were fast settling on forty-acre lots, upon which substantial houses have been built. The sanitary condition of the tribe is excellent, and the births far exceed the deaths. I mention the last fact because the surest evidence of disease and tribal decay is the absence of children.

What I have said of this agency is true of every other agency in the Territory—of the Catholic agencies, of the Presbyterian and Congregational agencies.

Now, sir, these Indians are already self-sustaining, and under the benign influence of these Christian agents are fast adopting the modes of civilized life and are moving slowly but surely up to a higher plane of civilization.

The change proposed in this bill will check if it does not entirely arrest this good work. I am not left to conjecture and speculation as to the correctness of this declaration. This change has been tried before and abandoned, because it was a cold and cheerless negation and was without beneficial results. Father Wilbur and all of those Christian agents were removed in A. D. 1871, and military officers substituted for them. The result is shown in a marked manner on this Yakama reservation. The Indians abandoned their homes on the reservation, let their houses, shops, and mills go to decay, left their farms untilled, and drove their stock to the plains and mountains, and they did not return until Father Wilbur was restored.

The loss to the Indians was heavy. Their horses and cattle were slaughtered for food, the work of civilization entirely arrested, suspicion and mistrust of the whites took the place of a confiding trust in their agent, and for a time there was danger of another Indian war. When Father Wilbur was restored the Indians came in from the plains and mountains with the remnant of their stock and settled down upon the reservation again. From that time to the present they have been making rapid advancement in civilized life; have fenced lands, built houses, plowed and sowed fields, established and sustained churches and schools, and now enjoy a large degree of material prosperity.

A word or two for pioneers and border-men, and I am done. I know that there is a popular belief that there is a settled hostility on the part of the pioneer toward the Indian—that he values the Indian only for his scalp; but, sir, this is a great mistake. Every consideration of protection and safety to himself, his family, and his property prompts him to live on friendly terms with the Indians. He knows the Indian's mode of warfare, he knows that the Indian recognizes no non-combatants, but that he slays alike women and children as well as men. Under these circumstances it would be madness for him to provoke a contest that would imperil the lives of his wife and little ones and consign his property to the flames. Whenever Indian wars have sprung from the wrongful acts of white men those acts were not perpetrated by pioneers, but by the parasites of civilization coming in their wake. They were the individual acts of bad men resented by the Indians on their principles of justice, which were satisfied not by the punishment of the offender, but upon some other white man. But, sir, most Indian wars sprang from no individual act of injustice perpetrated by the whites, but were the result of matured plans among the Indians to check the encroachment of the whites into what they deemed their country, and to preserve to themselves the domain of their fathers.

Mr. SCALES. I move the committee rise.

The motion was agreed to.

The committee accordingly rose; and Mr. SAYLER having taken the chair as Speaker *pro tempore*, Mr. SPRINGER reported that the Committee of the Whole on the state of the Union had, according to order, had under consideration the special order, a bill (H. R. No. 2677) to transfer the Office of Indian Affairs from the Interior to the War Department, and had come to no resolution thereon.

ORDER OF BUSINESS.

Mr. VANCE, of Ohio. I wish to ask the Chair whether the order made this afternoon precludes the introduction of bills?

The SPEAKER *pro tempore*. The understanding of the Chair at the time the recess was taken was that no other business would be transacted this evening than the Indian bill, and he will so rule.

Mr. VANCE, of Ohio. I ask unanimous consent to introduce a bill for reference.

Mr. COX. I do not like to interfere with the gentleman, but we must abide by the understanding of the House before the recess was taken.

The SPEAKER *pro tempore*. The Chair will rule that no other business can be transacted to-night.

Mr. RANDALL. Such was the understanding. Although it may not be a matter of record, nevertheless that was the agreement, that no other business should be transacted this evening. Therefore I think we ought not to put ourselves in any position which is open to criticism.

Mr. LORD. I rise to make a privileged report from the managers of the impeachment.

Mr. RANDALL. I think I must object for the reason I have stated.

The SPEAKER *pro tempore*. The Chair must refuse, under the understanding as to the order of business for this evening, to entertain any other business than the bill for the transfer of the Indian Bureau.

Mr. COX. I understand from the reporter that before the recess the question was asked, and it was distinctly settled that no other business was to be transacted this evening.

The SPEAKER *pro tempore*. That is the understanding of the Chair.

And then, on motion of Mr. SCALES, (at nine o'clock and fifty minutes p. m.,) the House adjourned.

PETITIONS, ETC.

The following memorials, petitions, and other papers were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. G. A. BAGLEY: The petition of Mrs. Mary Danahay, for a pension, to the Committee on Invalid Pensions.

By Mr. BELL: The memorial of H. P. Rolfe, relating to an appropriation for expenses incurred and for services rendered in the matter of the extradition of William Johnson, to the Committee on Appropriations.

By Mr. DAVY: The petition of S. P. Pitts, for compensation for a quantity of salt destroyed by British forces at Oswego, in May, 1814, to the Committee of Claims.

By Mr. HENDERSON: The petition of J. H. Paddleford and 72 other citizens of Cleveland, Illinois, for the repeal of the resumption act, to the Committee on Banking and Currency.

Also, the petition of S. M. Brown and 351 other citizens of Geneseo, Illinois, for the repeal of the resumption act, to the same committee.

By Mr. HEWITT, of New York: Memorial of the Society of Friends, on behalf of the Indians, to the Committee on Indian Affairs.

By Mr. HOOKER: The petition of 2,967 citizens of Mississippi, for the refunding of the cotton tax paid by them in the years 1865, 1866, 1867, and 1868, to the Committee of Ways and Means.

By Mr. HOPKINS: The petition of citizens of Pittsburgh, for the regulation of commerce and to prevent discriminations by common carriers, to the Committee on Commerce.

By Mr. HUNTON: The petition of P. H. Hooff, for compensation for property taken by and furnished to United States troops, to the Committee on War Claims.

By Mr. JACOBS: Papers relating to the establishment of a post-route from Snohomish to Falls City, Washington Territory, to the Committee on the Post-Office and Post-Roads.

By Mr. LEAVENWORTH: The petition of Mrs. Charles O. Roundy and 250 other ladies and gentlemen of Cayuga County, New York, for the appointment of a commission of inquiry concerning the alcoholic liquor traffic, to the Committee of Ways and Means.

By Mr. MAGOON: The petition of Allen R. Law and 38 other citizens of La Fayette County, Wisconsin, that the present duty on flaxseed and linseed-oil be maintained, to the Committee of Ways and Means.

By Mr. MAISH: Memorial of John A. Rea, for the return to him of certain taxes paid to the Government, to the Committee of Claims.

By Mr. ROBERTS: The petition of R. L. Thomas and 70 others, citizens of Cecil County, Maryland, for an appropriation for the improvement of the Northeast River, and remonstrating against any suggestion that the opening of navigation can do any one harm, and representing that the promotion of commerce will benefit all, to the Committee on Commerce.

By Mr. TUFTS: The petition of dealers and manufacturers of envelopes at Davenport, Iowa, relative to the manufacture of envelopes, postal cards, &c., by the Government, to the Committee on the Post-Office and Post-Roads.

By Mr. VANCE, of North Carolina: Papers relating to the petition of Mrs. Kate L. Usher for a pension, to the Committee on Invalid Pensions.

By Mr. WHITTHORNE: Memorial of J. H. Sims, for compensation for property taken by United States troops, to the Committee on War Claims.

By Mr. A. S. WILLIAMS: The petition of citizens of Detroit, Michigan, importers and dealers in crockery, china, and glass ware, that a uniform rate of duty of 30 per cent. be levied upon these articles, exclusive of packages, inland freight, shipping charges, and commissions, to the Committee of Ways and Means.

By Mr. YOUNG: The petition of Mary McMannamon, for the reconsideration of her claim filed before the southern claims commission and rejected, to the Committee on War Claims.

IN SENATE.

WEDNESDAY, *April* 19, 1876.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

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

SALARY OF THE PRESIDENT—VETO MESSAGE.

The PRESIDENT *pro tempore* laid before the Senate the following message from the President of the United States:

To the Senate of the United States:

Herewith I return Senate bill No. 172, entitled "An act fixing the salary of the President of the United States," without my approval.

I am constrained to this course from a sense of duty to my successors in office, to myself, and to what is due to the dignity of the position of Chief Magistrate of a nation of more than forty millions of people.

When the salary of the President of the United States pursuant to the Constitution was fixed at $25,000 per annum we were a nation of but three millions of people, poor from a long and exhaustive war, without commerce or manufactories, with but few wants and those cheaply supplied. The salary must then have been deemed small for the responsibilities and dignity of the position, but justifiably so from the impoverished condition of the Treasury and the simplicity it was desired to cultivate in the Republic.

The salary of Congressmen under the Constitution was first fixed at $6 per day for the time actually in session—an average of about one hundred and twenty days to each session—or $720 per year, or less than one-thirtieth of the salary of the President.

Congress have legislated upon their own salaries from time to time since, until finally it reached $5,000 per annum, or one-fifth that of the President before the salary of the latter was increased.

No one having a knowledge of the cost of living at the national capital will contend that the present salary of Congressmen is too high, unless it is the intention to make the office one entirely of honor, when the salary should be abolished—a proposition repugnant to our republican ideas and institutions.

I do not believe the citizens of this Republic desire their public servants to serve them without a fair compensation for their services. Twenty-five thousand dollars does not defray the expenses of the Executive for one year, or has not in my experience. It is not now one-fifth in value what it was at the time of the adoption of the Constitution in supplying demands and wants.

Having no personal interest in this matter, I have felt myself free to return this bill to the House in which it originated with my objections, believing that in doing so I meet the wishes and judgment of the great majority of those who indirectly pay all the salaries and other expenses of Government.

U. S. GRANT.

EXECUTIVE MANSION, *April* 18, 1876.

The PRESIDENT *pro tempore*. The question is, Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding?

Mr. CLAYTON. I move that the message be printed, and that the bill and message be referred to the Committee on Civil Service and Retrenchment.

The motion was agreed to.

PETITIONS AND MEMORIALS.

Mr. KEY presented the petition of John L. Divine and the representatives of the estate of William E. Kennedy, who in the life-time of the latter were mail contractors on the route from Jacksonville, Alabama, to Chattanooga, Tennessee, praying that they may be remunerated for losses sustained and time and labor bestowed in carrying the mail on that route from December 1, 1858, to the 30th of June, 1862; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. CONOVER presented a petition of the common council of the city of Saint Augustine, Florida, praying the Government to donate a certain lot of land to the city of Saint Augustine for the public uses of that city; which was referred to the Committee on Public Lands.

Mr. DAVIS. Mr. President, I desire to present for the consideration of the Senate a petition of a number of citizens of Martinsburgh, West Virginia, asking the intervention of the Government in behalf of Edward O'Meagher Condon, now confined in prison in England for some alleged political offense. The petition is numerously signed by a number of the best citizens of our State.

If the facts set forth in the petition are correctly understood by the petitioners and myself in relation to the trial and imprisonment of this citizen of the United States, then there should be some prompt action taken by the Government for his relief. It is at least due to the prisoner and the large number of people who are appealing to the Government in his behalf that all the facts in the case should be promptly inquired into and some immediate steps taken for his relief.

I move that the petition be referred to the Committee on Foreign Relations.

The motion was agreed to.

Mr. STEVENSON presented the petition of D. W. Claywell, late a sutler in the Fifth Kentucky Cavalry Volunteers, praying compensation for certain private property turned over to military officers and used by the United States Government; which was referred to the Committee on Military Affairs.

He also presented the petition of James Haggard, administrator of the estate of Jesse K. Shaw, deceased, praying compensation for one horse owned by Shaw at the time of his death and retained in the service of the United States; which was referred to the Committee on Military Affairs.

He also presented the petition of James Haggard, administrator of Jesse M. Carter, deceased, late captain of Company I, First Regiment Kentucky Volunteer Cavalry, praying pay for two horses owned by Carter at the time of his death and retained in the service of the United States Government; which was referred to the Committee on Military Affairs.

Mr. HOWE. I present the petition of certain persons who represent themselves to be members of the Menomonee tribe of Indians, of Wisconsin, not residing on the reservation set apart for the tribe, praying for the passage of an act authorizing the sale of a portion of their reservation and that they may be allowed to participate in its proceeds. I move the reference of this petition to the Committee on Indian Affairs.

The motion was agreed to.

Mr. WALLACE presented a memorial of the Board of Trade of Philadelphia, Pennsylvania, in favor of the permanent organization and maintenance of the Signal Service Corps; which was referred to the Committee on Commerce.

Mr. BOOTH presented the petition of George H. Wells, of San Francisco, California, praying compensation for the use of the steamer Southern Merchant during the late war; which was referred to the Committee on Claims.

Mr. MORTON presented a petition of 250 soldiers and heirs of deceased soldiers of the States of Indiana and Illinois, who served in the volunteer forces of the United States in the war for the suppression of the rebellion, praying for the enactment of a law providing for the equalization of bounties; which was referred to the Committee on Military Affairs.

Mr. BOGY presented the memorial of the city council and citizens of Saint Louis, Missouri, relative to the boundary line between the State of Missouri and the State of Illinois; which was referred to the Committee on the Judiciary.

Mr. CHRISTIANCY presented the petition of George H. Rathbin and 144 others, citizens of Monroe County, Michigan, praying that a pension may be allowed to the widow and children of William Bell; which was referred to the Committee on Pensions.

He also presented the memorial of Duncan Burnside and 20 other citizens of Michigan, remonstrating against the placing of bicarbonate of soda, sal-soda, caustic soda, and alum on the free list; which was referred to the Committee on Finance.

He also presented the petition of Captain George W. Yates, Seventh United States Cavalry, praying compensation for a horse lost in the Government service; which was referred to the Committee on Military Affairs.

COMMITTEE SERVICE.

Mr. OGLESBY. I ask the indulgence of the Senate and its favor to make a personal request. Some time ago, under the direction of the Senate, the President *pro tempore* placed me upon the special committee to go to the State of Mississippi and make investigations there, under a resolution passed by this body. I have reflected upon the matter as best I could, and while I am willing to share my part in the proper responsibilities that belong to a Senator, it would be exceedingly inconvenient for me to go. I cannot state all the special reasons, but in a general sense I think I may take the liberty to say to the Senate that it would be so inconvenient for me to go, that I feel that I could not in justice to myself and other duties pertaining to me officially venture to go upon that inquiry. Two of the members of the Committee on Public Lands have been appointed upon this committee. We have very important matters before that committee, and to take two members from one committee seems, as I think, rather a heavy draught upon that branch of this body. I therefore ask the Senate to excuse me from serving on the select committee.

The PRESIDENT *pro tempore*. The Senator from Illinois asks to be excused from further service upon the Special Committee on Mississippi Affairs. Will the Senate excuse the Senator from service?

The question being put, Mr. OGLESBY was excused. By unanimous consent the Chair was authorized to fill the vacancy.

REPORTS OF COMMITTEES.

Mr. OGLESBY. The Committee on Indian Affairs, to whom was referred the bill (S. No. 429) to authorize the eastern band of Cherokee Indians to institute suits against the Cherokee Indians residing west of the Mississippi River, and for other purposes, have had the same under consideration. While the subject, upon its title and one provision of the bill, seems to refer to Indian affairs, the whole purpose of the bill is to organize a court, or rather give to the eastern band the right to institute suits or legal proceedings against the western band. It involves a legal construction of treaties, the right to bring suit in the District of Columbia, the question of the service of process; and the bill, although relating by its title to Indian affairs almost exclusively, belongs to the Committee on the Judiciary, because it treats of judicial matters. The Committee on Indian Affairs therefore ask to be discharged from its further consideration, and that it be referred to the Committee on the Judiciary.

The report was agreed to.

Mr. HOWE, from the Committee on Foreign Relations, to whom was referred a letter of the Secretary of State, inclosing a proposed amendment to sections 91 and 168 of the regulations for the consular courts of the United States in Japan, reported a bill (S. No. 757) to amend the regulations for the consular courts of the United States in Japan; which was read, and passed to the second reading.

He also, from the Committee on the Judiciary, to whom was referred the bill (S. No. 155) to amend sections 533, 556, and 572 of the Revised Statutes of the United States, reported it with an amendment.

Mr. BOUTWELL, from the Committee on the Revision of the Laws, to whom the subject was referred, reported a bill (S. No. 758) to perfect the revision of the statutes of the United States, general and permanent in their nature, relating to the District of Columbia; which was read twice by its title, and recommitted to the Committee on the Revision of the Laws.

Mr. MITCHELL. The Committee on Claims, to whom was recommitted the bill (S. No. 489) for the relief of G. B. Tyler and E. H. Luckett, together with the message of the President of the United States returning the bill to the Senate without his approval, have considered the same and have instructed me to report it back to the Senate with the unanimous recommendation of the committee that it

pass, notwithstanding the objection of the President. I also submit a report on this subject, and move that it be printed.

The motion was agreed to.

Mr. CRAGIN, from the Committee on Naval Affairs, to whom was referred the bill (H. R. No. 2337) declaratory of the sense of section 4504 of the Revised Statutes, relative to the shipment of crews of vessels of the United States, asked to be discharged from its further consideration, and that it be referred to the Committee on Commerce; which was agreed to.

Mr. COOPER, from the Committee on Public Buildings and Grounds, to whom was referred the bill (S. No. 699) to confirm the sale of the marine-hospital building and grounds at Natchez, in the State of Mississippi, reported it without amendment.

Mr. COCKRELL, from the Committee on Claims, to whom was referred the petition of Timothy Newhall, praying remuneration for his invention for the protection of life upon steamships and other vessels, submitted an adverse report thereon; which was agreed to, and ordered to be printed.

Mr. CAPERTON, from the Committee on Claims, to whom was referred the petition of Alice E. De Groot and Theodore B. B. De Groot, administrators of the estate of William H. De Groot, deceased, praying payment of the claim of the decedent, allowed by the Secretary of War for the construction of the Washington Aqueduct, submitted an adverse report thereon; which was ordered to lie on the table, and be printed.

Mr. INGALLS, from the Committee on Indian Affairs, to whom was referred the bill (S. No. 619) to carry out in part the provisions of the act entitled "An act to abolish the tribal relations of the Miami Indians and for other purposes," approved March 3, 1873, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

BILLS INTRODUCED.

Mr. CONOVER (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 759) authorizing the President to appoint Henry Hoover a naval constructor in the United States Navy; which was read twice by its title, referred to the Committee on Naval Affairs, and ordered to be printed.

PAPERS WITHDRAWN.

On motion of Mr. HAMILTON, it was

Ordered, That copies of the papers on file in the case of L. D. Evans, late collector of internal revenue for the fourth collection district of Texas, be furnished to the said Evans or to his attorney.

SIOUX INDIAN RESERVATION.

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

Resolved, That the Secretary of the Interior be directed to communicate to the Senate any information in his possession in relation to the present situation of Indian disturbances in the Sioux reservation or unceded Indian territory of said Sioux, and whether military force has been interposed therein; and, if so, whether at the instance of the Interior Department, and the reasons for such interposition.

IMPEACHMENT OF W. W. BELKNAP.

The PRESIDENT *pro tempore*. The hour of twelve o'clock and thirty minutes having arrived, according to the rules the legislative and executive business of the Senate will be suspended, and the Senate will proceed to the consideration of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War. The Sergeant-at-Arms will open the session by proclamation.

The SERGEANT-AT-ARMS. Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William W. Belknap, late Secretary of War.

The respondent appeared with his counsel, Messrs. Black, Blair, and Carpenter.

The PRESIDENT *pro tempore*. The Chair observes that the managers are not present. If there be no objection, the Secretary will inform the managers, before the minutes are read, that the Senate is ready for the trial; pending which, if there be no objection, the Secretary will call the roll of Senators who were heretofore absent and have not been sworn.

The Chief Clerk proceeded to call the names of the Senators who have not been heretofore sworn; and the President *pro tempore* administered the oath to Senators ENGLISH and PATTERSON.

At twelve o'clock and forty-five minutes p. m., Mr. G. M. ADAMS, Clerk of the House of Representatives, appeared below the bar and delivered the following message:

Mr. President, I am directed by the House of Representatives to inform the Senate that the House of Representatives have adopted a replication to the plea of William W. Belknap, late Secretary of War, to the articles of impeachment exhibited against him, and that the same will be presented to the Senate by the managers on the part of the House.

The PRESIDENT *pro tempore*. The Senate is now ready to receive the managers.

At twelve o'clock and fifty-two minutes p. m. the Sergeant-at-Arms announced the managers of the impeachment on the part of the House of Representatives.

The PRESIDENT *pro tempore*. The Sergeant-at-Arms will conduct the managers to the seats prepared for them within the bar of the Senate.

The managers (with the exception of Mr. KNOTT, who was not present) were conducted to the seats assigned them.

The PRESIDENT *pro tempore*. The Secretary will now read the minutes of the last day's proceedings.

The Secretary read the journal of the proceedings of the Senate sitting for the trial of the impeachment of William W. Belknap, of Monday, April 17, and they were approved.

The PRESIDENT *pro tempore*. The message received from the House of Representatives will be read.

The Secretary read as follows:

CONGRESS OF THE UNITED STATES,
IN THE HOUSE OF REPRESENTATIVES,
April 19, 1876.

Resolved, That a message be sent to the Senate by the Clerk of the House, informing the Senate that the House of Representatives has adopted a replication to the plea of William W. Belknap, late Secretary of War, to the articles of impeachment exhibited against him, and that the same will be presented to the Senate by the managers on the part of the House.

Attest:

GEO. M. ADAMS, *Clerk*.

The PRESIDENT *pro tempore*. Gentlemen managers, in accordance with the order of the Senate fixing the hour of one o'clock as the time at which it will hear you, the Senate is now ready to hear you.

Mr. Manager LORD. Mr. President, the House of Representatives having adopted a replication to the plea of William W. Belknap to the jurisdiction of this court, as advised by the resolution just read, the managers are instructed to present the replication to the Senate sitting as a court of impeachment and to request that the same may be read by the Secretary and filed among the Senate's papers.

The PRESIDENT *pro tempore*. The replication will be read by the Secretary.

The Secretary read as follows:

In the Senate of the United States sitting as a court of impeachment.

THE UNITED STATES OF AMERICA
vs.
WILLIAM W. BELKNAP.

The replication of the House of Representatives of the United States in their own behalf, and also in the name of the people of the United States, to the plea of William W. Belknap to the articles of impeachment exhibited by them to the Senate against the said William W. Belknap.

The House of Representatives of the United States, prosecuting, on behalf of themselves and the people of the United States, the articles of impeachment exhibited by them to the Senate of the United States against said William W. Belknap, reply to the plea of said William W. Belknap, and say that the matters alleged in the said plea are not sufficient to exempt the said William W. Belknap from answering the said articles of impeachment, because they say that at the time all the acts charged in said articles of impeachment were done and committed, and thence continuously done, to the 2d day of March, A. D. 1876, the said William W. Belknap was Secretary of War of the United States, as in said articles of impeachment averred, and, therefore, that by the Constitution of the United States the House of Representatives had power to prefer the articles of impeachment, and the Senate have full and the sole power to try the same. Wherefore, they demand that the plea aforesaid of the said William W. Belknap be not allowed, but that the said William W. Belknap be required to answer the said articles of impeachment.

II.

The House of Representatives of the United States, so prosecuting in behalf of themselves and the people of the United States the said articles of impeachment exhibited by them to the Senate of the United States against the said William W. Belknap, for a second and further replication to the plea of the said William W. Belknap, say that the matters alleged in the said plea are not sufficient to exempt the said William W. Belknap from answering the said articles of impeachment, because they say that at the time of the commission by the said William W. Belknap of the acts and matters set forth in the said articles of impeachment he, said William W. Belknap, was an officer of the United States, as alleged in the said articles of impeachment; and they say that the said William W. Belknap, after the commission of each one of the acts alleged in the said articles, was and continued to be such officer, as alleged in said articles, until and including the 2d day of March, A. D. 1876, and until the House of Representatives, by its proper committee, had completed its investigation of his official conduct as such officer in regard to the matters and things set forth as official misconduct in the said articles, and the said committee was considering the report it should make to the House of Representatives upon the same, the said Belknap being at the time aware of such investigation and of the evidence taken and of such proposed report.

And the House of Representatives further say that, while its said committee was considering and preparing its said report to the House of Representatives recommending the impeachment of the said William W. Belknap for the matters and things set forth in the said articles, the said William W. Belknap, with full knowledge thereof, resigned his position as such officer on the said 2d day of March, A. D. 1876, with intent to evade the proceedings of impeachment against him. And the House of Representatives resolved to impeach the said William W. Belknap for said matters as in said articles set forth on said 2d day of March, A. D. 1876. And the House of Representatives say that by the Constitution of the United States the House of Representatives had power to prefer said articles of impeachment against the said William W. Belknap, and that the Senate sitting as a court of impeachment has full power to try the same.

Wherefore the House of Representatives demand that the plea aforesaid be not allowed, but that the said William W. Belknap be compelled to answer the said articles of impeachment.

MICHAEL C. KERR,
Speaker of the House of Representatives.

Attest:

GEO. M. ADAMS,
Clerk of the House of Representatives.

The PRESIDENT *pro tempore*. If there be no objection the replication will be filed. The Chair hears none. Have the managers anything further to offer?

Mr. Manager LORD. Mr. President, I understand that we have nothing further to do until we hear from the other side.

The PRESIDENT *pro tempore*. Gentlemen of counsel, what have you to offer?

Mr. CARPENTER. Mr. President, Mr. Belknap, the respondent, wishes a copy of the replications which have been filed to his plea in abatement, and for time to consider the same, and frame pleadings in reply; and I suggest Monday next as the day, and submit a written motion to that effect.

The PRESIDENT *pro tempore*. The Secretary will read the motion.

The Secretary read as follows:

In the Senate of the United States sitting as a court of impeachment.

THE UNITED STATES OF AMERICA } Upon articles of impeachment presented by the
vs. } House of Representatives against the said
WILLIAM W. BELKNAP. } William W. Belknap.

Mr. President, the respondent asks for copies of the replications this day filed by the managers, and asks for time until Monday next to frame pleadings to meet the same.

WILLIAM W. BELKNAP.

Mr. EDMUNDS. Mr. President, I wish to offer an order upon this subject in a moment.

The PRESIDENT *pro tempore*. The order will be put in writing and reported.

Mr. Manager LORD. Mr. President, we desire of course to offer all possible indulgence to the other side, and we do not deem that the request for time until next Monday is in itself unreasonable, and yet there are reasons, which need not now be stated, for having this matter hastened as much as is possible. The managers therefore instruct me to ask that the day be fixed on Friday next, instead of Monday next.

Mr. EDMUNDS. Mr. President, I have reduced an order to writing which I submit.

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

The Secretary read as follows:

Ordered, That the respondent file his rejoinder on or before the 24th day of April, instant; and that the House of Representatives file their surrejoinder, if any, on or before the 25th day of April, instant.

Ordered, That the trial proceed on the 27th day of April, instant, at twelve o'clock and thirty minutes afternoon.

Mr. CONKLING. What days are they?

Mr. EDMUNDS. The 24th is Monday; the 25th, Tuesday, and the 27th, the day of trial, Thursday, of next week.

The PRESIDENT *pro tempore*. Senators, you have heard the motion proposed by the Senator from Vermont.

Mr. EDMUNDS. I shall then propose that the Senate sitting for this trial adjourn until the last day named, the 27th instant.

Mr. CARPENTER. Mr. President, I desire to understand that order. The 24th is Monday, as I understand, and the court is not to be in session on that day.

Mr. CONKLING. How will the rejoinder be received?

Mr. EDMUNDS. Let it be filed with the Clerk.

Mr. CARPENTER. Mr. President, we desire not to deal with anything less than the court in our pleadings from beginning to end.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Vermont.

Mr. EDMUNDS. I will modify it by adding "file and serve on the other party copies," so as to save the necessity of any further order on the subject.

The PRESIDENT *pro tempore*. The Secretary will modify the order accordingly and will report it as modified.

Mr. CARPENTER. Mr. President, I desire to suggest to the Senate that we cannot serve any papers on the other side. We have no standing in the House of Representatives. The courtesy that the Senate has extended to us to be here has not been extended by the House. I do not see how we can serve any papers on the House. We cannot get in.

Mr. CONKLING. Mr. President, I move to amend the order so as to provide that the papers referred to shall be filed with the Secretary, and that he deliver copies to either side promptly on application.

The PRESIDENT *pro tempore*. The Secretary will commit the amendment of the Senator from New York to writing.

Mr. Manager HOAR. Mr. President, I respectfully suggest, at the request of my associates, that we do not understand in what position the House of Representatives will be placed under that order. Certainly it is not in accordance with their custom to make application to the Secretary of the Senate.

Mr. Manager LORD. I would suggest, Mr. President, as relieving the difficulty, that the Secretary be directed to serve a copy on the Clerk of the House.

Mr. CONKLING. I have no objection, Mr. President, to so modifying my amendment. Let it be that he send copies to the managers on the one side and the counsel on the other, or that he send a copy to the Clerk of the House of Representatives on the one side and to the counsel on the other.

The PRESIDENT *pro tempore*. The Senator from New York modifies his amendment as he has stated. The Secretary will reduce to writing the amendment proposed.

Mr. CARPENTER. Mr. President, we are taken quite by surprise by this order. We have always supposed that no paper could be filed in the court of impeachment except by special leave of the court. Are we to come here on the 24th and file anything we please, orderly or disorderly, in form or out of form, and does that become the basis of the action of the House? I supposed that as in the Supreme Court in the exercise of its original jurisdiction, not a paper could be filed in this court without the order of the court when the court should see what the paper was. It seems to me we shall be very likely to get into a jangle in the filing of papers unless we do it in the presence and with the approbation of the court on each paper filed.

The PRESIDENT *pro tempore*. The Secretary will now report the resolution first proposed and then the amendment suggested by the Senator from New York.

The SECRETARY. The order is as follows:

Ordered, That the respondent file his rejoinder on or before the 24th day of April instant, and that the House of Representatives file their surrejoinder, if any, on or before the 25th day of April instant.

It is proposed to be amended so as to read:

Ordered, That the respondent file his rejoinder with the Secretary on or before the 24th day of April instant, who shall deliver a copy thereof to the Clerk of the House of Representatives, and that the House of Representatives file their surrejoinder, if any, on or before the 25th day of April, instant, a copy of which shall be delivered by the Secretary to the counsel for the respondent.

Ordered, That the trial proceed on the 27th day of April, instant, at twelve o'clock and thirty minutes afternoon.

The PRESIDENT *pro tempore*. The question is on the amendment proposed by the Senator from New York to the motion suggested by the Senator from Vermont.

Mr. EDMUNDS. There is no objection to that. I accept it.

The PRESIDENT *pro tempore*. The order will be so modified; and the question recurs on the order as so modified.

The order as modified was agreed to.

Mr. EDMUNDS. Mr. President, now I move that the Senate sitting for this trial adjourn until the 27th instant, at half past twelve o'clock afternoon.

The motion was agreed to; and the Senate sitting for the trial of the impeachment adjourned until the time named.

PROTECTION OF WITNESSES.

The PRESIDENT *pro tempore*. The Senate resumes its legislative business.

Mr. THURMAN. Mr. President——

The PRESIDENT *pro tempore*. Before the Senator proceeds, the Chair will call up the unfinished business of yesterday, the morning hour having expired.

Mr. THURMAN. What is the unfinished business?

The SECRETARY. The unfinished business of yesterday is the bill (H. R. No. 2572) to protect witnesses who shall be required to testify in certain cases.

The PRESIDENT *pro tempore*. This bill is before the Senate as in Committee of the Whole.

Mr. THURMAN. I wish to discuss the bill which is the unfinished business more at large than I am able to do to-day, as I am too unwell to proceed with a lengthy discussion. I am very glad that the Senator from Vermont [Mr. EDMUNDS] has caused the bill to be taken up, for it ought to be considered at as early a day as possible. Perhaps by to-morrow I shall be well enough to proceed; certainly by the day after to-morrow I will not ask any further delay. I would not ask for a moment's delay now but that I am too unwell to speak upon the bill to-day at length.

Mr. EDMUNDS. As the Senator from Ohio was not in when I moved to take up the bill last night, although I did not know it at the moment, I think it due to him that the matter should go over. Therefore I move to postpone the bill until to-morrow, and we can take it up whenever he is ready.

The motion to postpone was agreed to.

COUNTING OF ELECTORAL VOTES.

Mr. THURMAN. I want to fulfill a promise which I made the Senator from Indiana [Mr. MORTON] that I would move to take up the motion to reconsider the vote on the bill relative to counting the electoral votes for President and Vice-President. I move to take up that motion to reconsider.

The PRESIDENT *pro tempore*. The Senator from Ohio moves to proceed to the consideration of the motion to reconsider the vote by which Senate bill No. 1 was passed.

The motion was agreed to; and the Senate proceeded to consider the motion to reconsider the vote on the passage of the bill (S. No. 1) to provide for and regulate the counting of votes for President and Vice-President and the decision of questions arising thereon.

Mr. THURMAN. Mr. President——

CREDITS TO SETTLERS ON PUBLIC LANDS.

Mr. SARGENT. With the leave of the Senator from Ohio, I ask unanimous consent to restore to the Calendar the bill (H. R. No. 1052) to correct an error in the Revised Statutes of the United States and for other purposes, which bill passed the House and was reported by the Committee on the Revision of the Laws and subsequently because it was to be embraced in a general bill for the revision of the statutes it was indefinitely postponed. The Senator from Massachusetts, [Mr. BOUTWELL,] who reported the bill, stated to me that he would ask to have it restored to the Calendar. I see that he is not in his seat. I should like to have it restored to the Calendar. The reason is on account of the pressing necessity for the passage of this bill.

Mr. EDMUNDS. What is the bill about?

Mr. SARGENT. In the Revised Statutes in stating a section the word "seven" is used instead of the word "one," and it has made endless confusion.

Mr. EDMUNDS. On what subject?

Mr. SARGENT. On the subject of public lands, the rights of preemptors, &c. The Revised Statutes refer to the wrong sections.

Mr. EDMUNDS. Has the bill to which the Senator refers been reported from a committee?

Mr. SARGENT. It was reported favorably from the Committee on the Revision of the Laws. I only ask that it go on the Calendar.

Mr. EDMUNDS. I have no objection.

The PRESIDENT *pro tempore*. The bill will be placed on the Calendar, if there be no objection. The Chair hears none.

TAX ON FERMENTED LIQUORS.

Mr. LOGAN. If the Senator from Ohio will yield to me for a moment, I ask—I think it will take but a moment—that House bill No. 522, which was yesterday ordered to lie on the table, be taken up and passed. I move to take it from the table.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. No. 522) to define the tax on fermented or malt liquors. It provides that nothing contained in section 3337 of the Revised Statutes shall be so construed as to authorize an assessment upon the quantity of materials used in producing, or purchased for the purpose of producing, fermented or malt liquors, nor shall the quantity of materials so used or purchased be evidence, for the purpose of taxation, of the quantity of liquor produced; but the tax on all beer, lager-beer, ale, porter, or other similar fermented liquor, brewed or manufactured, and sold or removed for consumption or sale, shall be paid as provided in section 3339, and not otherwise; but the act is not to apply to cases of fraud.

Mr. EDMUNDS. I move the following amendment, to come in at the end, as an additional proviso:

Provided further, That nothing in this act shall have the effect to change the present rules of law respecting evidence in any prosecution or suit.

Mr. LOGAN. I can see no objection to that; it does not change the bill at all. The only objection there can be is that it sends the bill back to the House; but inasmuch as the Senator from Vermont desires that a provision of that kind should be in the bill for fear that it might be misconstrued, I shall make no objection, and am willing that the amendment shall be adopted.

Mr. THURMAN. I should like to hear some explanation of the necessity of this proviso. I was not here yesterday when the bill was under discussion; but I fail to see the necessity for the proviso. I dare say there is some, or the Senator from Vermont would not have offered it.

Mr. EDMUNDS. The necessity which has occurred to me arises out of a phrase which is used in about the middle of the bill, which says, in substance, that the quantity of material used in making beer shall not be evidence for the purpose of taxation of the amount of beer made. Now I offer this amendment to guard against the possibility that that statement in the statute may be made use of in some prosecution in court to show that evidence against a brewer of the amount of malt he is using is inadmissible under the existing state of the law and to guard against the possibility of that which I myself think is not the true construction of the act; but courts are very critical in criminal statutes, as we all know, and I put in this proviso in order to make it certain that, if evidence of the quantity of material used would be admissible under the ordinary principles of law in a prosecution against a brewer, this statute shall not change that rule.

Mr. LOGAN. As I said, I do not think that this amendment changes the effect of the provisions of the bill at all. It merely sends it back to the House. Still I have no objection to it, because before a court where fraud is charged and a party is being prosecuted for it, I should have no desire to exclude any evidence that the law would recognize as proper testimony. That is all that this means, as I understand it. The only objection I have to the amendment is that it sends the bill back to the House of Representatives. I do not think it is necessary, but at the same time time I shall not make opposition to it, as it is desired by the Senator from Vermont.

Mr. MORRILL, of Vermont. I suggest to my colleague an amendment to come in in the body of the bill which I think would simplify it and accomplish all the purposes he desires. After the word "produced" in line 10, I would insert, "except in cases of alleged fraud," and then strike out the proviso.

Mr. EDMUNDS. I should want the proviso just the same even in that case. I have no objection to any other amendment that is a good one, but I want this proviso.

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from Vermont, [Mr. EDMUNDS.]

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

IMPROVEMENT OF OCONTO RIVER.

Mr. CAMERON, of Wisconsin. I move that Senate bill No. 176 be taken up now.

The motion was agreed to; and the bill (S. No. 176) to authorize the Northwestern Improvement Company, a corporation organized under the laws of the State of Wisconsin, to enter upon the Menomonee Indian reservation and improve the Oconto River, its branches and tributaries, was considered as in Committee of the Whole.

Mr. THURMAN. I should like to have an explanation of that bill.

Mr. CAMERON, of Wisconsin. The bill is accompanied by a printed report, which I will ask the Secretary to read.

The Secretary read the following report, submitted by Mr. CAMERON, of Wisconsin, from the Committee on Commerce, on the 18th instant:

The Committee on Commerce, to whom was referred the bill (S. No. 176) relating to the improvement of the Oconto River in the State of Wisconsin, have considered the same, and beg leave to make the following report:

The Northwestern Improvement Company is a corporation created by the State of Wisconsin for the purpose of making certain improvements in the Oconto River, a stream emptying into Green Bay, in the northern portion of the State. The river, at some distance above its mouth, divides into what are called the North and South Branches.

The company have already, under their charter, succeeded in improving the main stream, together with the North Branch. They have built seven dams, and so cleared the river of rocks and sand as to permit logs to be run with facility from the lumbering camps above to the mills below.

They are now desirous of commencing similar improvements upon the South Branch. A portion of this branch, however, passes through the Menomonee Indian reservation. The company ask the passage of this bill to enable them to go upon the reservation and make the same improvements they have already made elsewhere.

The bill provides that the company shall be responsible for all damages in making their improvements, and that Indians and all others shall have the right to use the improvements by the payment of charges, to be regulated by the State.

The committee cannot see that the granting of this right will interfere with the rights of any one, but think, on the contrary, that it will be a benefit to all the parties concerned, whether Indians or citizens.

The bill, moreover, has the authority of precedent. On the 15th of May, 1874, an act was approved authorizing the Keshena Improvement Company to go upon the very same reservation and improve the Wolf River. (See Statutes at Large, volume 18, page 46.)

Your committee, not knowing but the Committee on Indian Affairs might possess information showing that the rights of the Indians might in some way or to some extent be affected or injured by this bill, have had the same submitted to the Committee on Indian Affairs, which said committee, on the 5th of April, returned the same to your committee, with a report stating that they knew of no reason why it should not pass. The said report of the Committee on Indian Affairs is embodied in and made a part of this report.

COMMITTEE ON INDIAN AFFAIRS,
Washington, April 5, 1876.

SIR: Referring to your communication of February 26 requesting that the inclosed bill (S. No. 176) and report prepared thereon by subcommittee of the Committee on Commerce, in charge, be considered by the Committee on Indian Affairs, I am directed by the said committee to inform you that they have considered the same and know of no reason why the bill should not pass, and assent to the same.

Very respectfully, your obedient servant,

R. J. OGLESBY,
Chairman (pro tempore) Committee on Indian Affairs.

Hon. ROSCOE CONKLING,
Chairman Committee on Commerce, United States Senate.

Your committee recommend that said bill do pass.

Mr. BOGY. In the absence of the chairman of the Committee on Indian Affairs, I will state that this bill was carefully examined by that committee, and that it appeared entirely unobjectionable. It cannot interfere with the rights of the Indians that this route should be improved at the expense of this corporation; and it is a necessity as an outlet for a very extensive pinery lying above the Indian reservation. There can be no objection to it whatever. At all events, that was the conclusion of the committee. I think it is entirely proper.

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

PROTECTION OF CAPITOL GROUNDS.

Mr. MORRILL, of Vermont. I am instructed by the Committee on Public Buildings and Grounds to report a bill, and I desire its present consideration.

By unanimous consent, the bill (S. No. 760) to protect the public property, turf, and grass of the Capitol grounds from injury was read twice and considered as in Committee of the Whole. It makes it the duty of the Capitol police hereafter to prevent any portion of the Capitol grounds and terraces from being used as play-grounds or otherwise, so far as may be necessary to protect the public property, turf, and grass from destruction or injury.

Mr. MORRILL, of Vermont. The Committee on Public Buildings and Grounds are of the opinion that the duty of protecting the grounds in this way is already provided for in the statutes, but there is a little difference of opinion in relation to the subject on the part of some at least; at all events it is not done. I suppose the great pleasure of seeing ten thousand children here on Easter Monday, as was witnessed this week and in previous years, has prevented the police from doing their duty; but at the same time, if Senators will notice the injury done, it will be seen to amount to thousands of dollars. This grass cannot be restored for many months, and some of it could not be restored without being replaced by new turf. Although it is a very great pleasure to see these children enjoying themselves here on Easter Monday, it is deemed important that we should protect the grounds.

There are other reasons why this bill should be passed. There are cattle crossing the ground here frequently, and the police do not consider it a part of their duty to prevent them. Some of the public

monuments, vases, &c., that are here need constant protection. Therefore it seems proper to pass this bill.

Mr. WITHERS. I do not like to oppose the bill just offered, but I beg to suggest a modification of it so as to prevent trespassing upon the slopes of the terraces, which are really the only portions of the grass that are injured by the tramping of the children in their annual holiday which they take in the public squares. I have a very strong sympathy with those children. I have a very strong inclination to permit them to continue in the enjoyment of what seems to be almost a prescriptive right acquired by custom. They are generally from a class of citizens who have little opportunity for enjoying themselves, and I suppose it is only once a year, on Easter Monday, that their feet ever tread upon this sward. The level ground belonging to the Capitol, the grassy bed, cannot be injured by tramping upon it. It is in fact a benefit to grass to be tramped upon; the sod is improved by it; but the slopes of the different terraces can be and are injured and very seriously injured, no doubt, on Easter Monday, by the running and sliding of the children down them. If the bill should pass in the form proposed, it seems to me it would debar these children from an enjoyment which they enter into with so much zest and which it affords us all pleasure to witness. I would suggest therefore that it be modified so as to merely prohibit encroaching upon the slopes of the terraces, because I am sure that the flat grass would not be injured at all by any such means.

Mr. MORRILL, of Vermont. Of course, if the object of the Senator is accomplished, the children will not come here to slide. I know the Russian government in the winter season provide places for their citizens to slide; but I hardly think it is proper that here, in the spring of the year, at so large an expense both of money and of the appearance of the public grounds, we should allow these terraces to be entirely ruined by the process that was witnessed last Monday. I will say to the Senator from Virginia that if the bill passes in precisely the form that it now is in, it will practically accomplish the purpose which he suggests, and nothing more.

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

PRESIDENTIAL APPROVAL.

A message from the President of the United States, by Mr. U. S. GRANT, jr., his Secretary, announced that the President had yesterday approved and signed the act (S. No. 701) further to provide for the administering of oaths in the Senate.

TRANSFER OF CASES IN ALABAMA.

Mr. EDMUNDS. Mr. President, I ask unanimous consent to report at this time, from the Committee on the Judiciary, a bill (H. R. No. 1439) authorizing the transfer of certain causes from the circuit court of the United States for the district of Alabama, at Mobile, into the circuit court of the United States for the middle and northern districts of Alabama, at Montgomery and Huntsville, in said State, with a view to its being passed. It is a bill which merely authorizes the transfer of certain causes in the circuit court for the southern district of Alabama back to the northern and middle districts, to which they were transferred by act of Congress two or three years ago, before there were any circuit courts established in those northern and middle districts. In the present state of the law, the parties in the northern and middle districts desire that the causes which arose there should be sent back to the circuit court in those districts for trial, they having been transferred when there was no circuit court in the northern and middle districts. That being all there is of the bill, and the court being just about to sit, as these cases have been suspended so long, I ask unanimous consent to report this bill, and have it considered at this time.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It provides that all civil causes, actions, suits, executions, pleas, process, or other proceedings whatsoever which were transferred by the act of Congress approved March 3, 1873, from the district courts of the United States for the northern and middle districts of Alabama into the circuit court for the district of Alabama, at Mobile, and which are now pending in that circuit court, shall be transferred from the circuit court at Mobile into the circuit courts of the United States for the northern and middle districts, respectively.

The bill was reported to the Senate, ordered to a third reading, read the third time, and passed.

COUNTING OF ELECTORAL VOTES.

Mr. HITCHCOCK. I move that the Senate proceed to the consideration of House bill No. 1345, revising and amending the various acts establishing and relating to the Reform School in the District of Columbia.

Mr. THURMAN. If it gives rise to no discussion, I shall not object.

Mr. HITCHCOCK. I presume there will be no opposition to the bill, and there are some reasons why it should pass immediately.

Mr. THURMAN. I understand from the Senator from Indiana [Mr. MORTON] that he desires to leave the Chamber soon, and I hope therefore we shall proceed with the electoral bill. I shall not occupy more than ten minutes of the time of the Senate, I think, and there will be ample time after that to take up the bill of the Senator from Nebraska.

Mr. HITCHCOCK. Very well.

The PRESIDENT *pro tempore*. The question before the Senate is the motion of the Senator from Ohio [Mr. THURMAN] to reconsider the vote by which the bill (S. No. 1) to provide for and regulate the counting of votes for President and Vice-President, and the decision of questions arising thereon, was passed.

Mr. THURMAN. Mr. President, I shall not enter into a discussion of the general subject of this bill on the motion to reconsider, but will simply state the reasons which induced me to make the motion. I have, if it is proper to state it, a very firm conviction that if this bill should go to the House of Representatives with no larger majority than that by which it was passed, with the votes of a very large majority of one of the parties in this Chamber against it, it would not pass the House of Representatives, and the result would be that no law on the subject would be passed. I have said again and again that I think some law on this subject ought to be passed, and I have made the motion to reconsider because I think so, and because I believe that if the bill goes to the House as it has been voted upon, it will not become a law and, in fact, no measure for this purpose will become a law at this session. I wish the vote to be reconsidered in order that one more attempt may be made in the Senate to harmonize the views of Senators upon this measure. I believe that if the Senate by a substantially unanimous vote were to approve a measure it would most likely become a law, and I am not without hope that that unanimity of opinion upon a measure like this, which ought not in any sense to be considered a party measure, may be procured. It is very obvious that the reason why there was so large a vote against this measure was the omission of the bill to provide any ultimate umpire or arbiter or tribunal to decide in cases where there were two or more returns from a State. That omission in the bill was considered by a large number of Senators to be an invitation in fact, or that it would operate as an invitation, to bad men in some of the States to make a second return from those States, and thus produce the case mentioned in the second section of the bill. And it was the fear that it would be so considered and so acted upon, and that we should have from some of the States perhaps, and States whose votes might affect the general result, two returns, and that then the operation of the bill might be to deprive those States of their electoral votes altogether—it was that consideration, I am quite sure from the debate, which led so many Senators to oppose the measure, because upon the main question as to the right of Congress to legislate upon this subject the votes showed that an overwhelming majority of all parties concurred in that right. It was not upon constitutional grounds that the bill was opposed to the extent that it met opposition, but it was upon the ground and the sole ground that here was a fatal omission in the bill, the effect of which might be to deprive States of their electoral votes

Now, if that fatal omission can be supplied, if some mode fair and just and within the scope and the spirit of the Constitution can be adopted which shall remedy that omission and thus perfect the bill, it is my belief that the bill will receive almost or quite the unanimous support of the Senate; and, receiving that, will become a law. But I do very much fear that if the bill go to the House of Representatives upon the vote that has already been taken, instead of being amended in the House it will simply be defeated, and we shall never have any committee of conference upon the subject and the measure will be wholly lost. If I could see that the bill would be amended in the House and that the result would be a conference committee between the two Houses, I should greatly prefer that, because then each House would be represented in framing this great measure; but I very much fear that would not be the result, and therefore I am anxious that one more effort should be made in this body, where discussion and deliberation still prevail, to perfect this measure which in my judgment ought to be perfected and then ought to be passed.

This is all that I have to say. Upon the general subject of the bill I have already expressed my opinion, both at this session and at a former session, as fully as I desire to do. It is true that since the vote was taken upon this bill I have discovered, or there have been pointed out to me, some very instructive proceedings in Congress more than three-quarters of a century ago upon this very subject, proceedings that I think might be read and studied with great advantage by every Senator; but it would take up too much time to go into them now. If, however, the vote shall be reconsidered, then I shall feel it to be my duty to lay those proceedings before the Senate for its consideration.

Mr. MORTON. Mr. President, the Senator from Ohio voted for this bill, and is its friend; but I think he is mistaken in supposing that any good is to be attained by the reconsideration, and by making another effort in the Senate. If the House of Representatives does not like this bill, it can amend it. If it is in favor of any bill at all, it can put the bill into the shape that suits it; and if the Senate disagrees to that, it will then go to a committee of conference, and there the matter can be adjusted; and that will realize the first motion made by the Senator from Delaware, who wanted it considered by a joint committee. I think the only way of getting it before a joint committee is by a committee of conference; and I have faith to believe that, whatever may be the first action of the House of Representatives, the two Houses will finally come together in that way.

But, Mr. President, I must take occasion to express my surprise at the vote which was taken on this bill. I certainly supposed it was as far above party considerations as any bill that could possibly be brought into this body. I could not comprehend how there could

be any partisan feeling about it, or any partisan interest one way or the other; and when I found that the vote was comparatively a party vote almost, I was surprised.

The argument in favor of reconsideration on the part of the Senator from Ohio is that the majority for the bill was not large enough. That is rather a novel argument for the reconsideration of a bill. What is the point in dispute? There was but one, substantially but one point of disagreement, and that was upon the second section. That was in regard to a case where there were two returns from a State, and the two Houses did not concur in adopting one return as being the lawful return—a very remote contingency. I, having faith in men and faith in parties and in the final integrity and patriotism of all parties, will be slow to believe that in a case of that kind the return which is the true and lawful return will not receive the sanction of both Houses, although the parties controlling the two Houses may be different. I am not willing to believe that there is in either party of this country such an absence of patriotism as to do great violence to the rights of the people of the States and to the Constitution in a case like that; and hence the contingency that has alarmed so many has not alarmed me. In such a contingency as that it should be subject to the decision of both Houses, just like every other great question of legislation that comes before Congress.

Since that vote was taken a circumstance has been brought to my knowledge, a historical fact which I am sure will surprise and astonish this country when it is made known. The discovery was made by another Senator and I shall not state what it is; but it shows the overwhelming importance of some action upon this point.

Mr. BAYARD. Will the Senator state the nature of it?

Mr. MORTON. I will not give the name of the Vice-President or the names of the parties concerned; but it was where a Vice-President was counting the vote, himself being a candidate, and he counted a false or null return in his own favor, a return that was no return at all. The facts are in the possession of the Senator from Vermont. But it is just one of those things that at any time might occur when a man is to be the judge in a case where he is a party interested.

Mr. President, I hope this vote will not be reconsidered, for I have but very little expectation that anything will ever come of it. It seems on the part of a majority of our friends on one side of the Chamber there was but one arbitrament that they would accept. If I remember the vote, eighteen distinguished Senators, representative men of their party, voted to make the House of Representatives, voting by States, the umpire in deciding upon a question of that kind. It was simply going back a hundred years in this Government; it was simply going back to the confederation where every question was decided in the Congress of the confederation, not by representatives of States, but by States, each State having one vote. This proposition, so far from showing any progress, is retrogression, a retrogression of one hundred years. If that is the only arbiter that can be accepted, I am sure it will never meet with my approval.

I think it is better all around to let this bill go to the House of Representatives and let the democratic majority there fix up such a bill as will meet with their approbation. If it comes back here and and we cannot agree to it, let it go to a committee of conference. I am sure that the House will see the necessity of doing something, and the only argument my friend offers is that the majority here for the bill was not large enough. It is a bigger majority than you will get again. My opinion is that if this bill is now reconsidered that will be the end of it.

Mr. BAYARD. Mr. President, I have stated to the Senate too often to make it necessary for me to repeat now my sense of the very great importance of this measure or of a measure satisfactory in its nature and its results upon this most important subject. I shall vote in favor of the motion of the Senator from Ohio to reconsider the vote by which this bill was passed by the Senate, because, if it has no other effect, it will lead to a prolonged consideration of a subject that it seems to me thus far has had what I must think a wrong view taken of it.

I regret that the Senator from Indiana should be so thoroughly possessed at all times, as it seems to me, with an idea of distrust and almost of dislike for the very name of State existence or the exercise of State power or the recognition of State individuality. Why, sir, it seems to me that he is forgetting constantly the very federal nature of our system; and everything that tends to give a State individuality, to allow it to act as one of the units in our Union, is distasteful to the Senator. Why should he say it was retrogression; why should he say that it was advancing backward, to intrust a question so vital as the decision of the people in the choice of their Chief Executive Magistrate to the tribunal deliberately selected by those who framed the Constitution, in the event of a majority of the electoral votes not being ascertained at the first count to be in favor of one of the candidates? Why, Mr. President, if it be true that there was a more distinctive recognition of separate State existence under the old Articles of Confederation, yet that was known to have its uses. It was known as a practice, worthy of recognition when, after their experience as a Confederacy, the States resolved themselves into a Union under a national form of government and carried into that, on this very subject which we are now considering, the recognition of the right and power of the States, as separate communities, each voting individually, to elect a President in case a majority of the electoral votes should not be found to be in favor of any one candidate. In the present case it was proposed by an amendment offered by my friend from Tennessee, [Mr. COOPER,] and subsequently renewed by me, and on both occasions, I am sorry to say, rejected by the Senate, that in the event of the two Houses of Congress not having reached that happy condition of mind which enabled them to judge totally irrespective of partisan bias in respect to candidates, the two Houses failing to agree as to which of two returns should be counted by the tellers in calculating the electoral vote, then, in the event of that disagreement, the House of Representatives, following the analogies of the Constitution as expressly declared, should, voting by States, become the arbiter between the two Houses who had failed to agree.

Mr. President, look at it. I do not say that the Senator from Indiana is oversanguine; but I am afraid that he is oversanguine in supposing that that day of political millennium has arrived in which he and his party friends or I and mine shall be able to look at facts imbued with all the color of party feeling and yet decide them as though we were entirely indifferent to the result of our decision. Why, sir, there have been too many votes lately cast in this body—need I refer to the unhappy and discreditable case of the State of Louisiana in which we saw what party would do or what party could do? I do not refer to it for the purpose of suggesting whether on one side or the other the blame or the merit lay. I only state the facts as they exist, facts that astonished me, holding my views, that persons could so be blinded by political prejudices to the extent that perhaps they thought I myself was. But so it is that it would be in my opinion a very dangerous experiment to submit to the two Houses of Congress a question for their separate and distinct decision, the result of a difference in opinion between them being the total disfranchisement of one or more of those political communities that form this Union.

Sir, what must be the feeling of the citizens of a disfranchised community? Bring it home to yourself, sir, (Mr. WALLACE in the chair,) a citizen of the honored Keystone State of this Union. Suppose there a dissatisfied minority, not accepting the results of an election, should meet and go through the form of a count of electoral votes and send forward a certificate, so that from Pennsylvania a double return should be made to the presiding officer of the Senate, and then came the question of counting them, the vote of that State determining the contest, what would be the feeling of every citizen of that State to find that the voice of Pennsylvania was absolutely silenced in a contest of that kind, when her vote would have been productive of a decision complete and final on the subject? Why, sir, it must be dissatisfaction. It cannot be satisfactory to any man who will look at the matter in advance; and, therefore, the very gross defect of the bill as it passed the Senate is that, contemplating just such a difference of opinion as that, it provides no arbitration to settle it. The Constitution has provided and to-day provides for an arbitration where the original electoral vote has failed to contain a clear majority in favor of one or the other of the candidates. Is it not analogous, not simply to the Constitution, but is it not analogous and amenable to reason, justice, propriety, expediency, that we should have an arbitration created and accept that as an arbitration which has been suggested by the Constitution to us for the decision of this very question?

Mr. President, I do not see that it is out of order, but perhaps it may be inopportune to have gone into a discussion of this question, so deeply interesting, at this time. If there has been party feeling in the vote cast upon this bill I sincerely regret it. The Senator from Indiana, however, will agree with me in saying that there was no party feeling exhibited in the debate which preceded the vote. There was at least that feature which I am sure was a grateful one in this Chamber.

Now, sir, I do not know that a reconsideration of this vote and a re-argument of the question before the Senate will change opinions; and yet at the same time I can but remark at the present time what I have often observed before, that here, in the face of a matter of the most vital importance, confessedly so, not more than one-third or one fourth of the seats in this Chamber are filled by their proper occupants; and so it was before. I believe, could the fact be ascertained, that not more than one-half of the members of the Senate who voted *pro* and *con* on the proposition of the Senator from Indiana heard the debate that preceded it or could, it seems to me, have given much attention to the subject. It is, therefore, with a view of provoking, if possible, their attention to this matter, of making their vote even more deliberate than it was before, that I shall vote for the reconsideration of the vote by which this bill passed the Senate.

I did believe and still believe that it would have been wiser to commit this whole matter, in advance of any expression of opinion of either House, to a joint select committee, selected for the purpose of coming together in a proper non-partisan tone for the settlement of this great question. Still it has been the pleasure of the Senate to choose another course: and now the opportunity may arise by a committee of conference to meet somewhat the object which I originally proposed. But still, sir, as I was one of those who did not concur in the action of the Senate and believe still that there should be further consideration before we come to adopt as a measure, by a vote of the Senate, that which I scarcely believe will meet the approval (judging from the color of the vote) of the other House of Congress, believing that every effort should be made, dispassionately made, to arrive at a proper solution, I trust the Senator will consent to have this vote reconsidered.

Mr. MORTON. No Senator, Mr. President, was more gratified at the tone and character of the debate on this bill than myself, for there was no partisan feeling in it. There was no indication that there was any party interest in the question, and hence my surprise when the vote was taken. As the Senator from Delaware says, the bill did not appear to excite a very great degree of interest, and yet it is fraught with the very deepest interest to the country. If we shall adjourn without passing some bill upon the subject, we shall have left the seed of a revolution to grow. You will then have left this great power, that you are now not willing to trust to the two Houses because they may not agree, to the decision of one man. That is the practical result of it, because when we come together to count the votes next February, if there be no law and no rule upon the subject, none can then be made. You cannot then make a rule and agree upon any plan to meet these difficulties. You have then got to decide it as it was in 1857, as it was in 1801, as it was in 1805, and in 1825, by the President of the Senate. The returns that he presents will be counted and those that he withholds will be withheld, and there will be no remedy. You are simply voting to leave this to the decision of one man, because, as I said, when the time comes you can then make no law nor agree upon any rule. As there will be no remedy, it must be left just where it has been from the beginning, to the decision of the Vice-President of the United States, and as one Vice-President did count a vote in his own favor where there was no return the same thing may be done some time in the future.

I do not propose to go into an argument upon this question. It is one of a most important character. We cannot have a subject demanding more important consideration before us at this session. If we desire to have a law to avoid this danger, let the bill go to the House and let the House put upon it just such amendments as it chooses. Then we can come together in a committee of conference and we can agree upon some measure I doubt not. If the vote is to be reconsidered and if the bill is never to go to the House until you get a bill that can be carried by a big majority here, you may just as well give it up. I have no more interest in it than anybody else. It is a matter of no personal importance to me over any other Senator, and I have no feeling about it.

Mr. MERRIMON. Suppose the House should reject the bill, then we could have no conference at all.

Mr. MORTON. That would be because they do not intend to pass any bill. If they should do that, it would be simply saying, "We intend to leave this thing just where it is now." It will be in their power to frame any measure they choose. They can put the bill in such a shape as to refer the decision of the question to the House voting by States, if they choose, and then we can come together in a committee of conference and agree possibly upon some measure. If they should choose the House to be the umpire, as eighteen Senators in this body voted solidly to do, we can then come together and consider the matter; but if they pass nothing it is simply saying that they do not want any bill; and of course that would be the end of it.

Mr. EATON. I should like to ask the Senator from Indiana a question. I understood him to say that a Vice-President of the United States counted a vote that was fraudulently returned. Did I understand him correctly?

Mr. MORTON. I did not mean to say that.

Mr. EATON. Will the Senator state again what he said?

Mr. MORTON. I undertake to say that the return-lists will show that the Vice-President counted a vote in his own favor where there was no certificate of return; where there was simply a certificate by the governor of a State of the election of certain persons as electors, and on the back of the return was a little table, not signed by anybody, not certified to by anybody, stating that so many votes for one man and so many votes for another had been cast.

Mr. EATON. Will the Senator inform the Senate who that Vice-President was?

Mr. MORTON. I will not make that statement now. There is a Senator here who has the record in his possession.

Mr. SAULSBURY. Mr. President, the conclusion to be drawn from the remarks of the Senator from Indiana is that the votes cast on this side of the House in opposition to the bill which he reported were governed by partisan considerations. In reference to the main question which was under consideration, the constitutionality of this bill, the power of Congress to pass laws and make the provisions contemplated by the bill, I was with the Senator from Indiana. I submitted my views upon that point, and they were in harmony with his own. I believe that a majority of the members on this side of the Chamber concurred with the view of the Senator from Indiana as to the power of Congress to make provision for counting the electoral votes. But there were provisions in the bill which we did not like. I was fully impressed with the importance of making some provision for ascertaining the vote of the people of this country in reference to the election of President, believing that it ought to be done at the present session. I tried in my humble way to so shape the bill that it should be perfectly fair and right, proposing such amendments to the bill reported by the Senator from Indiana as I believed would accomplish that purpose. There was a positive provision in the bill as it passed the Senate for throwing out the vote of a State. I was unwilling to commit myself by my vote to the provisions of any bill which provided affirmatively for the rejection of the vote of a State. There is no such provision as that in the Constitution, and I was unwilling to assume the responsibility of voting for a bill which affirmatively provided for throwing out the vote of a State.

Mr. MORTON. Let me suggest to my friend on this point that the bill cannot be said to make provision for throwing out the vote of a State, but it simply provides for the decision of a question arising upon the vote of a State. In the absence of the bill you let the matter stand just as it is now. When we come to count the votes next February, if there are two returns one of those returns must be rejected. It must be rejected by somebody. Who will be that person? It will be the President of the Senate. Nobody else can act upon it because there would be no rule under which anybody else could act. You cannot frame a law then. He may select the wrong return. In such a case the bill provides that the right return shall be selected by the two Houses, and if the matter is so doubtful and so obscure that the two Houses cannot agree upon it, then, as a matter of necessity, in the very nature of the case, it goes out. That is all there is of it.

Mr. SAULSBURY. I contend, nevertheless, that a fair interpretation of the bill proves this to be an affirmative provision that upon a certain contingency the vote of a State shall not be counted. To such a proposition I was unwilling to commit myself. I am aware that grave difficulties may arise if the matter is left to stand as it is now. I would prefer therefore to remedy it, and I will assist the honorable Senator from Indiana in shaping the provisions of a bill that shall provide for every possible contingency in order to secure to the people of every State in the Union a voice in the election of the Chief Magistrate. I was as anxious as the Senator from Indiana that some provision should be made in regard to this matter; I feel the importance of such a provision fully as much as the Senator from Indiana; and I tried in my humble way, as honestly as the Senator from Indiana tried, to make some provision. It was because, and only because, the bill of the Senator from Indiana did not do what I in my judgment thought it ought to do, because it did not provide for the counting of the votes of every State in the Union, that I cast my vote against the bill. I was governed by no party consideration. It is a question that ought to rise infinitely above party feeling and party interests. It addresses itself to the nobler sentiments of our being, and we ought not to be governed by party interests in it. I hope that no inference will arise from the remarks of the Senator from Indiana that the democratic party in the Senate was governed in the vote it cast by anything of party consideration. We were governed by the fact that the Senator's bill did not make proper provisions for ascertaining the popular will in reference to the choice of the people for President of the United States.

I hope the motion of the Senator from Ohio will prevail so that fair and proper consideration may be given to this subject and some proper provision made for securing to the people of every State in the Union their just voice in determining the election of a President.

Mr. THURMAN. I have but a word more to say before the vote is taken. I think I have never heard a discussion in the Senate on any great public measure that was freer from anything like party than was the discussion on this bill. There was not an allusion on any side that could be considered in any sense partisan. The Senator from Indiana is greatly mistaken if he supposes that party feeling dictated the vote upon this bill. There were republican Senators as well as democratic Senators who voted against the bill—republican Senators of great distinction, and of great ability, and of great experience. There are Senators on this floor who rather than leave open the possibility of a State losing her vote would prefer that it should be decided by the President of the Senate. They would rather trust to one man to decide the grave question of which return should be counted, and leave it to his conscience, his honor, his official responsibility to the American people, than leave it open to any possibility that a State should be disfranchised.

It cannot be denied that the bill does make a possibility of depriving a State of any voice in the election. The Senator from Indiana says that it is a misfortune that cannot be avoided where a tribunal that is to decide is unable to form its judgment; but there are Senators here who would, as I said before, follow the early usage of the country and let the President of the Senate, though opposed to them in political sentiment, decide the question, rather than open the door to the possibility of depriving a State of her voice in the election of a President. That is the reason which induced so large a vote against the bill. This reason and the belief that, although no such thing was intended, although any such idea was the farthest possible from those who supported the bill, yet that bad men might take advantage of the second section of the bill, and, taking advantage of that, send up double returns for the very purpose of depriving a State of its voice in the election of President, induced the large vote that was cast against this bill. I do not believe that men ever voted from more patriotic impulses in the world than actuated those Senators who voted against this bill. I voted for the bill. I voted for it although I considered it imperfect. I voted for it in the hope that it would be amended in the House of Representatives; but when I saw the large vote against it, I believed, as I still believe, it will not be by amendment there in all probability that this measure will be perfected. We cannot conceal the fact that the Senate of the United States is alone the department in this Government in which there is full and free and unrestrained discussion. I say this not to reproach any other department of the Government, but because from the very

nature and necessity of the case such is the truth. A measure like this (and no greater measure can engage our attention than this very bill) ought, if possible, to be perfected here where there is deliberation and discussion without trammel and restraint. The Senator from Indina certainly knows that I moved to reconsider the vote on this bill in the most perfect good faith. I may be mistaken as to the effect of a reconsideration and he may be right; but I believe that I have the right view on the subject.

Allusion has been made to a circumstance which I perhaps would not have noticed if something had been said more definitely about it. It was said that a Vice-President of the United States once counted for himself the votes of a State without any return from that State. I have seen it stated in the newspapers that when his attention was called by the tellers to the fact he directed them to record the vote and then tore up the paper in order to prevent a detection of the fraud. I venture to say that that good man never committed any such fraud in this world; and, if there is any paper that is apparently insufficient of itself, it is not all the return that was before him at the time and that was counted. What is conclusive in the matter is that the vote of that State, if it had been rejected, would not have affected the result in the slightest degree. The election would still have been determined by the House of Representatives, for there was no choice by the people. Therefore, he could have had no possible inducement to count for himself the vote which they say he counted without any return. Does anybody doubt how Georgia voted on that occasion? Is there any pretense that she did not vote as her vote was recorded? Is there any pretense, or can there be, that if her vote had been rejected it would have affected the result? She would still have the right, when the President came to be elected by the House of Representatives, to cast her vote. It is of no use to conceal the name of this great man who is charged with this offense. It is no less a man than he whose hand wrote the Declaration of Independence. It is no less a great name than that of Thomas Jefferson that is impugned in this way. It is no less a man than he who at this late day is charged with having counted in his own interest the vote of a State without any evidence whatsoever that it had been cast for him. O, no, Mr. President, it will not do now to make such a charge. I await the production of the evidence upon that subject, and when it shall be produced I venture to say that nothing that impugns the integrity or the honor of that man will be found to exist. But this is apart from the question.

I grant, as fully as the Senator from Indiana can argue, that there is danger. I grant, as fully as he can assert, that the President of the Senate ought not to be the man to count the vote, he himself being interested. I read the Constitution as he reads it, that the duty of the President of the Senate is to open the votes, and not to count them. I know the precedents when he did count them, in support of his counting them. I understand all that; but I know too, I think, the value of precedents where there was no contest and where there was no question. I therefore agree, as the Senator knows, with him in his view of the constitutional power of Congress to regulate this matter; and I urged, therefore, the passage of his bill. I did so at the last session as well as at this, and I hope that it may yet be passed; but I say to him in all frankness that I do not believe that any measure which, so to speak, creates a possibility of depriving a State of her voice in the election of President can pass this Congress.

Mr. MORTON. I did not intend to impugn the motive of any Senator who voted for any amendment to which I referred or who desires to reconsider the vote by which the bill was passed. All I said was that I was surprised at the final vote in view of the general tone of the discussion. I think I was no more surprised than my friend from Ohio, and perhaps not so much as he was. The Senator says that no bill can become a law that leaves a possible contingency by which a State can be deprived of a vote. I tell my friend that we can pass no bill that will not leave such a contingency. He said he would rather leave it to the presiding officer of the Senate to decide. Can we compel the presiding officer of the Senate to decide? Suppose there are two returns, and the presiding officer says, "I will not take the responsibility of deciding between these two returns; I will refer the matter to the two Houses," a thing the presiding officer of this body often does; you cannot make him decide it. And then, if the two Houses, having no knowledge about it, cannot decide it, if they separate and vote by common consent, they may not agree, and in that case the vote is lost. How will you prevent the vote from being lost in that case? In the very amendment offered by the Senator from Virginia [Mr. JOHNSTON] to refer the decision of this question to the House of Representatives voting by States, there were two possibilities for the votes of States to be lost. I have that amendment here. In voting by States the amendment provides:

> But if the representation of any State shall be equally divided, its vote shall not be counted.

As a matter of course, if you vote by States and the State has two, four, or six Representatives, and they are equally divided, the vote of the State is lost.

Mr. WITHERS. O, no; the vote of the State in deciding the question in the House is lost; but the vote of the State is not necessarily lost in the election of President.

Mr. MORTON. Precisely, the vote of the State in deciding that question, and who will decide the other question?

Mr. WITHERS. That is very remote indeed.

Mr. MORTON. I will bring the question right home to my friend from Virginia. Suppose it is referred to the House under the amendment of his colleague. The House is to decide which of two returns shall be counted and to decide by a vote by States. Suppose the States are equally divided; I ask him if the vote of the State is not lost then?

Mr. WITHERS. That is a more remote contingency, possibly, than the other.

Mr. MORTON. If you come to count contingencies, that may be a little more remote; but my friend from Ohio says that no bill can pass which will leave that contingency open. I say you cannot pass a bill which will not leave that contingency, and that contingency is not so very remote either. When you come to decide it there may be half a dozen States which will lose their votes in deciding it. I call my friend's attention to the fact that when the President was first elected by the House in 1801 there were three States that were deadlocked from the first to the thirty-sixth ballot, and then they were only released from the deadlock by one member dodging and the other two changing their votes.

Mr. RANDOLPH. The Senator from Indiana has said three or four times in the course of this short debate that Congress cannot pass a bill that will provide for every contingency. He has not said that Congress has had no opportunity of passing a bill so framed as to provide for every contingency. I beg to remind the Senator that during the previous discussion I presented an amendment which provided for every difficulty, and the Senator not only voted against it, but, as I believe, spoke against it. If the opportunity is offered, I propose to renew that amendment. I propose to do that which he claims he desires to do, that is, to provide that in no contingency shall the people of a State be disfranchised.

Mr. MORTON. What was my friend's amendment? Will my friend read it?

Mr. RANDOLPH. The amendment has almost passed out of my mind, because the debate occurred some time ago.

Mr. MORTON. Has my friend his amendment?

Mr. RANDOLPH. I have a portion of it here. The copy that I finally presented is not now in my possession, but the substance of my amendment is here. In substance it is this:

> Should the two Houses of Congress, acting separately, fail to agree as to which is the true and valid return of a State, then, and in that event only, the President of the Senate shall render a decision of the question, and such rendition shall be in favor of that return of a State which shall have received a majority of all the votes cast in both Houses of Congress, considered as if both Houses had cast their votes in joint meeting assembled.

I submitted the amendment at first in this form, and it was afterward put in a better shape, a copy of which I have sent for.

Mr. MORTON. I have it here.

Mr. RANDOLPH. Has the Senator from Indiana the last one?

Mr. MORTON. My friend from New Jersey thinks he has found the method by which the vote of a State shall not be lost in any contingency, and he provides that where there are two returns "such rendition shall be in favor of that return of a State which shall have received a majority of all the votes cast in both Houses of Congress, considered as if both Houses had cast their votes in joint meeting assembled," counting so many votes in the Senate and so many votes in the House, and then adding them together as if they had all been cast in one body, and that return which has a majority of all the votes cast is to be adopted. Suppose there is a tie; in that case no return is adopted, and the vote of the State is lost on my friend's own hypothesis.

Mr. RANDOLPH. In the amendment, which is not now in my hand—the one that was finally substituted for that which I have just read—I provided for that very contingency, leaving the President of the Senate to give the casting vote in that exceedingly remote contingency. I regret very much that I could not obtain the Senator's attention upon that subject. I tried very hard, but he seemed to be wedded to his own plan so that he appeared to me to listen very little to the suggestions of others.

Mr. MORTON. My friend proposed to leave it in that case to the determination of the President of the Senate. If he should be a President *pro tempore*, as is the case now, he would vote originally and his vote would be counted in the vote of the State, and then if he decided as President *pro tempore* he would vote on it again. He might refuse to exercise the extraordinary power of voting twice on the same thing. My friend from New Jersey [Mr. FRELINGHUYSEN] suggests that he may himself be a candidate for President or Vice-President and it would place him in a very delicate position. He would not want to be embarrassed and might decline to vote at all.

Mr. RANDOLPH. The difficulty is that there are so many gentlemen in this body who are in that condition that we can pass no bill that will not be surrounded with some such difficulty as the Senator has suggested. [Laughter.]

Mr. MORTON. I appreciate that difficulty, because my gaze falls upon about twenty-five distinguished gentlemen over here who are all in that condition, and I should think they would desire to avoid the embarrassment which may arise from being called upon to decide in that case. [Laughter.]

Mr. MAXEY. Mr. President, I gave the bill to count the electoral vote as much care and deliberation conscientiously as I was capable

of. I regarded the bill as the most important that has been before the Senate during the present session. I think so yet. The bill as originally presented and as it passed the Senate does contain a defect which was made manifest to everybody during the progress of the discussion. If the two certificates are presented and the two Houses disagree, one voting for one certificate and the other voting for the other certificate, both coming from the same State, then according to the bill as it passed the vote of that State is lost. Various propositions were presented to cure that defect. I had the honor of presenting one myself. The Senator from Indiana states that no proposition could come up that would cover every possible contingency. With all deference to the opinion of the distinguished Senator, it does seem to me that the amendment which I presented covered any sort of contingency. That was that where the two Houses disagreed, one voting for one certificate and the other for the other, the Vice-President should give the casting vote. A great many of my friends were so very fearful of the power of the Vice-President that they placed themselves in this condition, in my humble judgment, that by refusing to give him a right to the casting vote in that contingency, (the only case in which he would have the power to cast a vote at all,) the result is that he counts the entire vote. That is my judgment about it; so that they practically, as the Bible says, "strain at a gnat and swallow a camel." That is in my judgment the result of voting down that amendment. But I was not wedded to that amendment, as I stated. I wanted some amendment adopted that would cure that defect. I voted against the bill as it passed conscientiously, because I then believed, and now believe, that the bill as it passed is, though not designedly, an invitation to fraud; for if an election for President is coming to a close vote, and there is the slightest excuse for a State to send up two certificates, that State will send up two certificates—and we have a case directly in point where that might be done—and the vote thus sent up, if one certificate only were to come up, would turn the scale and elect a President. Then the result of sending up two certificates from that State will be that both will be ruled out, one House voting one way, and the other House the other way; and thus it would happen, under the bill as passed, that the voice of the people would not be heard in electing their President. For that reason I voted against the bill. It was not with me a party question. As I stated in the argument when that question was here before, it was a great constitutional question, rising high above and beyond all party considerations; and I should regard myself unworthy of a position on this floor if I were to permit party to control my vote in a matter where the great rights of the people were concerned in the selection of a President of the United States. So I can say for myself at least that I did all that my poor judgment could do to relieve the difficulty. I presented an amendment which I then thought would relieve that difficulty. The wisdom of the Senate saw proper to vote down that amendment, and the bill passed without any amendment. The bill contains a defect which, in my judgment, is an invitation to fraud unwittingly embodied in the bill. So believing I voted against it.

Mr. MERRIMON. Mr. President, I felt a very serious interest in the bill and gave it the most serious attention when it was before the Senate. I did not regard it from a party stand-point at all. The idea of party never entered into my consideration of it for one moment. My vote went upon the grounds that the Constitution charges Congress with the duty of counting the vote. I believe that Congress is as much charged by the Constitution with counting the electoral vote for President and Vice-President as it is charged to pass a revenue law or any other law; and, so believing, I was logically constrained to vote against every proposition which provided an umpire in the case of any difference between the two Houses. I cannot conceive a case in discharging the ordinary legislative duties of Congress, where the two Houses disagree about the passage of a bill, where Congress would have the power to provide an umpire to decide what amendments should be adopted and what amendments should be rejected, or what action of any character should be taken upon a bill passing between the two Houses. No more can I conceive of any possibility that Congress in counting the electoral vote shall provide that the President of the Senate, or the Chief Justice, or the Supreme Court, or any other tribunal shall decide whether the vote of a State should be accepted or rejected in that count. It is a duty that devolves upon Congress exclusively, after the President of the Senate, being the medium by which Congress comes in contact with the States, shall have opened the returns and laid them before it. It cannot escape the duty. I admit that I have some embarrassment about the question when two electoral returns shall be made from a State; but I cannot see that if the matter is permitted to remain as it is now we shall be free from that embarrassment, and it did seem to me that under the bill which was passed the possibilities of such a difficulty were so remote that we need not trouble ourselves a great deal about it. I had the honor to offer an amendment which I thought would relieve the difficulty. The judgment of the Senate, however, was against it. Still I was willing, though not entirely satisfied, to accept the bill as it passed. After having given the matter considerable deliberation since the bill passed, I have not come to any conclusion variant from that which I sanctioned by my vote. I should be willing to stand by that vote to-day, unless I thought the bill could be amended in such a way as to obviate the difficulty that we have all talked about so much. I hear no plan suggested by which that difficulty can be obviated. I do not see from anything that has fallen from Senators in this debate that we shall be in any other condition after the bill is reconsidered, if it shall be, than we were at the time the bill passed. If we had to vote again, I should give the same vote under similar circumstances. I am very sure I never could vote for an amendment which would provide an umpire. If, however, it is thought that by a reconsideration of the bill new light can be thrown upon the subject, and that we can come to a more definite and satisfactory conclusion, I have no objection to that, and without desiring to change my vote on the bill as it stands, I shall vote for the motion of the Senator from Ohio to reconsider, hoping that some amendment in the line of the view that Congress, and Congress alone, shall count the vote, may be adopted which will make it more satisfactory. Upon that ground alone I vote to reconsider.

Mr. BURNSIDE. Mr. President, the more I hear this discussion the more I am convinced that the amendment which I submitted to the committee's bill suggests the proper course to be pursued in order to meet the case in all its points. It is clear to me that Congress has a right to delegate to a court the power to decide as to the electoral returns where there is a dispute in regard to them. In the famous Rhode Island case to which I referred in the former debate it was decided by the Supreme Court of the United States that Congress had the right to refer a question of equal importance to a court. What was that case?

The fourth section of the fourth article of the Constitution of the United States provides that the United States shall guarantee to every State in the Union a republican form of government, and shall protect each of them against invasion, &c.

The court goes on to discuss the question, and says finally:

It rested with Congress, too, to determine upon the means proper to be adopted to fulfill this guarantee.

So here it is the plain duty of Congress to adopt measures which shall ascertain the will of the electors. The court goes on to say:

They might, if they had deemed it most advisable to do so, have placed it in the power of a court to decide when the contingency had happened which required the Federal Government to interfere.

So spoke the Supreme Court in the great case of Luther *vs.* Borden, uttering its voice through Chief Justice Taney in a decision which is still regarded as settled and fixed law. Now I say that the duty devolves upon Congress to see that the electoral returns are properly counted and that each State shall have its representation in the electoral college; and if any contingency arises which makes it advisable for Congress to impose the duty upon any court of this country to decide for them upon certain points involved in these returns, they clearly have the right to require that court to perform that duty. It seems to me that that comes precisely within the rule prescribed by the Supreme Court in the decision from which I have read. If, as the court there hold, Congress had a right to determine when it was necessary for the Government to interfere in a State under the guarantee clause of the Constitution; if, in other words, Congress had a right to delegate to a court of the United States the power to decide when the occasion for that interposition arose, then Congress certainly have the right to delegate to a court of the United States the power to decide as to which is the lawful return of the votes of electors from any State where two sets of returns from any one State are presented.

It seems to me that the decision to which I have referred is one of great importance. The case there spoken of probably is not of equal importance to the one under discussion, but there certainly can be no reason why all good citizens of the United States would not be satisfied with the decision of the Supreme Court in a case like this. As I said the other day, we have been in the habit of abiding by its decisions. Whether they accord with our own views upon the matters at issue we all acquiesce in their decisions. No safer or more impartial arbitrament can be selected, in my opinion.

Mr. MORTON. Mr. President, my friend from Rhode Island, before the conclusion of the former debate, had his attention called to this decision. The remark that he quotes as having been made by the court in that case was clearly outside of the case; but it does not refer to the question of the power of Congress to establish an umpire to decide the thing other than Congress itself. It refers to the question of fact when the contingency of fact had arisen of domestic violence, and as to that the court say incidentally, in passing:

They—

Congress—

might, if they had deemed it most advisable to do so, have placed it in the power of a court to decide when the contingency had happened which required the Federal Government to interfere. But Congress thought otherwise, and no doubt wisely, and, by the act of February 28, 1795, provided that "in case of an insurrection in any State against the government thereof it shall be lawful for the President of the United States, on application of the Legislature of such State or of the Executive, (when the Legislature cannot be convened,) to call forth such number of the militia of any other State or States as may be applied for, as he may judge sufficient to suppress such insurrection."

That was a case where the Constitution had not located the power of determining when the contingency of fact had happened; but Congress did vest the President with that power by the act of 1795–'96. I think the language of the court falls short of the principle my friend refers to, and it is mere *obiter* any how; it is not in the case at all.

Mr BURNSIDE. I am quite aware that the court made no decision

on this question, but simply said that Congress might, if it chose, delegate this power. It did not delegate the power, I know, as the Senator from Indiana says; but the court said it might have delegated the power. I consider that a case of the kind now under consideration, of two returns from a State, is a question of fact just as much as the question to which the Senator from Indiana refers, and which the Supreme Court said Congress might delegate the determination of to a court.

The PRESIDING OFFICER, (Mr. WALLACE in the chair.) The question before the Senate is, Shall the vote by which this bill passed be reconsidered?

Mr. STEVENSON. I ask for the yeas and nays on the motion to reconsider.

The yeas and nays were ordered; and being taken, resulted—yeas 31, nays 23; as follows:

YEAS—Messrs. Bayard, Bogy, Caperton, Cockrell, Conkling, Cooper, Davis, Dawes, Dennis, Eaton, Edmunds, English, Goldthwaite, Gordon, Hamilton, Howe, Kelly, Kernan, Key, McCreery, Maxey, Merrimon, Norwood, Paddock, Randolph, Ransom, Saulsbury, Stevenson, Thurman, Wallace, and Withers—31.

NAYS—Messrs. Anthony, Booth, Boutwell, Burnside, Cameron of Pennsylvania, Cameron of Wisconsin, Clayton, Cragin, Ferry, Frelinghuysen, Hamlin, Harvey, Ingalls, Jones of Nevada, Logan, McMillan, Morrill of Maine, Morrill of Vermont, Morton, Oglesby, Robertson, Sargent, and Windom—23.

ABSENT—Messrs. Alcorn, Allison, Bruce, Christiancy, Conover, Dorsey, Hitchcock, Johnston, Jones of Florida, McDonald, Mitchell, Patterson, Sharon, Sherman, Spencer, Wadleigh, West, Whyte, and Wright—19.

The PRESIDING OFFICER. The motion to reconsider is agreed to. The question recurs on the passage of the bill.

Mr. MORTON. I give notice that I will call up the bill to-morrow.

Mr. EDMUNDS. The bill is before the Senate now. The motion should be to postpone it until to-morrow.

Mr. MORTON. That is to be done by common consent.

The PRESIDING OFFICER. That is the understanding of the Chair.

Mr. SARGENT. I ask the consent of the Senate to take up House bill No. 1052, to correct an error in the Revised Statutes of the United States, and for other purposes.

Mr. THURMAN. Before the electoral bill passes over, I wish to suggest that it cannot be amended without a further vote of reconsideration, which I suppose is a mere matter of form, and that is to reconsider the third reading. I make that motion.

The PRESIDING OFFICER. It is moved to reconsider the vote by which Senate bill No. 1 was ordered to be engrossed for a third reading.

The motion to reconsider was agreed to.

The PRESIDING OFFICER. The bill will be regarded as postponed until to-morrow by common consent.

CREDITS TO SETTLERS ON PUBLIC LANDS.

Mr. SARGENT. I move to take up the bill I have indicated.

The motion was agreed to; and the bill (H. R. No. 1052) to correct an error in the Revised Statutes of the United States, and for other purposes, was considered as in Committee of the Whole.

The bill amends section 2403 of the Revised Statutes by striking out in the second line the word "seven" and inserting the word "one."

The Committee on the Revision of the Laws reported the bill with an amendment to strike out after "one," in line 11, the words:

And all credits to settlers for moneys deposited by them for surveys of lands, as provided by section 2401, allowed since the date of the approval of the Revised Statutes of the United States are hereby declared to be legal.

And in lieu thereof to insert:

And all proceedings under said section 2403 shall have the same force and effect as though enacted as herein amended.

The amendment was agreed to.

Mr. SARGENT. Perhaps I should make a slight explanation of the bill before asking that it be passed. The Commissioner of the General Land Office in his last annual report called attention to the fact that in the revision of the United States laws a section had been named as 2407, when it ought to be named 2401. It affects the rights of settlers who under the law are entitled to deposit in the United States Treasury the cost of surveys of the lands where their homes may be, and subsequently to be credited with the amount of such deposit upon the price of the land. By the error made in the Revised Statutes this is rendered nugatory; that is to say, they make their deposits but cannot receive their credit. The result has been some considerable confusion both with reference to pre-emptions and town sites. He recommends that the change be made. The only change is to make a correct citation of the statute in the Revised Statutes. The bill has been favorably reported by the Committee on the Revision of the Laws and is a House bill.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

WESTERN AND ATLANTIC RAILROAD COMPANY.

Mr. GORDON. I move to take up the bill (S. No. 177) to authorize the Secretary of War to adjust and settle claims of the State of Georgia against the Government on account of the Western and Atlantic Railroad.

Mr. EDMUNDS. I hope the Senator will withdraw that motion. I offered a resolution, which was adopted by the Senate some days since, calling on the Secretary of War for detailed information respecting the transactions of the United States about this railroad, and I think we ought not to act upon the bill until we get that information. I ask the Senator from Georgia to let it go over for a very few days, until we can get that information.

Mr. GORDON. I have not the least objection to its lying over, but I think if the Senator will examine the book which I hold in my hand he will find that we have all the information that he asks for. However, it is scattered through the volume and it may be better to get it in a condensed form. I think we already have the information of the transactions of this road with the State, the amount of property turned over, the price the State paid for this property, the order under which it was done, &c.

Mr. EDMUNDS. We have a good deal of that, which was not unknown to me when I offered the resolution to which I have referred; but if the Senator will carefully examine the resolution he will find that it is designed to get from the War Department a supplement to what we already have, which will bear more precisely upon the precise point involved in this bill. The reports to which the Senator refers are perfectly familiar to the Committee on the Judiciary, who had bills of a similar character with this, respecting, I think, about six railways, two sessions ago, I believe, before them; and therefore the subject is not new to us at all. I thought in reading this bill that this information from the War Department it would be desirable to have, in order that we might perfectly understand the whole bearing of the case. I imagine, of course, that we shall get the information very soon indeed.

Mr. GORDON. I have no objection to letting the bill lie over for a short time.

The PRESIDENT *pro tempore*. The Senator from Georgia withdraws his motion.

PAY DEPARTMENT OF THE ARMY.

Mr. BURNSIDE. I move to take up the bill (S. No. 126) to restore appointments and promotions to the Pay Department of the Army.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill, which proposes to repeal so much of section 1194 of the Revised Statutes as applies to the Pay Department of the Army, and to provide that the rank of Paymaster-General shall be restored to the grade of brigadier-general, and that his rank shall date from the day he entered on the duties of the office.

The Committee on Military Affairs reported an amendment to strike out "and the rank of the appointee under this act shall date from the day he entered on the duties of the office."

Mr. EDMUNDS. Does that section apply to anything else than the Paymaster-General?

Mr. BURNSIDE. No, sir; and the amendment that was reported by the committee makes the repeal take effect from and after the passage of this act.

Mr. EDMUNDS. Section 1194 of the Revised Statutes is as follows:

Until otherwise directed by law there shall be no new appointments and no promotions in the Departments of Adjutant-General, or of Inspector-General, or in the Pay, Quartermaster's, Subsistence, Ordnance, or Medical Departments.

The bill, I believe, provides that, as applied to the Pay Department, this whole section is repealed, which opens the whole Pay Department to promotions and appointments exactly as if this law did not exist. Does the Senator from Rhode Island intend that?

Mr. BURNSIDE. This bill is only for the purpose of making the Paymaster-General a brigadier-general. Nobody else can be promoted under it.

Mr. EDMUNDS. I do not know about that. I should like to have the bill read once more.

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

The Chief Clerk read the bill.

Mr. EDMUNDS. What is the object of repealing this section, which applies to the whole Pay Department?

Mr. PADDOCK. Is it not necessary to repeal so much of the act as relates to the Paymaster-General?

Mr. EDMUNDS. Ah, I agree to that.

Mr. BURNSIDE. I think myself it would be well to amend the bill so as simply to repeal so much of the section as relates to the rank of the Paymaster-General.

Mr. LOGAN. I had not observed the bill; in fact, it was in the charge of the Senator from Rhode Island, and the committee agreed to let him report it and I did not examine it; but I am satisfied that the bill as reported will open the Pay Department to promotion. I should not have agreed to it if I had so understood it. Hence I suggest to the Senator, inasmuch as the intention of the bill is not to do that, that the bill be recommitted, and let him report it back again. He can do it to-morrow.

Mr. BURNSIDE. If the Senator from Illinois will allow me I will make one suggestion that may strike him as covering the case. It is that the bill be so amended as to say that so much of this section be repealed as refers to the rank of the Paymaster-General, and that the Paymaster-General may be a brigadier.

Mr. LOGAN. I would report the bill in a form providing that the head of the Pay Department shall hereafter be a brigadier-general;

and that leaves this section stand just as it is, so as not to effect promotions.

Mr. BURNSIDE. I accept the suggestion of the Senator from Illinois, and I should be very glad to have the thing arranged.

Mr. LOGAN. The Senator can report it to-morrow.

Mr. BURNSIDE. The Military Committee meet to-night, and it can be recommitted and attended to and reported back to-morrow, and I shall then call it up.

The PRESIDENT *pro tempore*. It is proposed that the bill be recommitted to the Committee on Military Affairs. Is there objection? The Chair hears no objection to that course, and the bill is recommitted.

MUTUAL FIRE-INSURANCE COMPANY.

Mr. INGALLS. House bill No. 700 lies on the table, it having been read three times and the question now being on its passage. I ask that the bill may be taken up and the vote taken. It is the bill to incorporate the Mutual Protection Fire-Insurance Company of this city.

The PRESIDENT *pro tempore*. A motion to reconsider was pending. The bill was rejected, and a motion to reconsider was made.

Mr. INGALLS. That motion was passed, and the bill returned to the Senate.

The PRESIDENT *pro tempore*. A motion to reconsider was entered, pending which request was made of the House of Representatives to have the bill returned in order to have the motion to reconsider attach to it; but the motion to reconsider was not considered, and it could not be until the return of the bill.

Mr. INGALLS. Then I move that the Senate now proceed to the consideration of that question.

The motion was agreed to; and the Senate proceeded to consider the motion to reconsider the vote rejecting the bill (H. R. No. 700) to incorporate the Mutual Protection Fire-Insurance Company of the District of Columbia.

The motion to reconsider was agreed to.

The PRESIDENT *pro tempore*. The question now recurs on the passage of the bill.

The bill was passed.

DISTRICT REFORM SCHOOL.

Mr. HITCHCOCK. I move that the Senate proceed to the consideration of the bill (H. R. No. 1345) revising and amending the various acts establishing and relating to the Reform School in the District of Columbia.

The motion was agreed to; and the bill was considered as in Committee of the Whole.

Mr. ALLISON. I suggest to the Senator having charge of this bill that the bond of the treasurer is not large enough. I see it is only $5,000. From the very necessity of the case, it seems to me, considerable sums of money may be placed in the hands of the treasurer. I suggest the propriety of increasing the bond.

Mr. HITCHCOCK. Does the Senator offer an amendment?

Mr. ALLISON. I think the bond ought to be larger. I submit that to the Senator.

Mr. HITCHCOCK. The committee thought the amount of the bond was proper.

Mr. ALLISON. We are in the habit of making appropriations for this Reform School, and a considerable sum of money may be in the hands of the treasurer.

Mr. HITCHCOCK. Probably this is a much larger amount than the treasurer will have in his hands at any one time.

Mr. ALLISON. Any one likely to be appointed treasurer could give a bond of $20,000 just as well as $3,000. I move to amend by striking out "$5,000" in line 5 of section 4, and inserting "$20,000" as the amount of the bond.

The motion was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

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

The bill was read the third time, and passed.

LEGAL TENDER OF SILVER COIN.

Mr. SHERMAN. I move to take up Senate bill No. 263 with a view at the end of to-day's session of leaving it as the unfinished business for to-morrow. It is what is commonly called the silver bill. I do this at the request of Senators who desire to speak to-morrow. I do not expect action to-morrow on the bill. I make the motion for their convenience, not to interrupt the business of to-day, but simply that the bill may be left as the unfinished business for to-morrow.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Ohio to take up the bill (S. No. 263) to amend the laws relating to legal tender of silver coin. Is there objection? The Chair hears none, and the bill is before the Senate, and will be regarded as left as the unfinished business at the end of to-day's session.

JAPANESE INDEMNITY FUND.

Mr. FRELINGHUYSEN. I move to proceed to the consideration of Senate bill No. 626. It is the bill in relation to the Japanese indemnity fund.

Mr. COCKRELL. I must object to taking up that bill, and insist on calling the Calendar in regular order.

Mr. FRELINGHUYSEN. I move that the Senate proceed to consider the bill I have mentioned.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from New Jersey.

Mr. COCKRELL. I think we can soon reach that bill by taking up the Calendar regularly, and there are a number of other matters here that can soon be passed upon. They are accumulating on the Calendar; and it seems to me that we ought to work off some of the business.

Mr. FRELINGHUYSEN. When the Calendar is called it is only for cases that are not objected to. This bill has been passed on the Calendar; and at the request of several Senators, especially those on the other side of the House, I call it up now. It may be that the bill wants more consideration than we can give it this afternoon; but I make the motion to take it up.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from New Jersey.

The question being put, the Chair declared that the noes appeared to prevail.

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

The yeas and nays were ordered.

Mr. PADDOCK. I am satisfied that this bill will lead to a great deal of discussion, and I hope that my friend from New Jersey will not insist upon it at this late hour of the day. It seems to me that it would be better to let the bill go over until another day, so that we may take it up at an earlier hour and make a day's business of it. There are some bills less important which might be considered to-day, to which there can be no objection. I have one of that kind myself. I hope that we shall not be called upon to consider this bill at the present time.

The PRESIDENT *pro tempore*. The question is on the motion to proceed to the consideration of the bill in relation to the Japanese indemnity fund, upon which the yeas and nays have been ordered.

The question being taken by yeas and nays, resulted—yeas 30, nays 9; as follows:

YEAS—Messrs. Allison, Bogy, Burnside, Clayton, Cooper, Davis, Dawes, Dennis, English, Ferry, Frelinghuysen, Gordon, Hamilton, Hamlin, Jones of Nevada, Kernan, Logan, McCreery, McMillan, Maxey, Merrimon, Morrill of Vermont, Randolph, Ransom, Robertson, Sargent, Saulsbury, Sharon, Sherman, and Windom—30.

NAYS—Messrs. Cameron of Wisconsin, Cockrell, Dorsey, Eaton, Goldthwaite, Hitchcock, Paddock, Spencer, and Withers—9.

ABSENT—Messrs. Alcorn, Anthony, Bayard, Booth, Boutwell, Bruce, Cameron of Pennsylvania, Caperton, Christiancy, Conkling, Conover, Cragin, Edmunds, Harvey, Howe, Ingalls, Johnston, Jones of Florida, Kelly, Key, McDonald, Mitchell, Morrill of Maine, Morton, Norwood, Oglesby, Patterson, Stevenson, Thurman, Wadleigh, Wallace, West, Whyte, and Wright—34.

So the motion was agreed to; and the bill (S. No. 626) in relation to the Japanese indemnity fund was read the second time, and considered as in Committee of the Whole.

The first section authorizes the President to reserve from the Japanese indemnity fund the sum of $125,000, to be used in the manner hereinafter provided; and, if not incompatible with the relations of the United States to other powers, to pay over to the government of Japan the residue of the indemnity fund, including all accumulations of interest; or, after correspondence with that government, and in a manner satisfactory to it, to transfer the fund, together with its increase, to the government of Japan in trust, the income thereof to be perpetually used for the promotion of education in Japan.

The second section authorizes the President to ascertain the claims of the officers and crew of the United States ship Wyoming for bounty, ransom, or prize money on account of the destruction of piratical vessels on the 16th of July, 1863, in the Straits of Simonoseki; and also the claims of that portion of the officers and crew of the United States ship Jamestown who manned the Takiang in the bombardment of the hostile forts at the Straits of Simonoseki on the 5th, 6th, 7th, and 8th days of September, 1864; and if, in his judgment, they are found either in law or equity to be justly chargeable against this fund, then he is directed, in full satisfaction thereof, to cause $125,000, reserved from the indemnity fund, or such part thereof as in his judgment shall be just and equitable, to be distributed among the officers and crews in accordance with the laws and regulations governing the distribution of prize-money in the Navy of the United States. In this distribution no money is to be paid to the assignee of the mariner, but only to the mariner or his duly authorized attorney in fact, or, in case of his decease, to his legal representative, excluding any assignee. If after the satisfaction of these claims any part of the $125,000 reserved for this purpose shall remain unused, then he is further authorized to pay over to the Japanese government the remainder in the manner provided in the first section.

Mr. COCKRELL. Is there a report accompanying the bill?

The PRESIDENT *pro tempore*. There is a report.

Mr. FRELINGHUYSEN. The bill as reported from the Committee on Foreign Relations contains this clause:

And is further authorized, if not incompatible with the relations of the United States to other powers, to pay over to the government of Japan the residue of said indemnity fund, including all accumulations of interest; or, after correspondence with said government, and in a manner satisfactory to it, to transfer said fund, together with its increase, to the government of Japan in trust, the income thereof to be perpetually used for the promotion of education in Japan.

Since the bill has been reported I have had an interview with the superintendent of education, Professor Murray, who went from this country, who has had communication with the representative of

Japan here, and his impression is that it would be advisable not to employ that alternative condition; in which opinion I agree. I have spoken to a number of the members of the committee who also think that in returning this money we should return it without any qualification whatever. I think that is the better sentiment of all with whom I have conferred. Therefore I move to strike out in the first section all after the word "interest" at the end of the ninth line; which will have the effect of returning this money without any condition to Japan. My friend from Missouri [Mr. COCKRELL] asked whether there is a report. There is a full report accompanying the bill.

Mr. COCKRELL. I should like to hear it read.

The Chief Clerk read the following report submitted by Mr. FRELINGHUYSEN, from the Committee on Foreign Relations, March 22:

The Committee on Foreign Relations, to whom were referred the resolutions and the report of the committee on foreign commerce of the Chamber of Commerce of the city of New York, in reference to the Japanese indemnity fund, submit to the Senate the following report, and recommend the passage of the accompanying bill in reference to the same:

It is now more than twelve years since the occurrence which gave rise to this indemnity. The money composing this fund has been paid over to the United States at intervals during this period, and that portion not actually required to pay the damages and expenses for which it was stipulated has been invested in registered bonds of the United States and retained as a trust fund in the custody of the Secretary of State. After the payment of the claims which have been recognized as legally chargeable to this fund, it now amounts, with its interest accumulations, to over a million and a quarter of dollars. The subject of the disposition of this fund has from time to time been brought to the attention of Congress in the messages of the President and by memorials addressed to Congress, and the subject should now be disposed of. The essential facts bearing upon this question are as follows:

The treaties formed by Japan with the United States and with other foreign powers were the occasion of great political excitement and disturbance in Japan, and continued until the revolution of the government in 1868. The cause of this disturbance was the fear and suspicion of foreigners which prevailed among the people of Japan. For several centuries the country had been closed against foreign intercourse, and the people had been taught to regard the admission of foreigners as fraught with danger and as hostile to their prosperity. Hence when the Tycoon of Japan actually formed treaties of amity and commerce with these suspected foreigners, there arose such a tumult of excitement as finally resulted in a civil war and in the overthrow of his power. The government of Japan was a feudal aristocracy, in which the supreme military and executive authority was exercised by the Tycoon, and the details of local government by a number of territorial princes or daimios. These daimios were, in many cases, on account of their wealth and extensive possessions, almost independent rulers. And in this uprising against foreign intercourse several of the most powerful daimios took a leading and active part. Among these was the powerful prince of Chosin, whose territories bordered upon the Straits of Simonoseki, which connect the Japanese inland sea with the Chinese waters. He, in defiance of his government, and while that government was striving as well as it could to fulfill its treaty obligations, erected hostile batteries capable of commanding the straits, and announced his determination to prevent the passage of foreign vessels. In 1863 an American merchant-vessel, the Pembroke, when passing the straits was fired upon, but not injured, by the prince's batteries. In retaliation for this insult to our flag, the United States steamship Wyoming, under the command of Captain David McDougal, was dispatched to Simonoseki. He found there, besides the land-batteries, several vessels belonging to the prince. With great gallantry, and no little danger to his vessel and its crew, he attacked the vessels and sunk or destroyed two of them. Six of his crew were killed and several wounded in the action.

This insult to our flag was brought to the attention of the Japanese government by the American minister. They promptly disavowed the action of their rebellious vassal, and subsequently arranged with the minister for the settlement of the claim for damages on the part of the owners of the Pembroke. Shortly after the affair of the Pembroke, however, the prince, still defiant, fired upon vessels belonging to the French and the Dutch, who, in retaliation, also inflicted summary punishment. The affairs of the country were in so disturbed a condition and the power of the Tycoon was in such danger from his rebellious daimios that he could not and dared not send a sufficient force to put an end to the obstructions of the straits. To the foreign representatives he expressed his deepest regret for this and begged for additional time in which to put down the rebellion. And as the straits of Simonoseki were not necessary to the passage of commerce to and from the open ports of Japan, the delay would not have seriously interfered with the convenience of the foreign nations. But the representatives of the treaty powers resolved to take the matter into their own hands and do for themselves what the government could not undertake to do at once. They therefore dispatched a squadron of armed vessels, seventeen in all, to remove the obstructions to the passage of the straits. The United States having no steam-vessel in Japanese waters at that time, a small vessel, the Takiang, was chartered for the occasion, at an expense of $9,500. The squadron executed its commission with thoroughness and dispatch. The vessels and batteries were utterly destroyed and the prince himself compelled to make his submission.

Immediately after the return of the expedition, the representatives of the treaty powers held a conference with the ministers of the government, and presented to them a demand for damages and expenses, resulting from these transactions. The indemnity was fixed by the foreign representatives at $3,000,000. The share of the United States in this indemnity was subsequently fixed by the negotiations of the home governments, and we have received on this account $785,000, Mexican. The only claims known to exist against this fund which have not been already ascertained and settled are those of the officers and crew of the United States ship Wyoming and of that portion of the officers and crew of the United States ship Jamestown who manned the chartered ship Takiang in the allied expedition. On behalf of the claimants it is urged that, had the vessels and batteries which were destroyed by their actions been the vessels of an enemy, they would have been entitled to bounty or prize money under the laws of the United States, and that, while technically they were not the vessels of an enemy, and therefore they are not technically entitled by law to bounty or prize money, yet that, inasmuch as by these actions, which were attended with danger and loss of life, the United States became possessed of this large sum of money, they are in equity entitled to some share thereof.

Your committee, after a careful consideration of the above facts and of others bearing upon the case, have arrived at the following conclusions:

1. The acts for which this indemnity was exacted were not the willful acts of the Japanese government, nor were they approved or countenanced by it. They occurred during a period of great political disquiet, when the government found it impossible to control the rebellious actions of its subjects and to fulfill its treaty obligations.

2. The Japanese government is justly held responsible for the actual damages and expenses arising to the United States or to citizens of the United States out of these transactions. But it has never been the true policy of the United States to exact indemnities from weaker powers further than was necessary to cover actual outlay; and while the popular hostility to foreign intercourse and the desire to compel the nation to open up additional facilities for trade may have been at the time an excuse for fixing the indemnity at its stipulated amount, yet now, when the attitude and policy of Japan have undergone a complete change, it seems no longer just or magnanimous to exact from them a sum greater than actually needed.

3. Since Japan was opened to the intercourse of the world the United States have felt a genuine and commendable interest in the affairs of that country. They have watched with pleasure the wonderful movements in the development of her resources, in the education of her people, and in the assimilation of her laws and government to those of Christian nations. It is plainly the true policy of the United States to aid and encourage these movements, and we have, in the disposition to be made of this indemnity fund, an occasion, without any draught upon our own resources, to give to them an example of American justice and magnanimity which will be beneficial to both nations.

4. The conclusion of the committee is that Congress should in the first place provide for the final adjudication of any claims that may yet be unsatisfied against this fund. As doubts may still attach to the admissibility of the claims of the naval officers and crews above referred to, it is recommended that they be referred to the President for final settlement, and that a sum of money sufficient to cover these claims be reserved from this fund, and that the remainder of the fund, including its accumulations of interest, be paid over to the Government of Japan. To effect this object the committee report the accompanying bill entitled "A bill in relation to the Japanese indemnity fund," and recommend its passage.

Mr. HAMLIN. I wish to add a word only in relation to the motion which the Senator from New Jersey has submitted, to strike out so much of the bill as provides as an alternative in the return of this money that it shall be appropriated for educational purposes. I think I have a longer acquaintance, in committee at least, with the subject than my friend from New Jersey, and my recollection is very clear and very distinct that that alternative was originally incorporated from suggestions made that it would be more acceptable to the Japanese government. We now learn that it would be more acceptable to exclude it, and therefore for the very reason on which it originally went in it should now go out.

Mr. DAWES. I should like to ask the Senator from New Jersey why it is that it is more acceptable to the Japanese government that the money should be paid into their treasury?

Mr. KERNAN. They can apply it to educational purposes if they choose.

Mr. DAWES. I do not see any difficulty in their applying it, if it is in their treasury; but what assurance do we have that they will not devote it to the general current expenses of their government?

Mr. KERNAN. I beg to ask my friend if he thinks that having money in our hands that belongs to them we ought to impose any condition upon them in handing it back? I think our true duty is to say, "We have paid all our claims, and here is the residue of the money."

Mr. DAWES. That is a question that I do not desire to discuss now, because I have expressed my opinion on it elsewhere.

Mr. HAMLIN. If my friend from Massachusetts will allow me to answer him, I think I may do it with propriety. It was suggested as a point of honor, at one period of time, that the Japanese government would be disinclined to receive the money back in terms, but if our government would appropriate it to educational purposes it would avoid what might be regarded a point of honor. I believe they have gotten over that now, and say they will appropriate it as they please, if we will return it to them. That is the real truth about it.

Mr. THURMAN. If the Senator will allow me to make a remark, it does seem to me that it would be almost an insult to a foreign government for us to give them money which we admit to be theirs (for otherwise we have no right to give it to them) and then undertake to prescribe what they shall do with it.

Mr. HAMLIN. It was done at their own suggestion in the first place.

Mr. THURMAN. If any power should undertake to return us money which it found to belong to us, and at the same time assume to prescribe what we should do with it, I do not think that we would accept one cent of it. I am not disposed to treat any power, even the most feeble on the earth, (and Japan is not the most feeble,) in any such manner. I therefore have heard with great pleasure the motion of the Senator from New Jersey to strike this clause out of the bill. In regard to the bill, I think it proceeds upon the right idea. The second section commends itself to my approval. I have expressed my opinion upon this subject at previous sessions of the Senate. Here was a case in which a set of rebels against the Japanese government undertook to make war upon the commerce not only of the United States but of certain European powers in defiance of their own government, in defiance of treaty stipulations between those powers and Japan, and in defiance of the law of nations. They inflicted severe injuries upon an American vessel. Thereupon Commodore McDougal, in command of the American naval force in those seas, did precisely for the protection of American commerce what he was bound to do. I speak of him from forty years' knowledge of him, for he and I were school-boys together. Like a brave man as he was, he took the responsibility of acting without instructions, but his course has since been fully approved by his Government, and admitted to be correct by the Japanese government. He punished the pirates, if they can be so called, as they are called in the report, certainly rebels against the Japanese government, who, in defiance of the laws and treaties of their own government, and of the rights of foreign governments that had treated with them, undertook to destroy American, Dutch, and other commerce in those seas. Afterward the same punishment was visited upon them by the French and the Dutch.

Mr. HAMLIN. It was all done jointly.

Mr. THURMAN. It was a most gallant thing. It was wisely done; it was done in strict pursuance of the laws of the United States; but it so happened that, we not being at war with Japan at the time, the prize-money acts of Congress do not apply to this case in letter. In spirit they do; and so it has been recognized ever since. Six committees have reported in favor of allowing the officers and crews of the Wyoming and the Takiang such compensation as would have been allowed to those officers and crews had there been open war with Japan. The reason of the thing applies as much in this case as any other. That indemnity being furnished to our officers and crews, the residue of the fund belongs to Japan, because all our claims upon her government above that have been satisfied. It is simply consistent with justice, and with the dignity of this country, and its respect for the dignity of Japan, that the remainder of the fund should be returned to her without any condition whatsoever.

I therefore entirely approve of the motion made by the Senator from New Jersey, and hope that it will be adopted. Then with some verbal amendments which are necessary in the second section, and which I think will be made without objection, I hope that the bill may pass.

Mr. DAWES. Having made the inquiry I did, perhaps I ought to say that it was from no desire to throw any obstacle in the way of the bill, but because heretofore, in another place, I struggled very hard to get a bill passed that would pay this sum back to Japan upon the condition that it should be devoted to educational purposes. I happened to know then that it was in accordance with the desire of the Japanese government, and, indeed, I was impelled to do what I did do at the instance strictly of the agents of that government and those largely interested in education in that country. Seeing the motion made to strike out that clause and to give the money generally over to the Japanese government, I was led to make the inquiry I did. I understood then, as the Senator from Maine has already stated, that at that time it was necessary to have it appear that it was in some way to be appropriated by the authority of the Government of the United States, else the Japanese government taking it back would thereby confess that there had been something wrong in taking it, and would suffer harikari or something of that kind. It was to get around such a calamity as that that the method was first suggested. I am heartily in favor of paying the money back to Japan; and if Japan prefers to take it unconditionally, or if it is thought best to pay it in that way, of course so much the better.

There is another fund like this that I hope the Senator from New Jersey will, the moment he gets this bill through, exert himself to have acted on by the Senate, before it is all frittered away by claims that are generally, when there is no other fund upon which to quarter them, quartered either upon the Japanese or the Chinese fund. I hope he will not suffer any delay, and I will vote with him to take up any bill of that character in regard to the Chinese fund, after this is passed.

Mr. EATON. I agree entirely with the Senator from New Jersey, and I suggest to him that it would be well to strike out these words also:

If not incompatible with the relations of the United States to other powers.

It seems to me that we ought to know, before we legislate with regard to a matter of this sort, whether it would be compatible with the relations of the United States to other powers or not.

Mr. FRELINGHUYSEN. As is well known, this fund which Japan paid was paid for the benefit of the French and the Dutch as well as of the United States. It is a matter of abundant caution that a clause is introduced into the bill that this money shall be paid over to Japan if it is not incompatible with the proprieties existing between us and those other nations which are interested in the general fund. My friend from Connecticut suggests that that ought to be ascertained before we legislate. I think not, with all deference to him. Our intercourse with those nations is through the executive department. We as a legislature can hardly hold intercourse with them to find out what their views are. We give this power to the Executive, and intrust to him, as we do in all our relations with foreign countries, the adjustment of this matter of delicacy between our nation and the French and the Dutch.

Mr. STEVENSON. I should like to ask the Senator from New Jersey a question. I see that the bill provides for the return of this fund with the accumulations of interest. Has this fund been drawing interest since we got it?

Mr. FRELINGHUYSEN. I understand that it has been a separate fund by itself, accumulating interest.

Mr. HAMLIN. That is so.

Mr. STEVENSON. I understand the amendment of the Senator from New Jersey is to strike out the clause relating to a fund for educational purposes?

Mr. FRELINGHUYSEN. Yes, sir.

Mr. INGALLS. This money is ours, or it is not. It either belongs to the American Government rightfully, or it belongs to the Japanese government. If it is ours, we certainly ought to keep it. If it is not ours, we ought to return it without condition. It appears to me that the second section is defective and necessarily so in that it appears from the terms of that section that there is an unadjusted demand still existing upon this fund in the nature of prize-money due to the officers of certain vessels, which sum has not been ascertained. It seems to me that the better course would be to authorize the President to ascertain specifically the amount that is due out of this fund, and then direct that the balance, whatever it may be, shall be paid over to the Japanese government.

Mr. HAMLIN. That is substantially done already.

Mr. INGALLS. Why not put it in the bill?

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from New Jersey to strike out lines 10, 11, 12, 13, and 14 of the first section.

The amendment was agreed to.

Mr. EATON. I did not wish to encumber the amendment of the honorable Senator from New Jersey with an amendment, and now that it is agreed to I move to strike out in lines 6, 7, and 8 of section 1 the words:

If not incompatible with the relations of the United States to other powers.

I apprehend that there can be no question with regard to this matter. Certain moneys were paid to other powers and certain moneys to the United States. It strikes me that we have nothing to do with regard to the payment by the government of Japan to other powers. This is a matter between ourselves and the government of Japan, and I would not encumber a statute with language of this character. It does not seem to me to be proper.

Mr. THURMAN. I hope the amendment offered by the Senator from Connecticut will prevail. I hardly think it is consistent with the dignity of the United States or the right determination of a question which should depend simply upon principles of justice, that we should make it depend upon what our relations are with other powers. This is a very noble example that we shall set if we pass this bill. It is an example that will be commemorated in the history of this country as a proof of its justice, that when we received from Japan more than the indemnity was, we returned her the surplus. It ought to be returned upon strict principles of justice, and not with any regard whatsoever to our relations with other powers. It is a question simply of justice and right, and in no sense dependent upon our relations with other powers.

Mr. FRELINGHUYSEN. I think the bill would be equally effective perhaps if the amendment of the Senator from Connecticut should prevail, but I certainly think it is better that these words should remain. The money will be paid in the same way. As was said by the Senator from Ohio, we owe the money and we have the right to pay it, whatever other powers say about it. The fact is that here was a joint engagement in which the French, the Dutch, and the United States were concerned. The money was divided equally between the three. The sum was divided into three parts. It is very probable that the French and the Dutch really did not receive more than was indemnity for their injuries, for I understand that they did suffer much more than the United States. While this provision will not prevent our paying back the money, it seems to me that it is a more gracious manner of doing it to do it after conference with them. Still, I submit the question to the Senate.

Mr. STEVENSON. I hope the amendment will be adopted. I do not think we have anything to do with the other nations. This is a matter which peculiarly belongs to us. It is a matter of great delicacy and great propriety. The fund had to be divided *ex æquo et bono*. Suppose it should turn out that they did not agree with us; what then, I should like to know from the committee? Suppose, upon consultation, these two nations were to say, "We do not agree with you, and we intend to hold on to it;" what would we do? I do not think we ought to allow them to dictate to us, and still less to have any power of dictating an action which the highest principles of integrity and a high enlightened polity demand. I think we ought to act independently of other nations, and I would not even let them know what we were doing. If this money does not belong to us, let us return it. I think there is a good deal in what was said by the Senator from Kansas, [Mr. INGALLS.] I do not know whether this $125,000 has been ascertained or not. I do not think we ought to retain anything unless we know that that much is due to these officers in the way of prize-money.

Mr. FRELINGHUYSEN. I would state to the Senator that that is the sum which has been estimated after examination. I suppose that it is as near an approximation as is possible.

Mr. STEVENSON. If that is so, I am willing that the bill shall be passed; but I hope the amendment of my friend from Connecticut will be adopted. I should like to see it adopted unanimously.

Mr. MERRIMON. I beg to ask the Senator in charge of this bill if there is anything in our treaty relations with England or France that renders it necessary that these words should remain in this bill?

Mr. FRELINGHUYSEN. I presume there is not. The words of the bill are, "incompatible with our relations." I do not suppose that even if these countries should say "we prefer you should not pay back this money," that would prevent our doing it. But I do not think the retention of the phrase is important; and if the Senate see proper to adopt the amendment of the Senator from Connecticut I do not object.

Mr. HOWE. Mr. President, it strikes me that if we are about to give an evidence of the sense of justice which animates the people of the United States we ought to be able to adduce some more striking proof of it than this bill will furnish if it passes. It may be that the first section of the bill will stand in the judgment of the world as a

signal evidence of that justice, but it seems to me very clear that the second section weakens that evidence very much.

I thought there was force in the suggestion made by the Senator from Kansas just now, that either this money in justice belongs to Japan or it does not, and if it belongs to Japan we ought to pay it to Japan without any conditions and without any abatement. I have never myself seen any very conclusive evidence that the money belonged to Japan. The theory has been that the money was paid by Japan to these allied or co-operating powers to enable them to indemnify their subjects severally for such losses as they had sustained by this affair in the Straits of Simonoseki. I do not understand myself that that was the theory upon which the sum was paid. There was what might be called a civil war; if I understand it, one of the provinces was in revolt against the imperial government and the revolting province inflicted some injuries upon our public rights, interfered with our rights of navigation in those straits, or were supposed to do so, and the naval forces of these several powers united to go up there and help Japan punish that province and at the same time avenge the insults that had been heaped upon us. In consideration of both those services—helping the imperial government and making reparation for the injuries that had been done these several powers—this gross sum of money was paid. The powers interested having agreed upon the division of the money out of the portion which came to us, this Government, acting upon its own sense of justice, has liquidated and paid every private claim which could be preferred against the fund. There is a certain sum left. The first section of the bill proposes to restore the balance of the money to Japan, but the second section of the bill proposes to make one more grab before it goes beyond our reach to pay something, either bounty, or ransom, or prize-money on account of the destruction of piratical vessels destroyed by the fleets of all these powers; and it is said you have got so that you can guess pretty near what sum that is. I have felt myself all along as though that was not precisely the kind of warfare in which prize-money was to be earned; and if prize-money was earned I do not see why it has not already been adjusted, and settled and paid out of this fund years ago, or out of some other fund.

Mr. EDMUNDS. Because the prize laws did not allow a claim in any such case.

Mr. HOWE. That would be a good reason, and if it was a good reason five years ago I do not see why it should not be a tolerably good reason to-day.

Mr. EDMUNDS. I do not.

Mr. HOWE. I think if we want to prove our justice, we had better strike out the second section of the bill and stand on the first section. Then you will have a pretty clear case as far as that goes, but at the same time it will be a little embarrassing to prove that it is just for this Government to take from a fund which belongs to Japan the money necessary to pay these prize claims and bounty claims.

Mr. FRELINGHUYSEN. I do not understand my friend from Wisconsin entirely, whether he does not favor the bill because it does not pay back enough to Japan, or because it pays back too much.

Mr. HOWE. It is on that precise question that I am divided. [Laughter.]

Mr. FRELINGHUYSEN. So I thought.

Mr. HOWE. It is a little difficult to determine what is the gravest objection to it. I am a little doubtful whether the first section ought to pass, but I will acquiesce in that if you will take off the second section. I say again it seems to me that either this money belongs to Japan or to us, and if it belongs to Japan you ought to pay it as provided in the first section and without the deduction which the second section calls for.

Mr. EDMUNDS. I move to strike out the second section of the bill. The section provides for allowing compensation in the nature of bounty, ransom, or prize money to the officers and crews of the vessels of the United States that participated in this engagement in certain straits of an unpronounceable name. The laws of prize, whether under the laws of nations or under the prize statutes of the United States, do not provide and were never intended to provide for cases of that character. The right to prize-money arises from a capture made in warfare, and the statutes of the United States are based upon that theory. There were two crafts, piratical or rebellious, one or the other, in Japan that were sunk in a little river by the combined operations of the navies of the Netherlands and of Great Britain and of France and of the United States. Now it is proposed by this second section that the President of the United States is to constitute himself a judicial tribunal to determine what are the just claims in respect of bounty, ransom, or prize money arising out of the destruction of those piratical vessels, as the statute calls them. Whether they were piratical vessels or not under the laws of war, would depend on the proportions that the rebellion in Japan had assumed at that time—questions that came at one time a good deal nearer home to us than they do at this present moment, or as I hope they ever will again.

This bill proposes to go entirely beyond either the public laws of war in relation to prizes or the statutes of the United States. It does not appear to me that there is any case whatever for making any allowance to the officers and crews of these public vessels of the United States. The mission for which they are commissioned and for which they enlist is to execute the power of the United States by force wherever it may be lawfully applied, and this was a public instance of such application. In one event, and in one event only, in the application of such force they are entitled to a certain share in what they conquer; outside of that they are not. There is no obligation that I can see, either in the way of law, or of justice, or of equity, considered in its natural or any other sense, for making this provision. You might just as well make an additional provision for Senators, if we sit two hours later than we do every day, on the ground that we have especially distinguished ourselves. It was one of the precise missions that these people were engaged to perform, and they did it, and they did it well, undoubtedly; but the idea that any money is to be taken from the Treasury or from anybody else to pay them for simply doing their natural and ordinary and legal duty, when the law under which they undertook to do that duty did not hold out any such expectation to them, is to me totally inadmissible.

Then, in addition to that, it proceeds to provide for the officers and crew of the United States ship Jamestown who manned the Takiang—which I take to have been a Japanese vessel of war—in the bombardment of the hostile forts at the Straits of Simonoseki. There is a case where it is proposed that you shall pay these officers and sailors of the United States for helping the Emperor of Japan to carry on this warfare against his rebellious subjects in bombarding a fort, and take that out of this indemnity fund which, as has been stated, either belongs to our Treasury or to Japan.

My friend from Wisconsin [Mr. HOWE] asks me, what is the measure of compensation? There is no measure except the discretion of the President of the United States, because there is no rule of law, there is no rule of public law or of statute law, or of custom or usage whatever, which is to guide the discretion of the President of the United States as to how much he shall allow to the people of the Jamestown for going on board a Japanese vessel of war and assisting in bombarding a rebellious fort on shore. There is nothing to guide his discretion whatever. He is to ascertain their claims, and, having ascertained them—that is, having settled, in his judgment, what they ought to be—he is to take the amount out of what he is to pay the Japanese.

Mr. CONKLING. I wish to inquire of the Senator from Vermont, having been out a moment, whether his observations are directed to the whole of the second section or whether they will be answered by striking out the words in line 11 "or equity" so as to make the rights or claims of these men hinge upon what is the law? And in that connection I inquire of the Senator from Vermont whether he has before him the fact so definitely that he is prepared to say that as matter of law none of these persons, regardless of such equitable claims as they might have, are entitled?

Mr. EDMUNDS. The question of the Senator from New York is very pertinent, as his questions almost always are. My observations were addressed in general to the whole section; and then I had made a note that, if the Senate should not choose to strike out the whole section, the words "in law or equity" ought to be modified in some way. But when you look at the convention between the Emperor of Japan and these four powers you will perceive—I think I am safe in saying that in the presence of this Senate as learned as it is—that there is no ground in point of law upon which any one of the officers or crews of these vessels of the United States could stand in a prize-court for a single moment. This convention recites what had taken place; and I must take it to be the best evidence attainable of what the fact really was; and if I do not weary the Senate I will read it.

Mr. FRELINGHUYSEN. What do you read from?

Mr. EDMUNDS. From the convention concluded between the United States and the Empire of Japan.

Mr. FRELINGHUYSEN. What volume?

Mr. EDMUNDS. The fourteenth volume of the Statutes at Large, page 665.

Whereas a convention between the Empire of Japan and the Government of the United States, Great Britain, France, and Holland—

Although afterward it is spoken of as "the Netherlands"—

providing for the payment to said governments of the sum of $3,000,000 for indemnities and expenses, was concluded and signed by their respective plenipotentiaries on the 22d day of October, 1864, which convention, being in the English, Dutch, and Japanese languages, is word for word as follows:

CONVENTION.

The representatives of the United States of America, Great Britain, France, and the Netherlands, in view of the hostile acts of Mori Daizen, prince of Nagato and Suwo, which were assuming such formidable proportions as to make it difficult for the Tycoon faithfully to observe the treaties, having been obliged to send their combined forces to the Straits of Simonoseki in order to destroy the batteries erected by that daimio for the destruction of foreign vessels and the stoppage of trade; and the government of the Tycoon, on whom devolved the duty of chastising this rebellious prince, being held responsible for any damage resulting to the interests of treaty powers, as well as the expenses occasioned by the expedition—

And here I will remark that we should have held it to be a somewhat singular law of nations in the years from 1861 to 1865, if it had happened that any foreign power had claimed that we were responsible for any acts of aggression upon foreign powers committed by rebels within our own borders. I will proceed:

The undersigned, representatives of treaty powers, and Sakai Hida no Kami, a member of his second council, invested with plenipotentiary powers by the Tycoon of Japan, animated with the desire to put an end to all reclamations concerning the acts of aggression and hostility committed by the said Mori Daizen since the first of these acts, in June, 1863, against the flags of divers treaty powers, and at the same time to regulate definitively the question of indemnities of war, of whatever kind, in respect to the allied expedition of Simonoseki, have agreed and determined upon the four articles following:

I. The amount payable to the four powers is fixed at $3,000,000. This sum to include all claims, of whatever nature, for past aggressions on the part of Nagato, whether indemnities, ransom for Simonoseki, or expenses entailed by the operations of the allied squadrons.

You will perceive that it includes not only reclamations for injuries to the citizens as subjects of the particular powers, insults, and all that, but also for the trouble and expense to which the allied powers were put in assisting the Tycoon to put down this rebellion at that place

II. The whole sum to be payable quarterly.

That merely provides for the payments. Then it proceeds to say in the third article:

Inasmuch as the receipt of money has never been the object of the said powers, but the establishment of better relations with Japan, and the desire to place these on a more satisfactory and mutually advantageous footing is still the leading object in view; therefore, if His Majesty the Tycoon wishes to offer, in lieu of payment of the sum claimed, and as a material compensation for loss and injury sustained, the opening of Simonoseki, or some other eligible port in the inland sea, it shall be at the option of the said foreign governments to accept the same, or insist on the payment of the indemnity in money, under the conditions above stipulated.

IV. This convention to be formally ratified by the Tycoon's government within fifteen days from the date thereof.

I have read all the operative parts. Therefore you will perceive, Mr. President, that this money was paid, not merely, or only, or chiefly indeed, for the distinct injuries that had happened to the citizens or subjects of the four countries, but also for a general and sweeping indemnity to those four powers for the assistance they had rendered to the empire of Japan in putting down this rebellion at that place; and inasmuch as they say money was not the object, it was left to be determined afterward whether the opening of this particular port should not be taken in the place of money, in order to square the account, to use a commercial phrase. It was finally determined that that was not desirable. They chose to take the money, and the money was paid. The Japanese government chose to pay it. Now, I fail to see, I confess, upon what ground it is, either upon high justice or high equity or high morality, that there is any obligation upon the part of the United States or of either of the other three powers to repay to the government of Japan any part of this money. Inasmuch as it was not, as in the case of many instances of conventions that have occurred in regard to private injuries to private citizens, a case of compensation for particular and individual injury, illegal injury happening in the country of the government paying it, but was a general indemnity, not only for that, whatever it might be, but also for the general expenses of assisting in putting down this rebellion, I do not see, I say, upon what ground it is that any morality requires us to repay any of it, or authorizes the Japanese government to demand it.

But that is apart from the motion I have now made to strike out the second section, because I think it will be obvious to my learned friend from New York in reading this convention and the report of the committee which states what took place, that there was on this occasion the destruction of two vessels called piratical, but really, as I suppose, in the service of this rebellious prince, and there was also the bombardment and capture of a fort on the land. Now, by the prize law, I submit to my friend from New York and to everybody else, there is no ground of claim on the part of the officers and crews of the vessels of the United States.

Mr. CONKLING. If the Senator will allow me, before he completes his remarks I will state to him the purpose of my question. Having been out of the Senate for a moment, I did not know whether he was directing his observations to the fact that under the bill these people might be remunerated, whether entitled by law or only in equity. I put to him the question to ascertain that. I now perceive that he maintains that this section ought to be stricken out because there is no law known to us under which in a prize-court or elsewhere these men can receive recompense, remuneration, reward, whatever it may be called, for the services they rendered.

Now I bring to the attention of the Senator from Vermont the fact first that if there were such a law, this part of the bill would be quite unnecessary; so much of this money as they could claim, probably would not have been begging for an owner for some years; and I suppose, I think the committee suppose, I think all those who have dealt with this subject suppose, that, like numerous cases in our history, this was an instance which invoked special action, action which no court could be summoned to take, action which was to be measured by the meritorious character and the exceptional nature of the acts which these men did.

A friend near me has reminded me of the case of the Algerine pirates, and of the measures taken against them. I might remind the Senate of other instances in which claimants could not go into a prize-court, and obtain anything for what they did, and because they could not, treating the fact not as an objection but as a reason, provision was made similar to this to the end that, although they were in the line of their duty, having rendered exceptional service, peculiar in its character, I might say perhaps, descriptive of this case, picturesque in the incidents which attended it——

Mr. EDMUNDS. "Picturesque" is the very word.

Mr. CONKLING. I am very glad to have the Senator from Vermont indorse even one word which falls from me.

Mr. EDMUNDS. That is the only one.

Mr. CONKLING. The only one I have heard him indorse. I say I have understood the theory in this case and in other cases to be that where services were rendered heroic, unusual, volunteer, exceptional, and now the Senator from Vermont authorizes me to add picturesque, in their character, because the actors in those services could not go into a prize-court, and upon the principles of law recover anything, therefore the case addressed itself to the discretion, the sense of equity of the Government which they served. That is this case; and if Japan were near us, and if the mode were a convenient one, it might be said that this money being returned in bulk Japan would render back to these persons anything which in equity and upon high and enlightened principles of polity (as I think I heard some Senator observe) might be thought their due—not their technical due; but a proper rendition to them. That would be very inconvenient in this instance, and perhaps in the instance of a nearer government; and therefore it was supposed by the committee; therefore it has been supposed by the predecessors of the present committee and by many persons, executive officers and others who have dealt with this subject, that it was appropriate to take some action, to make some provision under which discretion might be exercised touching the merits of these men, the services they rendered, the risks they incurred, the hardships, if any, which they underwent, and whatever there might be entitling them, not of technical right but of substantial merit, to some recompense. It seems to me so now, and therefore I do not see that this section should be stricken out. I do not see that it should fall for the reasons assigned by the honorable Senator from Vermont.

Mr. President, this bill seems likely not to be concluded to-day. I am inclined to think it ought not to be. The Senate is somewhat thin, and it is worth considering. I move that the Senate proceed to the consideration of executive business.

The PRESIDENT *pro tempore*. The Chair will remind the Senator from New York of the fact that the Senator from Ohio, [Mr. SHERMAN,] by a general understanding, called up the silver bill so called, that it should be left as the unfinished business to-day, and this other bill was interjected by common consent.

Mr. FRELINGHUYSEN. The Senator from Ohio is not here.

Mr. CONKLING. It is almost five o'clock.

Mr. FRELINGHUYSEN. I do not believe the Senator from Ohio will object to this bill proceeding to-morrow.

Mr. CONKLING. Surely this is a bill upon which no raid of opposition is to be made in point of time. There will be no difficulty in considering it at any convenient moment, I think. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After nine minutes spent in executive session the doors were re-opened, and (at four o'clock and fifty-four minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *April* 19, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

HALLET KILBOURN.

The SPEAKER. It is the duty of the Chair to lay before the House this morning a communication from the Sergeant-at Arms, which it seems proper should go on the records of the House.

The Clerk read as follows:

OFFICE SERGEANT-AT-ARMS, HOUSE OF REPRESENTATIVES,
Washington, D. C., April 17, 1876.

MY DEAR SIR: I desire respectfully to report to you, and through you to the House of Representatives, that in accordance with the resolution passed by your honorable body on the 17th instant I have this day, at ten o'clock a. m., made a careful return to the writ of *habeas corpus* heretofore issued by the chief justice of the District of Columbia, commanding me to produce the body of Hallet Kilbourn, committed to my custody by order of the House.

The return set out in detail the facts relating to his detention, and that he was in my custody by virtue of an adjudication of this House finding him guilty of contempt of its authority. I likewise produced the body of the said Kilbourn and presented it to the judge who had issued the writ. Thereupon he ordered the said Kilbourn into the custody of the marshal of the District of Columbia, who immediately took possession of his body.

Very respectfully, your obedient servant,

JOHN G. THOMPSON,
Sergeant-at-Arms.

Hon. M. C. KERR, *Speaker.*

Mr. CONGER. I ask the Chair whether the Sergeant-at-Arms ought not to have appended to his report a copy of his return to the writ? I think he should have added to his report a verbatim copy of that return, so that the House may have it in their possession. And I would suggest that the officer amend his report so as to embrace a copy of the return.

The SPEAKER. The Chair will venture to express the opinion that it would be very well that this communication should be accompanied with a copy of the return, so that the record of the House shall be more complete. If there be no objection, the Chair will see that that is done, and that the return to the writ accompanies the communication.