 36 others, citizens of Magnolia, Miss., in favor of Chicago for the world's fair—to the Select Committee on the World's Fair.

By Mr. WALLACE, of Massachusetts: Memorial of Local Assembly No. 7189, Knights of Labor, of North Leominster, Mass., relative to the next census of the United States showing what proportion of the people of this country occupy their own farms and homes—to the Select Committee on the Eleventh Census.

By Mr. WRIGHT (by request): Petition against the speculative sales of commodities other than those actually produced or manufactured—to the Committee on Agriculture.

SENATE.

THURSDAY, *January* 30, 1890.

Prayer by the Chaplain, Rev. J. G. BUTLER, D. D.

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

TRADE RELATIONS WITH MEXICO.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of the Treasury, requesting that a former communication sent by him to the Senate in response to a resolution of March 30, 1889, in regard to traffic between the United States and Mexico, be returned to him and that the inclosed pamphlet, entitled "Commerce between the United States and other foreign countries with Mexico, Central America, and South America, 1889," be substituted therefor; which was read.

Mr. SHERMAN. I think the communication and accompanying pamphlet may as well be referred to the Committee on Printing. It is hardly worth while to print both documents, and that committee will report the necessary order.

Mr. MANDERSON. I understand that one substantially contains the other.

Mr. SHERMAN. The later document, it is stated, includes all of the other and a good deal more, and both ought not to be printed.

The VICE-PRESIDENT. The communication and the accompanying report will be referred to the Committee on Printing.

ADJOURNMENT TO MONDAY.

Mr. MANDERSON. I move that when the Senate adjourn to-day, it be to meet on Monday next.

The motion was agreed to.

PETITIONS AND MEMORIALS.

Mr. FARWELL presented the petition of Dr. Joseph S. Lane, late a surgeon in the United States Army, and other citizens of Chicago, Ill., praying that Dr. Lane be granted an increase of pension; which was referred to the Committee on Pensions.

Mr. SHERMAN presented a petition of the Massillon (Ohio) branch of the National Suffrage Association, praying for the passage of a joint resolution providing for an amendment to the Constitution prohibiting the States from disfranchising citizens on account of sex; which was referred to the Select Committee on Woman Suffrage.

Mr. ALLEN presented a petition of the Board of Trade of Walla Walla, Wash., praying that an appropriation of $20,000 be made to be expended in building fences, planting trees, and otherwise improving the military reservation known as Fort Walla Walla, consisting of about 620 acres of land immediately adjoining the city of Walla Walla, in the State of Washington; which was referred to the Committee on Military Affairs.

Mr. TURPIE. I present a memorial of a convention held at Oklahoma City, November 29, 1889, on the subject of town sites in Oklahoma territory. The memorial sets out certain grievances of the people, charged to be such, and also makes suggestions with respect to pending legislation. I ask that it be printed as a document and referred to the Committee on Public Lands.

The VICE-PRESIDENT. The memorial will be printed as a document, if there be no objection, and referred to the Committee on Public Lands. The Chair hears no objection, and it is so ordered.

Mr. CASEY presented a petition of the San Diego (Cal.) Chamber of Commerce, praying for the establishment of a ten-company post at San Diego, Cal.; which was referred to the Committee on Military Affairs.

He also presented a petition of the Corpus Christi (Tex.) Board of Trade, praying that an appropriation of $6,200,000 be made for the improvement of Galveston Harbor, Texas; which was referred to the Committee on Commerce.

Mr. STEWART. I present a large number of petitions from various localities in Kansas, Texas, New Mexico, and Arizona, praying for appropriations for the purpose of sinking artesian wells for experimental purposes. The signers of the petitions are very numerous and they come from a large portion of the arid region of the South where it is represented that there is water beneath the surface at various places, and they desire to have appropriations made for experiments. I ask that the petitions be referred to the Select Committee on Irrigation and Reclamation of Arid Lands.

The petitions were referred to the Select Committee on Irrigation and Reclamation of Arid Lands, as follows:

A petition of G. W. Wilkes and 23 other citizens of Arlie, Tex.;

A petition of S. D. Frazier and 42 other citizens of Carrizo Springs, Tex.;

A petition of F. M. Harris and 17 other citizens of Cataline, Tex.;

A petition of I. D. Cruduss and 9 other citizens of Cedarton, Tex.;

A petition of W. M. Baker and 16 other citizens of Clint, Tex.;

A petition of W. G. Minor and 12 other citizens of Coldwater, Tex.;

A petition of S. B. Swink and 69 other citizens of Estacado, Tex.;

A petition of C. H. Earnest and 26 other citizens of Colorado, Tex.;

A petition of W. J. Maltby and 106 other citizens of Baird, Tex.;

A petition of A. Hulse and 13 other citizens of Thrifty, Tex.;

A petition of H. W. Frost and 11 other citizens of Tims, Tex.;

A petition of James Logue and 57 other citizens of Washburn, Tex.;