Mr. WHITE. I rise to a parliamentary inquiry. If this resolution shall be adopted, will it be in order to move an amendment in Committee of the Whole to provide that no person who was actively engaged in the rebellion shall be paid for any such mail service?

The SPEAKER *pro tempore*. That question will be answered by the Chair in Committee of the Whole on the state of the Union when the time arrives.

Mr. VANCE, of North Carolina. I withdraw the resolution.

Mr. WHITE. I object.

The SPEAKER. The question recurs on the motion to suspend the rules and adopt the resolution.

Mr. CLYMER. I move the House adjourn.

The motion was agreed to; and accordingly (at three o'clock and thirty-five 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. BAKER, of Indiana: The petition of Alexander M. Vinnedge, late a private in Company B, One hundred and fifty-fifth Regiment Indiana Volunteer Infantry, to be relieved from the charge of desertion and to be restored to all rights as though regularly mustered out of military service, to the Committee on Military Affairs.

By Mr. COX: The petition of Edwin F. Hatfield, stated clerk of the General Assembly of the Presbyterian Church of the United States, that the postal law be so changed as to allow the annual publications issued by the direction of said assembly and other annual publications issued by direction of various religious and charitable societies, none of which are issued for gain, to be sent through the mails at a lower rate of postage than is now charged for the same, to the Committee on the Post-Office and Post-Roads.

Also, the petition of Charles J. Bartram and 72 others, envelope dealers, stationers, and manufacturers, that such legislation may be adopted as may relieve them from injurious competition by the Government in the manufacture, transportation, and sale of envelopes, postal cards, &c., to the same committee.

By Mr. FAULKNER: The petition of the faculty of the West Virginia University, for the passage of the bill introduced in the Senate April 12, 1876, entitled "A bill to limit and fix the Signal Service," to the Committee on Commerce.

By Mr. HARRIS, of Georgia: Papers relating to the claim of Henry S. Castellon, for compensation for stock and provisions taken for use of the United States Army, to the Committee on War Claims.

By Mr. HENDEE: The petition of John G. Stafford, that the commissioners of the District of Columbia be directed to ascertain and pay him the amount due him for work done and material furnished under a contract with the board of public works in the city of Washington, to the Committee for the District of Columbia.

By Mr. JOYCE: The petition of Dudley Taft, that the charge of desertion may be removed from the record of his deceased son, George D. Taft, killed at the battle of the Wilderness, and that he be paid the bounty and back pay that would otherwise have been due him, to the Committee on Invalid Pensions.

Also, the petition of Tuttle & Co. and others, for such legislation as will relieve them from injurious competition by the Government in the manufacture and sale of envelopes, postal cards, &c., to the Committee on the Post-Office and Post-Roads.

By Mr. LANE: The petition of Virgil M. Jones, late an assistant quartermaster United States Army, to be released from his indebtedness to the United States, to the Committee on Military Affairs.

By Mr. LUTTRELL: A paper relating to the claim of James M. Watson, to the Committee on Invalid Pensions.

By Mr. McMAHON: The petition of Robert Quinn, for a pension, to the same committee.

By Mr. MONROE: The petition of Lieutenant M. C. Roach, for additional compensation as a United States officer, to the Committee on Military Affairs.

By Mr. TOWNSEND, of New York: The petition of citizens of Washington County, New York, that negotiations may be had with the Dominion of Canada relative to the Caughnawaga Ship-Canal, to the Committee on Foreign Affairs.

By Mr. YOUNG: The petition of Abner D. Lewis, for the reconsideration of his claim disallowed by the southern claims commission, to the Committee on War Claims.

IN SENATE.

TUESDAY, *May* 2, 1876.

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

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

RETURN OF A BILL TO THE HOUSE.

The PRESIDENT *pro tempore* laid before the Senate the request of the House of Representatives for the return of the joint resolution (H. R. No. 34) to print forty-five hundred copies of the annual report of the United States geological and geographical survey of the Territories; and, on motion of Mr. EDMUNDS, the request was granted.

PETITIONS AND MEMORIALS.

Mr. KEY presented the petition of J. P. McMillin, trustee of the Methodist Episcopal church South, of Chattanooga, Tennessee, praying compensation for the use of their church building for military purposes by the Army of the United States during the late war; which was referred to the Committee on Claims.

Mr. BOUTWELL presented a memorial of the Society of Friends on behalf of the Indians, remonstrating against the transfer of the management of Indian affairs to the War Department; which was referred to the Committee on Indian Affairs.

Mr. MERRIMON presented the petition of Malissa E. Banks, of Yancey County, North Carolina, praying to have her name restored to the pension-rolls as the widow of Ezekiel Banks, a Federal officer in the war of 1861; which was referred to the Committee on Pensions.

Mr. WRIGHT presented the petition of Thompson & Carmichael, and others, citizens of Davenport, Iowa, envelope-manufacturers, printers, stationers, lithographers, representing over 50,000 other dealers throughout the United States, praying for such action by Congress as will discontinue the manufacture and sale by the Government of stamped envelopes, &c.; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. DENNIS presented the petition of Samuel J. Lamden, of Worcester County, Maryland, late a private in Company B, First Mounted Missouri Volunteers, praying to be allowed a pension; which was referred to the Committee on Pensions.

Mr. CAMERON, of Wisconsin, presented the petition of Carl Jussen, late adjutant Twenty-third Wisconsin Volunteers, praying for the difference of pay between that of sergeant-major and adjutant from August 2 to December 13, 1863; which was referred to the Committee on Military Affairs.

Mr. CONKLING presented a memorial of citizens of the State of New York, remonstrating against the passage of any law granting an American register to foreign-built vessels; which was referred to the Committee on Commerce.

THE STEAMBOAT BILL.

Mr. CONKLING. Mr. President, having the floor I wish to make a statement for myself and for the Committee on Commerce. There is before the Committee on Commerce of the Senate a bill, passed some little while ago by the House of Representatives, popularly known as the steamboat bill. Various inquiries from time to time are addressed to me and various comments are made touching the period when the bill is likely to be reported and the fact that, although it has been here for some time, it has not been reported. To answer these inquiries, for the reason that it is easier to answer generally than particularly, and for some other reasons, I make this statement.

After the bill came from the House of Representatives it turned out that there was some error about it, and the bill was returned to the House, at its request, for the correction of the error. Afterward a second and corrected bill came, which bill has been received by the Senate only quite recently. In the meantime applications have been made, and I refer especially to one known to a Senator who hears me, made by a citizen representing a large part of the steamboat interest in one direction, having one set of views about legislation. An application was made by him to me, and made in writing, to defer and postpone action upon the bill in the committee until he and others should have opportunity to prepare and present to the committee some matters bearing upon it. Although it is quite doubtful whether any diligence would have enabled the committee to report the bill by this time, this request has been made, and it has not existed so long that anybody can charge the parties with being wanting in diligence and good faith. Had the committee been ready to report the bill, no doubt it would have waited at least as long as it has waited, and probably longer, to enable those interested in it to give information to the committee. But I sufficiently answer the purpose when I say that, upon the request of those interested, and affirmatively interested, in the bill, the committee has been waiting, and as yet only a short time, to enable them to present such facts as they may choose to submit.

I hope this will be a sufficient answer to all those curious to know why the bill has not been reported, and that it will avoid the necessity of answering in detail and separately so many persons as are making inquiries.

POLITICAL ASSESSMENTS ON OFFICERS.

Mr. MERRIMON submitted an amendment intended to be proposed by him to the bill (H. R. No. 876) to prevent the solicitation, contribution, or acceptance, by any officer or employé of the Government, of money, property, or other thing of value, for political purposes, and for other purposes; which was referred to the Committee on Privileges and Elections, and ordered to be printed.

REPORTS OF COMMITTEES.

Mr. SHERMAN, from the Committee on Finance, to whom was referred the bill (H. R. No. 2441) authorizing the appointment of receivers of national banks and for other purposes, reported it with amendments.

Mr. BAYARD, from the Committee on Finance, to whom were referred the petition and accompanying papers of Lena Bensinger, praying to have restored to her certain money alleged to have been wrongfully taken from her late husband, Nathan Bensinger, as surety on the bond of Dohn & Marks, brewers, of Louisville, Ken-

tucky, charged with violating the internal-revenue laws, asked to be discharged from its further consideration; which was agreed to.

Mr. MORRILL, of Vermont, from the Committee on Finance, to whom was referred the bill (S. No. 530) to re-imburse purchasers at direct-tax sales in Arkansas declared illegal by United States courts in consequence of a defective board of commissioners, reported it with amendments.

Mr. CAMERON, of Pennsylvania, from the Committee on Foreign Relations, to whom was referred the petition of Martinette Hardin McKee, widow of Alexander R. McKee, deceased, praying an appropriation by Congress sufficient to convey the remains of her late husband from Panama to Frankfort, Kentucky, to be interred in the cemetery at that place, asked to be discharged from its further consideration; which was agreed to.

Mr. WADLEIGH, from the Committee on Patents, to whom was referred the petition of Moses Marshall, praying for an extension of his patent for an improvement in knitting-machines, submitted a report accompanied by a bill (S. No. 795) to enable Moses Marshall to make application to the Commissioner of Patents for the extension of letters-patent for improvement in knitting-machines.

The bill was read and passed to the second reading, and the report was ordered to be printed.

He also, from the same committee, to whom was referred the petition of the heirs of S. L. Hartshorn, praying for an extension of his letters-patent for improvements in buckles, submitted a report accompanied by a bill (S. No. 796) for the relief of the heirs of Sheldon S. Hartshorn.

The bill was read and passed to the second reading, and the report was ordered to be printed.

Mr. DENNIS, from the Committee on Commerce, to whom was referred the bill (H. R. No. 1400) authorizing the residents and property-owners of Neville Township, county of Allegheny, and State of Pennsylvania, to close the channel of the Ohio River on the south side of Neville Island by the construction of an embankment or causeway from the head of said island to the southern shore of said river, reported it without amendment.

Mr. OGLESBY. The Committee on Public Lands, to whom was referred the bill (S. No. 15) to authorize the Secretary of the Interior to ascertain and certify the amount of land located with military warrants in the States described therein, and for other purposes, has had the same under consideration, and I may say, going beyond the technical formality of expression, has given very considerable attention to the subject. The committee finds itself confronted with what it understands to be a purely legal question, one that may be regarded as a legal question aside from almost any connection with the policy of the disposition of the public lands. The question involved in the bill is one of paying out of the National Treasury some three or four million dollars to various States, in which States public lands were taken up by warrants or certificates issued to soldiers for the location of lands for their services as soldiers. That very fact becomes a material question in considering this bill, as to what is a bounty-land warrant; whether it is in the nature of compensation, representing a part of the service of the soldier paid for by the Government, or whether it is purely and exclusively a bounty. That is one of the legal questions.

Another one of the legal questions is the construction of the ordinances for the admission of the various States into the Union affected by this bill, as to what were the terms of those ordinances or compacts. The Committee on Public Lands, although willing enough to take the labor and time to investigate this subject, felt that it was peculiarly a question involving the construction of an ordinance or contract, and also involving what is the legal status of bounty-land warrants; and hence, though the matter in the bill pertains largely to the Western States, and though the members of that committee are very largely from the West, they felt it due to that committee, and due to the gravity of the subject, that it should go to the Judiciary Committee, where we doubt not it will receive a fair and just interpretation. I am therefore instructed to ask that the Committee on Public Lands be discharged from the further consideration of the bill, and that it be referred to the Committee on the Judiciary.

The report was agreed to.

SUPPLIES FOR APACHE INDIANS.

Mr. ALLISON. I am directed by the Committee on Indian Affairs, to whom was referred the bill (H. R. No. 3269) appropriating $50,000 for subsistence supplies for Apache Indians in Arizona Territory, and for the removal of the Indians on the Chericahua agency to San Carlos agency, to report it without amendment; and as it is a matter of pressing importance I ask for the present consideration of the bill.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill. It appropriates $50,000, or so much thereof as may be necessary, to provide for subsistence supplies for the Apache Indians in Arizona Territory, from the 1st of May to the 30th of June, 1876. If any surplus remain after the purchase of supplies, the same shall be used to defray the expenses incident to the removal of the Indians of the Chericahua agency to the San Carlos reservation, in said Territory, whenever in the judgment of the Secretary of the Interior such removal may be deemed necessary.

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

CHANGE OF NAME OF A BRIG.

Mr. BURNSIDE, from the Committee on Commerce, to whom was referred the bill (S. No. 745) to authorize the Secretary of the Treasury to issue a register and change the name of the brig A. S. Pennell to the City of Moule, reported it without amendment.

Mr. HAMLIN. The bill just reported by the Senator from Rhode Island is simply to change the name of a vessel, and I ask that the Senate proceed to its consideration at this time.

By unanimous consent, the bill was considered as in Committee of the Whole.

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

BILLS INTRODUCED.

Mr. CONKLING. I ask leave to introduce a bill, because I have been requested to do so, and not because I know the merits of the bill myself.

By unanimous consent, leave was granted to introduce a bill (S. No. 797) to incorporate the Washington and Bladensburgh Pike Railroad Company, and to prohibit the use of steam or other dangerous power on the same or adjacent to it; which was read twice by its title, referred to the Committee on the District of Columbia, and ordered to be printed.

Mr. CAMERON, of Wisconsin, asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 798) for the relief of Carl Jussen, late adjutant Twenty-third Wisconsin Volunteers; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Military Affairs, and ordered to be printed.

Mr. HITCHCOCK (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 799) for the relief of J. B. Cornell and others; which was read twice by its title, referred to the Committee on Naval Affairs, and ordered to be printed.

Mr. ROBERTSON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 800) for the relief of Sarah P. Chisholm and Samuel P. Chisholm, of Beaufort, South Carolina; which was read twice by its title, referred to the Committee on Claims, and ordered to be printed.

Mr. BURNSIDE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 801) to improve the harbor of Washington City and the navigation of the Potomac River; which was read twice by its title, referred to the Committee on Commerce, and ordered to be printed.

Mr. MERRIMON (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 802) for the relief of Thomas H. Mallison, executor of the estate of Noah Gaskill, deceased; which was read twice by its title, referred to the Committee on Claims, and ordered to be printed.

Mr. INGALLS asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 803) to repeal an act granting a pension to Mary H. Bartlett, approved January 28, 1873; which was read twice by its title, referred to the Committee on Pensions, and ordered to be printed.

Mr. MITCHELL asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 804) to establish a post-route in the State of Oregon and Idaho Territory; which was read twice by its title, referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

Mr. BOOTH asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 805) relating to indemnity school selections in the State of California; which was read twice by its title, referred to the Committee on Public Lands, and ordered to be printed.

Mr. McMILLAN asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 806) for an act granting a pension to John B. Dearing; which was read twice by its title, referred to the Committee on Pensions, and ordered to be printed.

Mr. COCKRELL asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 807) for the relief of John E. Catlett, of Hannibal, Missouri; which was read twice by its title, referred to the Committee on Claims, and ordered to be printed.

IMMIGRATION TO THE UNITED STATES.

Mr. EDMUNDS. I offer the following resolution and ask for its present consideration:

Resolved, That the Committee on Commerce be, and it hereby is, instructed to inquire what legislation, if any, is necessary and expedient to provide regulations concerning the immigration or other arrival of persons in the United States from other countries with a view to securing the people against the evils of pauperism, crime, and other injuries to the morals and good order of society, and with a view to lending all lawful aid to the States in the exercise of their sanitary and police jurisdiction, and that said committee report by bill or otherwise.

Mr. CONKLING. Let the resolution lie over.

The PRESIDENT *pro tempore*. The resolution will lie over.

DISTRICT PUBLIC SCHOOLS.

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

Resolved, That the commissioners of the District of Columbia be directed to inform the Senate whether the standard of qualification of teachers, text-books, mode of punishment of pupils, rules, regulations, and general supervision of white and colored schools are the same in this District; and, if any discrimination exist in the management of said schools or in the respects aforesaid, that they inform the Senate in what such differences consist and the reasons therefor.

AMENDMENT OF IMPEACHMENT RULES.

Mr. INGALLS. If there is no further morning business, I will move that the remainder of the morning hour be devoted to the consideration of the Calendar.

Mr. HAMLIN. I think we had better take up the resolution in relation to the rules. It is legitimate morning business.

Mr. INGALLS. Very well.

The PRESIDENT *pro tempore*. The Senator from Maine moves the present consideration of the resolution introduced by him which was partly considered on a prior day.

Mr. McMILLAN. I ask the Senator if he will permit me to move that the Senate proceed to the consideration of a bill upon the Calendar which has been there for some time?

Mr. HAMLIN. This resolution is in the nature of morning business and it is in regular order. I should like to have the Senate vote upon this matter, and then I will assist the Senator from Minnesota in getting up his bill with great pleasure.

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

The motion was agreed to; and the Senate resumed the consideration of the following resolution submitted by Mr. HAMLIN, April 29:

Resolved, That Rules 19 and 23 of procedure and practice in the Senate, when sitting on the trial of impeachments, be amended to read as follows:

XIX. At all times while the Senate is sitting upon the trial of an impeachment the doors of the Senate shall be kept open.

XXIII. All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the record, subject, however, to the operation of Rule 7, and in that case no member shall speak more than once on one question, and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by one-fifth of the members present. The fifteen minutes herein allowed shall be for the whole deliberation on the final question, and not to the final question on each article of impeachment.

Mr. THURMAN. Mr. President, most of our constitutions provide that courts of justice shall be open; that is, they shall conduct their proceedings openly; but I never heard of a court in any country in the world that conducted its deliberations in the formation of its judgment, in public. I never heard of a court in which a jury was required to discuss the case in public. If the universal experience of mankind has been that judges and jurors should consult in private as to the verdict or judgment they shall render, I cannot very well see that there is anything peculiar in the constitution of the Senate sitting for the trial of impeachments that should exempt it from this general rule of convenience and propriety. On the other hand, it seems to me, with great respect for my friend who offers this amendment and for any one who supports it, that nothing in practice could prove more detrimental, nothing would be more likely to be injurious to the character of the Senate or to the cool deliberation that is necessary to prevail in arriving at our judgment; and I think, too, that instead of being a saving of time it would have directly the opposite effect.

As was well said yesterday by the Senator from Vermont, [Mr. EDMUNDS,] men are so constituted that if one expresses an opinion, although it be hastily expressed, he does not willingly forego that opinion, he does not willingly admit that he was in error, and that is especially the case if that opinion be expressed in public; and if he sees that to give up his opinion or to modify it may subject him to a charge of inconsistency, it becomes far more difficult for him to yield to reason and surrender an erroneous conception, and if he do it still the changing of opinions from time to time upon further reflection is calculated to injure the standing and dignity and reputation of the court. Hence, both for the preservation of that respect which is due to the court, as well as for arriving at a sound conclusion, the universal practice has been that the consultations of the court shall be in private.

There is still another reason, I may say, for I have had some experience about that. Courts after all are constituted of men and men only, with the infirmities that belong to other individuals; and the debates, even in a court of limited numbers and composed of men of age and of experience, are sometimes conducted with very considerable heat; their deliberations in private consultation, I mean. It is not advisable that any such scenes should be enacted. It is not advisable certainly that this court, consisting of seventy-three members, should exhibit anything like heat in debate upon this case. But if we are to discuss in this large Chamber all the questions that arise in this trial, it will be impossible to avoid that heated debate which ought not to prevail in a court.

I hope, for all these reasons, as well as those that have been given by others, that this amendment will not be adopted.

Mr. EDMUNDS. Mr. President, in order to test the sense of the Senate, I move to postpone the resolution indefinitely.

The PRESIDENT *pro tempore*. The Senator from Vermont moves that the resolution be indefinitely postponed.

Mr. EDMUNDS. On that motion I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. JONES, of Florida. Mr. President, it may be well to look into the history of this practice before we take the vote upon the question now before the Senate. I have felt enough interest in the question to go back beyond our own times to ascertain how this practice of secrecy originated. I find in the records of the Senate as early as 1798 that the order which the Senator from Maine now desires to revoke was adopted; this order under which we retire every day when a question is presented here for our decision to deliberate upon it. I say I have had the curiosity to go back and find how it came to be adopted and where it originated; and I discover that its origin is to be found in that great trial in England which was in progress at the time the Blount trial began—the first impeachment trial in this country.

The practice of retiring from Parliament and taking the sense of the judges is nothing new in parliamentary history, and out of that practice this order originated. It is not new; it originated in the trial of Warren Hastings, and let me say to the Senate that it originated against the protest of the best constitutional lawyers in England at that day and against the precedents of a century and a half previous. All of our rules of proceedings in cases like this are derived, as we know, from parliamentary law, not from the civil law, not from the common law, but from the parliamentary law; and when we come to inquire what that law provides in cases of impeachment, we find that it never did authorize this secrecy which is now sought to be abolished by the honorable Senator from Maine.

The power of impeachment is given by the Constitution to the House of Representatives, and the power to try all impeachments is given to the Senate; but we have no rules to guide us except what we derive from the English practice or such as we may originate ourselves. In the English House of Lords there is an element that does not exist here. They have their law lords, to whom all cases of law are referred; and it was the practice in the Hastings trial, whenever a legal question was presented, either of evidence or pleading, to retire from the halls of Parliament to take privately the opinion of the judges behind the back of the prisoner in regard to the particular question in dispute.

I have said that that practice called forth one of the ablest protests that is to be found in the English language to-day as being utterly inconsistent with the principles of the British constitution and rights of the prisoner in that case. But, sir, strange to say, notwithstanding the rights of the prisoner were seriously involved, his learned counsel did not think it proper or necessary to interpose any objections to the adoption of that despotic rule. What reason was assigned for it? He was at the time a favorite of the Crown; that was a trial which emanated from the Commons, representing the voice of the British people, and it was sought to shelter him by the mantle of the Crown. It was not a proceeding that emanated from the aristocracy, from the lords, but it emanated from the people, headed by Mr. Burke and his able associates. The distinguished counsel of the accused, who made no opposition to the adoption of that rule in that case, failed to do it because they thought it would benefit their client, which it did. That trial lasted for seven years, and it was sufficient to break down any ordinary man, however innocent he might have been; but it was the wish and purpose of the prisoner's counsel to continue it, and when the House of Commons, after it was over, or about the time it was on the eve of its termination, appointed a committee, headed by Mr. Burke, to inquire into the causes of that great delay, they made a report, which is here before me, which goes to show that one of the reasons which contributed to that delay was this practice of retiring and deliberating in secret upon the great questions that from time to time came before the court.

Mr. EDMUNDS. Would it be convenient for the Senator to read us the extract from the journal to which he refers of 1798, when this proposition was brought forward?

Mr. JONES, of Florida. I have not that before me now; but I have the dissent of the Lords here at hand, with Mr. Burke's report explaining the causes of the great delay, which will answer the same purpose. The Lords who dissented from the adoption of that rule used this language:

First. Because, by consulting the judges out of court in the absence of the parties, and with shut doors, we have deviated from the most approved, and almost uninterrupted, practice of above a century and a half, and established a precedent not only destructive of the justice due to the parties at our bar, but materially injurious to the rights of the community at large, who in cases of impeachments are more peculiarly interested that all proceedings of this high court of Parliament should be open and exposed, like all other courts of justice, to public observation and comment, in order that no covert and private practices should defeat the great ends of public justice.

Secondly. Because, from private opinions of the judges, upon private statements which the parties have neither heard nor seen, grounds of a decision will be obtained which must inevitably affect the cause at issue at our bar; this mode of proceeding seems to be a violation of the first principle of justice, inasmuch as we thereby force and confine the opinions of the judges to our private statement, and through the medium of our subsequent decision we transfer the effect of those opinions to the parties who have been deprived of the right and advantage of being heard by such private though unintended transmutations of the point at issue.

Mr. Burke, in his report to the House of Commons on this subject, says:

Your committee is of opinion that nothing better could be devised by human wisdom than argued judgments publicly delivered for preserving unbroken the great traditionary body of the law, and for marking, while that great body remained unaltered, every variation in the application and the construction of particular parts; for pointing out the ground of each variation, and for enabling the learned of the bar and all intelligent laymen to distinguish those changes made for the advancement of a more solid, equitable, and substantial justice, according to the variable nature of human affairs, a progressive experience, and the improvement of moral philosophy from those hazardous changes in any of the ancient opinions and decisions, which may arise from ignorance, from levity, from false refinement, from a spirit of innovation, or from other motives of a nature not more justifiable.

Your committee, finding this course of proceeding to be concordant with the character and spirit of our judicial proceeding, continued from time immemorial, supported by arguments of sound theory, and confirmed by effects highly beneficial, could not see without uneasiness, in this great trial for Indian offenses, a marked innovation. Against their reiterated requests, remonstrances, and protestations the opinions of the judges were always taken secretly. Not only the constitutional publicity for which we contend was refused to the request and entreaty of your committee, but when a noble peer, on the 24th of June, 1789, did in open court declare that he would then propose some questions to the judges in that place, and hoped to receive their answer openly according to the approved good customs of that and of other courts, the lords instantly put a stop to the further proceeding by an immediate adjournment to the chamber of Parliament. Upon this adjournment we find by the Lords' journals that the house, on being resumed, ordered that "it should resolve itself into a committee of the whole house on Monday next, to take into consideration what is the proper manner of putting questions by the Lords to the judges and of their answering the same in judicial proceedings." The house did thereon resolve itself into a committee, from which the Earl of Galloway, on the 29th of the same month, reported as follows: "That the house has, in the trial of Warren Hastings, esquire, proceeded in a regular course in the manner of propounding their questions to the judges in the chamber of Parliament and in receiving their answers to them in the same place." The resolution was agreed to by the Lords.

But the protest which I have just read was interposed against it. The committee of the Commons further say in this report:

It appears to your committee that from the thirtieth year of King Charles II until the trial of Warren Hastings, esq., in all trials in Parliament, as well upon impeachments of the Commons as on indictments brought up by *certiorari*, when any matter of law hath been agitated at the bar or in the course of trial hath been stated by any lord in the court, it hath been the prevalent custom to state the same in open court. Your committee has been able to find since that period no more than one precedent (and that a precedent rather in form than in substance) of the opinions of the judges being taken privately, except when the case on both sides has been closed and the lords have retired to consider of their verdict or of their judgment thereon. Upon the soundest and best precedents the lords have improved on the principles of publicity and equality, and have called upon the parties severally to argue the matter of law previously to a reference to the judges; who, on their parts, have afterward in *open court* delivered their opinions, often by the mouth of one of the judges speaking for himself and the rest, and in their presence; and sometimes all the judges have delivered their opinion *seriatim* (even when they have been unanimous in it) together with their reasons upon which their opinion had been founded. This from the most early times has been the course in all judgments in the House of Peers, formerly even the record containing the reasons of the decision. "The reason wherefore (said Lord Coke) the records of Parliaments have been so highly extolled is that therein is set down in cases of difficulty not only the judgment and resolution but *the reasons and causes of the same* by so great advice."

In the thirtieth of Charles II, during the trial of Lord Cornwallis, on the suggestion of a question in law to the judges, Lord Danby demanded of the lord high steward, the Earl of Nottingham, "whether it would be proper here [in open court] to ask the question of your grace, or to propose it to the judges?" The lord high steward answered, "If your lordships doubt of anything whereon a question in law ariseth, the latter opinion, and the *better* for the prisoner is—*that it must be stated in the presence of the prisoner, that he may know whether the question be truly put.* It hath *sometimes* been practiced otherwise; and the peers have sent for the judges, and have asked their opinion in private, and have come back and have given their verdict according to that opinion, and there is scarcely a precedent of its being otherwise done. There is a later authority in print that doth settle the point so as I tell you—and I do conceive *it ought to be followed;* and if being safe for the prisoner, my humble opinion to your lordship is, that he ought to be present at *the stating of the question.*"

And he said—

Call the prisoner.

* * * * * * *

Very soon after the trial of Lord Cornwallis the impeachment against Lord Stafford was brought to a hearing, that is, in the thirty-second of Charles II. In that case, the lord at the bar having stated a point of law, "touching the necessity of two witnesses to an overt act in case of treason," the Lord high steward told Lord Stafford that "all the judges that assist them, *and are here in your lordship's presence and hearing*, should deliver their opinions, whether it be doubtful and disputable or not." Accordingly the judges delivered their opinion, and each argued it (though they were all agreed) *seriatim* and *in open court.*

Each judge argued his opinion upon that important point of law in open court.

Another abstract point of law was also proposed from the bar on the same trial, concerning the legal sentence in high treason; and in the same manner the judges on reference delivered their opinion in *open court;* and no objection was taken to it, as anything new or irregular.

In the first of James II came on a remarkable trial of a peer, the trial of Lord Delemere. On that occasion a question of law was stated. There also, in conformity to the precedents and principles given on the trial of Lord Cornwallis, and the precedent in the impeachment of Lord Stafford, the then lord high steward took care that the opinion of the judges should be given in open court.

Mr. THURMAN. May I ask the Senator from Florida if that was not after the judges had formed their opinion; simply the delivery of their opinion?

Mr. JONES, of Florida. No, it was not so in the case that preceded it, because the report says they argued their opinions in open court, so that the very point was made which is suggested by the Senator.

Precedents grounded on principles so favorable to the fairness and equity of judicial proceedings given in the reigns of Charles II and James II, were not likely to be abandoned after the revolution. The first trial of a peer which we find after the revolution was that of the Earl of Warwick.

In the case of the Earl of Warwick, 2 William III, a question in law upon evidence was put to the judges; the statement of the question was made in open court by the lord high steward, Lord Somers—

Than whom a greater lawyer never lived—

if there be six in company and one of them is killed, the other five are afterward indicted and three are tried and found guilty of manslaughter, and upon their prayers have their clergy allowed and the burning in the hand is respited, but not pardoned, whether any of the three can be a witness on the trial of the other two?

Lord HALIFAX. I suppose your lordships will have the opinion of the judges upon this point, and *that must be in the presence of the prisoner.*

Lord High Steward, (Lord SOMERS.) *It must certainly be in the presence of the prisoner,* if you ask the judges' opinions.

In the same year, Lord Mohun was brought to trial upon an indictment for murder. In this single trial a greater number of questions was put the judges in matter of law than probably was ever referred to the judges in all the collective body of trials, before or since that period. That trial, therefore, furnishes the largest body of authentic precedents in this point to be found in the records of Parliament. The number of questions put to the judges in this trial was twenty-three. They all originated from the peers themselves; yet the court called upon the party's counsel as often as questions were proposed to be referred to the judges, as well as on the counsel for the Crown, to argue every one of them *before* they went to those learned persons. Many of the questions accordingly were argued at the bar at great length. The opinions were given and argued in *open court.* Peers frequently insisted that the judges should give their opinions *seriatim*, which they did always publicly in the court, with great gravity and dignity, and greatly to the illustration of the law, as they held and acted upon it in their own court.

Mr. THURMAN. Will the Senator tell us whether or not that language, that the opinions were argued in open court, means anything more than that the answers to the questions were given and the reasons for them stated openly after the judges had arrived at their conclusion? Is there anything to show that the judges did not confer before they stated their opinions and argued them, as it is said there, or gave the reasons for them?

Mr. JONES, of Florida. Well, sir, the word "argued" here will pass for what it is worth. I have a right to put my interpretation upon it. I am free to say that I am of opinion, from reading this report carefully, that it means that the whole proceeding was in the presence of the prisoner, in accordance with the spirit of the British law.

Mr. SHERMAN. Will the Senator allow me to ask him whether the habit was not for the peers to refer certain questions to what are called the law lords, to resolve that the law lords be inquired whether such propositions are the law, stating the propositions *seriatim?* Were not those propositions considered by the law lords in their chamber quietly in consultation among themselves, after being argued by counsel on both sides and being discussed? After argument they are taken up to their chamber and considered, and then they announce their opinions to the Peers on a subsequent day. Is not that the course of proceeding?

Mr. JONES, of Florida. The authority goes further than that. It not only requires that they should deliver their opinions in the presence of the prisoner—I will come to that after a little—but it requires that the questions should be stated in his presence in order that he may determine whether they were stated properly or not. That would seem to imply, if it was necessary that he should be present at the stating of the questions, that he should also be present when the questions were decided and when they were argued as well.

Now what has been our practice in this case? I say that no authority can be found for the secret practice, as I shall call it, except the precedent in the Hastings case; and it is opposed to the whole body of precedents, commencing with the trial of Lord Cornwallis in the reign of Charles II and coming down to the reign of George III. It is true that in the case of the Duchess of Kingston there was an exception, and there was some considerable controversy in that case in consequence of the practice adopted by the court; but in order to satisfy the public opinion of Great Britain it was found necessary that the reasons for the judgment in that case should be spread upon the records of Parliament.

Now what have we been doing under this rule here? Have we not endeavored to avoid giving reasons for our conclusions, and have we done anything more than come into court and give our conclusions, leaving the reasons for them behind us, at least away from the respondent and his counsel? Mr. Burke further says, in speaking of the court of star chamber, that they did not dare to conceal their judgments or the reasons for them:

Your committee is very sensible, that antecedent to the great period to which they refer, there are instances of questions having been put to the judges privately. But we find the *principle* of publicity (whatever variations from it there might be in practice) to have been so clearly established at a more early period, that all the judges of England resolved, in Lord Morley's trial, in the year 1666, (about twelve years before the observation of Lord Nottingham,) *on a supposition that the trial should be actually concluded, and the lords retired to the chamber of Parliament to consult* on their *verdict*, that even in that case (much stronger than the observation of your committee requires for its support) if their opinions should then be demanded by the peers, for the information of their private conscience, yet they determined that they should be given in public. This resolution is in itself so solemn, and is so bottomed on constitutional principle and legal policy, that your committee have thought fit to insert it *verbatim* in their report, as they relied upon it at the bar of the court when they contended for the same publicity.

And so it was in the great contest about ship-money—a controversy that involved more serious consequences than any cause that ever was tried in England. That cause was argued in open court, and the opinions of the judges were argued in open court; and we are told by Mr. Burke that the great historian, Lord Clarendon, said in his day that it was a fortunate thing for the people of England that the judges in that case gave the reasons for their judgment, because they showed to the whole world and to the people of Great Britain that that which they stated as law from the bench was not law; and it led afterward to a change, and a change in favor of the people who finally vindicated their rights by revolution.

The PRESIDENT *pro tempore.* The morning hour has expired.

Mr. HAMLIN. I hope the Senate will conclude to dispose of this matter at this time. I do not think it will take long. I ask that its consideration may be continued at present.

The PRESIDENT *pro tempore.* Is there objection to continuing the consideration of this resolution?

Mr. EDMUNDS. I ask that the Senator from Florida have leave to conclude his remarks. That is the usual courtesy, certainly.

The PRESIDENT *pro tempore*. Is there objection to the Senator from Florida concluding his remarks? The Chair hears none, and the Senator from Florida will continue to occupy the floor on the resolution before the Senate.

Mr. JONES, of Florida. Now, sir, I do not deny that I had in view the practice in cases of impeachment that had passed before my own eye; and speaking by the record in the case which is now before us as a high court I will draw the attention of the Senate to what has passed in the secret chamber, to show that the principle involved here is one of grave importance.

On one occasion we retired from this body for the purpose of considering an order introduced by the Senator from New York [Mr. CONKLING] and an amendment by the Senator from Vermont, [Mr. EDMUNDS.] That was the question stated here in the presence of the accused and of his counsel; and I suppose that the accused and his counsel thought that when we retired to our conference chamber behind us we should be confined to that resolution and that amendment; but, sir, the record shows that after we were in there, after we had retired to that conference chamber, the distinguished Senator from Ohio [Mr. THURMAN] introduced an amendment to the amendment of the Senator from Vermont, that never was moved in this body at all.

Mr. THURMAN moved further to amend the resolution by striking out all after the word "resolved"—

After first moving—

And whether the matters in support of the jurisdiction alleged by the House of Representatives in the pleadings subsequent to the articles of impeachment can be thus alleged if the same are not averred in said articles.

That amendment came up as a distinct proposition after we had left this Chamber, after we had left the presence of the accused and his counsel and the managers of the House. I ask in all seriousness if it is competent to do that why may you not introduce any new proposition after you retire from here in the absence of the parties, and is that, I ask, in accordance with the practice of the criminal law in this the highest criminal court in the land? Is it competent in a case affecting the rights of the accused that you may go behind his back and propose new propositions and new amendments, and debate them and discuss them there, without giving either him or his counsel an opportunity to be heard? I say that it is not in keeping either with the spirit or the practice of our laws; and if this rule is warranted in impeachment cases I say it is time that the hand of reform was set at work to remodel our system of jurisprudence.

I can see no harm which can come from this body debating in the face of the accused and in the face of the people. I believe that the contrary practice originated in the rule to which I referred in the Hastings trial, and that it was in opposition to the voice of the best lawyers in that kingdom and to the principles established by the precedents of one hundred and fifty years. I shall therefore support the honorable Senator from Maine in his efforts to change this rule and re-establish what I believe to be the true principles of the Constitution.

ORDER OF BUSINESS.

The PRESIDENT *pro tempore*. The unfinished business of yesterday is before the Senate, being the bill (S. No. 626) in relation to the Japanese indemnity fund, which the Senator from California [Mr. SARGENT] moved to postpone.

Mr. SARGENT. I understood that when the Senate adjourned last night the unfinished business was, unless otherwise ordered by the Senate, the resolution which I offered on the 20th of April.

The PRESIDENT *pro tempore*. The Chair understood that by general consent this bill should be considered the unfinished business, and that the motion of the Senator from California to postpone should be entertained in order to allow the Senator to submit his remarks.

Mr. SARGENT. Not merely for that purpose. The bill was taken up, and the Senate, it was stated, would afterward decide whether the discussion should continue to final action or whether it should be laid aside. I think I am correct in my recollection of it from referring to the RECORD of this morning.

The PRESIDENT *pro tempore*. The Senator from California moved to postpone this bill and all prior orders.

Mr. SARGENT. I did. I am willing that that motion should be considered now.

The PRESIDENT *pro tempore*. That is the way the Chair states it.

Mr. SARGENT. That motion has not been decided.

The PRESIDENT *pro tempore*. It has not been decided. The Chair is correct that the unfinished business is called up, which is Senate bill No. 626, and the Senator from California moved a postponement of the unfinished business and all prior orders for the purpose of considering the resolution which he introduced, upon which he submitted remarks. The question now is upon the motion to postpone the unfinished business and all prior orders.

Mr. SHERMAN. It is manifest that if we adopt the proposition of the Senator from California, we shall get ourselves into confusion. There are now two matters pending before the Senate which have been partly discussed. The silver bill I suppose is really the unfinished business, but by arrangement the Japanese indemnity bill was taken up simply because it had been previously partially considered and discussed before the silver bill came up. I felt therefore that there was a kind of equity in allowing that business to be disposed of after having been partially considered before the silver bill was pressed. It seems to me when that is done we should dispose of that question, the silver bill, and then take up the proposition of the Senator from California. But if we take up questions of this kind in an irregular way, discuss them a while, and then put them away for another proposition, and another, and still another, the time will soon come when the appropriation bills will be reported, and then all these matters will be all alike unconsidered or put aside. I hope, therefore, that the Senator from New Jersey will be allowed to finish his Japanese bill and get it out of the way; I think it will not take long; and then let us proceed with the consideration of the silver bill. I am in hopes that the Senate will be able before we proceed with the impeachment trial to dispose of that bill. Although I shall probably aid the Senator from California at any time that it is convenient to go on with the consideration of the subject he discussed yesterday, I do not feel at liberty to do so now.

Mr. SARGENT. I appreciate the indulgence of the Senate yesterday and I do not know that I ought to interfere with the business, but I do feel, I must confess, very much like fighting hard on this proposition. I trust Senators will not think me unduly impatient or that I was unduly impatient yesterday, but I tried to portray, I must confess in feeble colors, the evils with which we are afflicted upon the Pacific coast. I propose, however, this morning, on reflection and on hearing the remarks of the Senator from Ohio, to withdraw my motion to have this resolution take precedence of the business which was pending at the time it was injected, and I shall ask the indulgence of the Senate, and shall insist upon it strenuously as soon as the two matters referred to are disposed of, that this resolution be taken up and pressed to a conclusion.

The PRESIDENT *pro tempore*. The motion of the Senator from California is withdrawn and the unfinished business is before the Senate.

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. C. C. SNIFFEN, one of his secretaries, announced that the President had on the 29th of April approved and signed the following acts:

An act (S. No. 608) to enable Harvey Lull, of Hoboken, New Jersey, to make application to the Commissioner of Patents for extension of letters-patent for a self-locking shutter-hinge; and

An act (S. No. 760) to protect the public property, turf, and grass of the Capitol grounds from injury.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. G. M. ADAMS, its Clerk, announced that the House had passed a bill (H. R. No. 3356) authorizing the transfer of a certain appropriation; in which it requested the concurrence of the Senate.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills and joint resolution; and they were thereupon signed by the President *pro tempore:*

A bill (H. R. No. 1251) to exclude the States of Missouri and Kansas from the provisions of the act of Congress entitled "An act to promote the development of the mining resources of the United States," approved May 10, 1872;

A bill (H. R. No. 1595) for the relief of John T. Burchell, of Knoxville, Tennessee, for services rendered the Government in a small-pox hospital; and

A joint resolution (H. R. No. 99) concerning special-tax stamps.

THE CENTENNIAL EXPOSITION.

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

To the Senate:

I transmit herewith, for the information of Congress, a report of the president of the Centennial Commission upon the ceremonies to be observed at the opening of the exhibition, on the 10th instant. It will be observed that an invitation is therein extended to Senators and Representatives to be present on that occasion.

U. S. GRANT.

WASHINGTON, *May* 1, 1876.

Mr. MORRILL, of Maine. I move that the message lie on the table and be printed.

The motion was agreed to.

JAPANESE INDEMNITY FUND.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 626) in relation to the Japanese indemnity fund, the pending question being on the amendment proposed by the Senator from Connecticut, [Mr. EATON,] which was to strike out in section 1, lines 6, 7, and 8, the words:

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

Mr. FRELINGHUYSEN. Mr. President, I had not intended to trouble the Senate with any remarks on this subject. Having made a report in favor of the bill, I proposed there to leave the measure; but finding that there are some Senators, distinguished alike for their regard to the national honor and for their care of the public Treasury, who have doubts in reference to it, and as this is the voluntary payment of a large sum of money, I think it right that I should briefly and plainly state the reasons why the United States should not retain the Japanese indemnity fund.

We all know, sir, that for centuries the Japanese looked upon intercourse with other nations as destructive of their prosperity. They feared that if the Anglo-Saxons gained a foot-hold in their country they would subjugate them, or that they would at all events make their wealth tributary to them; and it seems to me that for that fear there is some apology in the history of Great Britain in the oriental world. Intercourse with foreigners is repulsive to their traditions, their tastes, and their pride. Such, without multiplying words, was the state of public sentiment. Now let us look for a minute at the governmental and political condition of that country.

The universally acknowledged sovereign of Japan was the Mikado. He claimed by hereditary succession, commencing prior to the Christian era and continuing for twenty-five centuries. The commander-in-chief of Japan was the Tycoon, who had held his position by succession for about two centuries. He was the executive of the government. Thus there seemed to be a dual government, the Mikado having his court at Kioto, in the northwestern part of Japan, and the Tycoon having his court at Yedo. The Tycoon, partly because he came more in contact with foreigners and partly because he saw personal commercial advantage, entered into treaties with the members of the allied powers—England, France, the Netherlands, and the United States. It seems as if the Tycoon had no right to make these treaties, and as if the treaty which was made with us, and this is worthy of observation, was defective.

Commodore Perry went to Japan in 1853. He used no coercion to effect these treaties. All he did was to take his big ship up in waters where a foreign man-of-war had never before floated, within a mile of Yedo, and there may have exercised a persuasive constraint upon the opinions of that people. In 1854 he made a treaty. It was only a treaty of amity. In 1858 a treaty of commerce was effected. These defective treaties were ratified by the Mikado in 1866, after the contest to which our attention will be called had occurred. This you will see by referring to the diplomatic correspondence of 1866-'67, pages 191, 192, and 193. There Mr. Portman, who was our consul and the successor of Mr. Pruyn, in 1865 made this report to Mr. Seward:

The treaties, as well as all the acts of the Tycoon's government in pursuance thereof, have now become legalized, and the Tycoon is said to be again the supreme executive authority in this empire. It is deemed quite probable that the Choshu rebellion will now be satisfactorily disposed of without resort to coercive measures.

Again he says:

I believe I am not too sanguine when venturing to submit it as my opinion that the formal sanction of the treaties by the Mikado, recognized by all Japanese as the real sovereign of their country, will prove an important result of the recent negotiations, due in a great measure, no doubt, to the perfect unanimity of views and action of the foreign representatives.

And Mr. Portman, in a letter to the Tycoon, November 21, 1865, says:

By approving the obligations entered into by your majesty with foreign powers, the Mikado and the daimios will make an end to existing difficulties and avert future dangers.

And on the 6th of December, 1865, Mr. Portman writes to Mr. Seward.

I have the honor to transmit herewith (No. 1) translation of a letter from the minister for foreign affairs, announcing that the Mikado's ratification of the treaties was promulgated in all parts of this empire on the 1st instant.

Thus we see, Mr. President, that at the time this controversy took place between Japan and this country there was at best a defective treaty, one which we were very happy subsequently to have ratified by the Mikado, the true sovereign of Japan.

In 1862 and 1863 the daimios, who were influential princes, one of them at least, Choshu, the daimio of Sagato, perhaps as powerful as the Mikado himself, determined to oppose this intercourse with foreigners. They did this because of their traditional antipathy to foreigners; their motto being that "that country is wisely governed which never changes its organic law." They were also opposed to the treaties, because they thought, and probably correctly, that the Tycoon had usurped authority in inaugurating these great fundamental changes in their country by means of treaties which he had no lawful authority to make.

The opposition of the daimios compelled the Tycoon to temporize. He was obliged to appear at times to them, and probably to the Mikado, to be in favor of the expulsion of foreigners, and he was obliged to act as their executive, while at the same time it is true that he faithfully fulfilled all the provisions of the treaties, as subsequent events have proven. That this was the position of the Tycoon appears by the Diplomatic Correspondence of 1864-'65, pages 468, 529, and 530, which is as follows:

Mr. Pruyn to Gorogio, minister of the Tycoon, December, 1863.

It is impossible to avoid the conclusion that the government of His Majesty the Tycoon urged my withdrawal from Yedo because it was aware of the existence of a party hostile to my residing there, and because it was apprehensive for my safety. It is also evident that the government, instead of insisting that the subjects of His Majesty the Tycoon should submit to the treaties, desired to conciliate the hostile daimios by rendering the treaties practically void so far as they guarantee a safe residence in that city. It was for this reason the suggestion was made that Yedo would be less safe during the absence of His Majesty the Tycoon, while, to my mind, directly the reverse was the fact. The assemblage of many daimios at Kioto and the withdrawal of so many of their retainers from Yedo appeared to me to constitute a great element of safety.

Memorandum of conversation between the representatives of allies in 1864.

The Tycoon, by treating with foreigners on a footing of equality, has hurt the national pride of the daimios, while he damaged their interests by reserving to himself the monopoly of our new commercial relations.

To these causes of the discontent of the daimios have soon been added the increase of taxes and other exactions imposed on them under the pretext of providing for the defense of the country.

This hostile attitude has been the more clearly defined from the Tycoonship having just passed into weak hands, and the best guarantee of its power was given up when the daimios, whom it was the custom to keep in Yedo as hostages, were allowed to retire to their territories. These elements of opposition have naturally been concentrated round the Mikado, who can at his pleasure resume the exercise of power which his ancestors and himself had simply delegated.

The members of the high aristocracy could not allow this occasion to pass without taking revenge for the long domination of a dynasty, the founder of which had not even been their equal in rank; and they have put aside their respective rivalries in order to combine and more effectually to attack the reigning Tycoon on the foreign question as his weak point.

And the dispatch of Sir Rutherford Alcock to Earl Russell, of August 25, 1864, (page 86 of the British State Papers of 1865.) That dispatch is as follows:

A fixed resolve to effect the expulsion of foreigners from Yokohama, and a stoppage of their trade, by the old system pursued with the Dutch, prevails at the court of the Mikado. A powerful confederation of daimios exists for the declared purpose of supporting and carrying out this policy with all the means at their command, and the Tycoon with his tributary daimios and adherents are menaced in their existence if they do not adopt it. The Tycoon's life and his power as virtual sovereign are both plotted against. And latterly pressed between two irreconcilable parties, each wielding superior forces to his own, the faction of daimios, acting in the name of the Mikado, the titular and only acknowledged sovereign of the empire, and foreign powers claiming the execution of treaties, the Tycoon and his councilors alike seem to have been distracted by contending fears, and bewildered with divergencies of opinion as to the course to be followed. The expulsion of foreigners or the maintenance of treaties, presented as the sole alternatives, each bringing their own danger, has been a cause of violent dissensions in the palace at Yedo, and ended with the sudden dissolution of the cabinet. The concentration of ships and troops here having latterly left no doubt that there were foreign powers determined to maintain their treaty rights, and one, at least, both able and willing to resist by force of arms if necessary any overt attempt to drive them and their trade from this port, has no doubt had much to do with this political crisis.

The Tycoon and his council, pressed by reiterated commands from Kioto to expel the foreigners, and convinced as they are now that the resolute attitude taken by myself and colleagues, and the material means collected for resistance, meant war if any act of hostility were committed either by the Japanese government or daimios, have no doubt been sore perplexed as to what course might best be steered under such perilous conditions with a Scylla and Charybdis visible on either hand.

The letter of the daimio of Nagato, Choshu, to the allied representatives is thus accounted for. He speaks of the Tycoon as being opposed to the treaty powers, as follows, (Diplomatic Correspondence, 1864 and 1865, page 578:)

Having fired upon foreign ships in the Straits of Simonoseki last year, in obedience to the order of the Mikado and Tycoon, I cannot understand why I was censured by the Tycoon's government as having done wrong in firing. This made it appear as if I had disobeyed the orders of the Mikado; and my two retainers having returned a short time ago with communications, (from the foreign ministers,) I became desirous to refer again to the Mikado in order to obtain his decision. Nagato-no-kami, (son and heir to the Prince of Choshu,) set out for Kioto, but before he had arrived disturbances arose in the capital which, I regret very much to say, obliged him to return without having accomplished the end in view. I have sent Matsu Shimakoso and Ito Shunske to explain to you, and I hope you will understand that henceforth I will offer no opposition to the free passage of the Straits of Simonoseki.

SOVEREIGN PRINCE OF SUWO AND NAGATO IN JAPAN.
Eighthmonth, third day, of the first year of Genji, (3d September, 1864.)

It is clear that that was only the apology of a defeated rebel, for he knew that the Tycoon acted by compulsion as the executive, as appears also from Adams's History of Japan, pages 305, 306, and 353; as follows:

In words the Tycoon's envoys have assured my colleagues of France and myself that the Mikado's edict of expulsion, conveyed to the representatives of the treaty powers as a matter of obligation by the Tycoon, was a dead letter with respect to all action in regard to it.

It was no doubt at that period, especially owing to the isolation in which foreigners lived, most difficult to ascertain the true state of affairs, and to reconcile seeming contradictions, but I think it is quite clear now that the Shogun's ministers were sincere when they said that the Mikado's edict of expulsion, though conveyed to the representatives as a matter of obligation, would in fact be nothing but a dead letter.

* * * * * * *

The memorial failed in its object, and the advisers of the Emperor were successful in causing His Majesty to turn a deaf ear to all supplications in favor of what must now be called the rebellious clan of Choshin.

Thus ended 1863, and it seemed that wiser counsels were prevailing at Kioto in regard to the policy toward foreigners, and that from this time, as the native writer complains, "the scheme of expelling the barbarians fell to pieces like ice during a thaw."

Thus we have this condition of things: a defective treaty; the daimios opposed to the government, opposed to the alleged usurpation of the Tycoon, and the Tycoon obliged to temporize.

Such being the political situation, let us look at the question more directly before us.

The hostility to the foreigners led to outrages which were committed by the daimios as appears by the Diplomatic Correspondence of 1864-'65, volume 3, page 559.

The governments with which your majesty has made treaties regard those treaties as clothed with every sanction necessary to their validity and force. Nor can your majesty, without a sacrifice of honor and sovereignty, allow any of your subjects to deny your perfect right to make such treaties. Your majesty will therefore understand what I say as neither intimating nor admitting that any public act is necessary to confer rights on the treaty powers not already acquired.

Their representatives cannot, however, shut their eyes to the fact that several turbulent and hostile daimios, in order to promote their own selfish purposes, have endeavored to bring into collision the authority of your majesty and the Mikado to interrupt your cordial relations, and to render antagonistic powers which, for more than two centuries, have been exercised in entire harmony.

They have, unfortunately, been successful in making the Mikado believe that the treaties were injurious to Japan and that they could be annulled. This he has called on your majesty to do, leaving no option between opposition to his wishes and a violation of the treaties, which would eventuate in war.

Not, therefore, for the purpose of acquiring any rights or privileges for themselves, but for the preservation of the ancient polity and laws of Japan and the continuance of the exercise of powers by your majesty and the Mikado which have been so long in harmonious action, the treaty powers, through their representatives, would urge the immediate necessity of inducing the Mikado to give those treaties his high sanction, and thus remove every cause of opposition and existing inducements for hostile combinations.

Your majesty has endeavored to reconcile the obligations thus imposed by the Mikado with those assumed with the treaty powers. Their representatives, appreciating the difficulties of your position, have been disposed to exercise great moderation and forbearance. But your majesty must now be satisfied that the time has arrived when it is necessary for you to declare that the treaties must and shall be faithfully observed and to abandon all half-way measures.

Among these outrages, they burned down the British legation; they burned the American legation at Yedo. On the 16th of June, 1863, the American steamer Pembroke, a merchantman, passing through the Straits of Simonoseki, was fired upon from the rebel batteries. This was done by the rebels in defiance of the government of Japan. The topmast of that ship was carried away, and she was otherwise injured. This insult to our flag the Wyoming properly punished. It is worthy of remark that the Wyoming contended against a vastly superior force. The daimios had erected their batteries seventy feet above the level of the sea; they had purchased war vessels and had them there, to wit: the brig Alert, clipper-built, twelve guns, a fast sailer, costing some $45,000; the iron British steamer Lancefield, which cost $160,000; the American bark Webster, which cost $22,000; and the American bark Lanrick. It is important to observe the character of the force with which the Wyoming contended, because the amount of prize-money, if any, that she would under certain circumstances have been entitled to under our law depends in a degree on that fact.

The Wyoming on the 26th of June, 1863, ran close along the batteries and shelled them. Men were seen to jump from the heights into the sea. She made her course between the two vessels which were there, the Lanrick and the Lancefield. She sent a ball through the stern of the Lanrick and sank her. She sent another ball through the boiler of the Lancefield, and produced an explosion by which, according to the report, some forty men were killed. Mr. George S. Fisher, our consul at Yokohama, says the vessels and property destroyed, besides the loss of life, were worth $350,000. All this appears by the following dispatch of Mr. Pruyn to Mr. Seward, in the second volume of the correspondence of 1863 and 1864, pages 1132 and 1133:

My anxiety was relieved by the return of the Wyoming early in the morning of the 20th instant.

From a copy of the report to the Secretary of the Navy, with which I have been furnished by Commander McDougal, it appears he entered the straits on the 16th instant, from the eastward, passing up the Bungo channel. When the Wyoming was seen approaching, a signal gun was fired from the first battery. As she rounded the point the steamer Lancefield, of four guns, the brig Lanrick of ten guns, and a bark of four guns, were seen anchored opposite the village of Simonoseki. All six of the batteries fired on the Wyoming as she steamed past them, carrying the national flag after the first battery had fired—the Wyoming reserving fire till she reached the ships.

By skillfully avoiding the main channel on which the guns of the batteries were trained, and keeping close to the batteries, the shot and shell mostly passed over the vessels, only damaging the rigging. Approaching the vessels, against the remonstrances of the Japanese pilot, who declared he would run aground, Captain McDougal carried the Wyoming between the bark and brig on the one side and the steamer on the other, receiving from and delivering broadsides into each of the ships. It was at this point the Wyoming was most under fire. Putting the ship about, he sent three eleven-inch shells into the Lancefield, the last of which exploded her boilers, and she was then run aground. The brig Lanrick was sinking as the Wyoming left, and the bark badly injured. The Wyoming then returned through the straits, pouring shot and shell into the batteries. The steamer Lancefield had the Japanese flag at the peak, but quickly lowered it. The other vessels carried both the flag of Japan and that of the prince.

I regret to have to say that this success was attended with the loss of four seamen killed and seven wounded, one of whom has since died.

The loss would have been much more severe had it not been for the skill and judgment shown by Captain McDougal in avoiding the usual route by the main channel. The guns on the batteries were depressed so as to strike the hull of passing ships at that point, and stakes were set up near the guns giving the range, so that each gun could be fired as the foremast of the ship came in range with the stake at the gun.

The Lancefield was a fine iron steamer of nearly six hundred tons, purchased of the English firm of Jardine, Mattheson & Co. for the sum of $115,000; and the brig Lanrick, formerly in the opium trade, pierced for eighteen guns, though carrying only sixteen, was purchased of the same firm for $20,000. The bark was built by the Prince of Thizen and sold by him to the Prince of Nagato.

The officers of the custom-house were overheard (as I am informed by the consul-general of the Netherlands) by one of his employés to say that when the boiler of the Lancefield exploded forty men were killed, being scalded or suffocated.

This was a gallant achievement of the Wyoming. The resident minister writes to Mr. Seward that the naval officers looked on and feared the result, and pronounced it a bold and daring deed. It is here worthy of remark as to the passage of the Straits of Simonoseki that by usage merchantmen had the right to the passage of those waters, but no man-of-war had the right, as I shall show, to pass those straits. The Pembroke being a merchantman and being fired upon, the Wyoming was justified in punishing the wrong.

Was not that act of firing on the Pembroke sufficiently punished? Two vessels were destroyed, with the property on board, worth, as Consul Fisher tells us, $350,000, and forty men were killed. Was not our flag vindicated? Was not the account squared? There is a point when the infliction of punishment becomes tyranny and the exaction of compensation robbery. Not only did we thus vindicate that wrong, but, independent of and prior to the treaty of 1864, Japan paid us full pecuniary compensation for all the damage that was done the Pembroke, for the destruction of the American legation at Yedo, and for all demands whatever. They paid all that the United States demanded. We had no possible claim against Japan at that time. To prove this I will read from the diplomatic correspondence of 1864-'65, page 536. It is a communication from our minister resident, Robert H. Pruyn, to Mr. Seward.

The indemnity demanded for the legation—

That is, the burning of the legation at Yedo—

has been paid; and, notwithstanding former declarations that it would be a disgrace to admit it, it was declared to be a just claim, and conceded at once without hesitation or delay.

The government placed in my hand a letter drawn by myself, in which they said that they had directed the governor of Kanagawa, on the 5th of September, to pay me the sum of $1,200—

It ought to be $12,000—

principal and interest of the Pembroke claim, and in which they stated that if not paid on that day on the production of my letter it would be receivable for all public dues to said amount.

And on page 541, in a letter of Mr. Pruyn to Captain Cicero Price of the Jamestown, he says:

The Japanese government having arranged to my satisfaction the claims which I had been instructed by the President of the United States to make upon it, it is my pleasant duty to acknowledge the great assistance which you so promptly rendered me in bringing the negotiations to a successful termination.

That letter is dated in August, 1863. This attack by the foreign ships of the allied powers on Japan was in September, 1864, and at that time we had destroyed vessels and property to the amount of $350,000, killed forty men, had been paid every farthing we demanded for the damage to the Pembroke, for the burning of the legation, and every other possible claim the United States made. Was not the flag vindicated? Was not the account squared? Did they owe us one farthing? In September, 1864, the United States, having no demand, joined with the allied powers in the attack on the batteries in a sea where a ship of war had no right to float. The rebel batteries were still on the heights of the Straits of Simonoseki. On the 15th of August, 1864, the representatives of the allied powers instructed the naval officers to attack those batteries, and, if the batteries did not fire upon them, notwithstanding to make the attack and to destroy them. This is seen in the British dispatch, page 80, signed by our minister:

The undersigned, representatives of treaty powers, having met and taken into consideration the copy of a minute showing the result of the deliberations of the commanding officers of the respective naval forces assembled at Yokohama, and signed on the 12th instant, have agreed as follows:

1. To inform the commanding officers aforesaid that they are entirely relieved from all responsibility with regard to the defense and security of the settlement.

2. To request them, in conformity with the programme of the policy set forth in the memorandum of the undersigned, dated the 22d of July last, to proceed with all convenient speed to open the Straits of Simonoseki, destroying and disarming the batteries of the Prince of Choshu, and otherwise crippling him in all his means of attack; to inform them that the political situation renders it desirable that there should be no considerable delay in the commencement of operations.

3. In the possibility of the Prince of Choshu being intimidated by the imposing nature of the force brought against him, and not firing, to request the naval officers notwithstanding to destroy the batteries and take such means as may be deemed practicable to secure a material guarantee against any future hostilities from the same quarter.

4. To request them to avoid entering into any negotiations with the prince, reserving the solution of all ulterior questions to the action of the Tycoon's government in connection with the foreign representatives.

5. To suggest that any demonstration of force in the vicinity of Osaka be avoided, as possibly giving rise to some new complications and in order not to change the character of this expedition, which ought to be regarded no otherwise than as a chastisement to be inflicted on an outlaw or a pirate.

6. To request the commanding officers to secure the return to Yokohama of such part of the squadron as may not be required for the maintenance of a free passage as soon as the operations here contemplated shall have been completed.

Signed this 15th day of August, 1864, at Yokohama.

RUTHERFORD ALCOCK,
Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary in Japan.
LÉON ROCHER,
Ministre Plénipotentiaire de sa Majesté Impériale au Japon.
ROBERT H. PRUYN,
Minister Resident of the United States in Japan.
D. DE GRAEFF VAN POLSBROCK,
Consul-General and Political Agent of His Netherlands Majesty in Japan.

The Japanese government, struggling with a rebellion almost too powerful for them, struggling because they had made a treaty with us, begged for a little time. They gave as a reason why they wanted a few days' delay before that attack was made in their waters by these ships of war, that a rebellion had broken out north of Yedo. This is found in the British Diplomatic Correspondence, page 81, and is as follows:

Taebibana Idzumi no Kami replied that the Gorogio, while acknowledging the necessity of proceedings being taken against the Prince of Choshu and the just cause the treaty powers had for action, were yet most anxious that no steps should be taken at present by any foreign powers. Various causes had tended to interfere with and delay the adoption of measures to that end by the Tycoon; among others, the breaking out of disturbances in the provinces north of Yedo, rendering necessary the dispatch of large bodies of troops in that direction; but it was still the intention of the Tycoon's government to take measures for the removal of the existing obstructions to the navigation of the straits.—*British State Papers*, page 81.

It should have been granted then. Earl Russell was of the same opinion, for his dispatch dated July 26, 1864, was on its way when this attack was made. I will read that dispatch. It is found in the British Diplomatic Correspondence, page 45. It is to the minister of Great Britain, Sir Rutherford Alcock:

FOREIGN OFFICE, *July* 26, 1864.

SIR: I have to state to you, with reference to the dispatches which I have lately received from you, that Her Majesty's government positively enjoin you not to undertake any military operations whatever in the interior of Japan; and they would

indeed regret the adoption of any measures of hostility against the Japanese government or princes, even though limited to naval operations, unless absolutely required by self-defense. The action of the naval and military forces of Her Majesty in Japan should be limited to the defense and protection of Her Majesty's subjects resident in Japan and of their property and to the maintenance of our treaty rights.

It may be hoped that the power vested in you by Her Majesty's order in council of the 7th of January last, to prohibit, or regulate, or restrict the entrance or passage of British ships into straits or waters of Japan, when such entrance or passage may lead to acts of disturbance or acts of violence or may otherwise endanger the maintenance of peaceful relations or intercourse between Her Majesty's subjects and the subjects of the Tycoon of Japan, will enable you to prevent the occurrence of the necessity for any such measures of hostility to obtain redress for injuries done to British vessels.

And on page 56, on the 18th of August, he, deprecating any such act, says—

That the Tycoon still professes an intention to chastise the Prince of Nagato for his hostile acts, and that he is promoting, by the most expeditious means in his power, the construction of barracks for the regiment of British troops which you have summoned to Yokohama.

Mr. EDMUNDS. What is the date of that dispatch?

Mr. FRELINGHUYSEN. That is on the 18th of August, 1864. The other was on the 26th of July, 1864.

The United States had no possible grievance and they only joined the expedition to show their approval of it, as will be seen by our Diplomatic Correspondence of 1864-'65, page 545, where Mr. Pruyn, September 3, 1864, the day before the attack was made, thus writes:

I have also been informed by a vice-minister, attended by Takemeto Kai-no-kami and other governors, that the Tycoon had taken possession of the Yasikis or palaces of Choshu in Yedo, and would proceed with great vigor to execute the orders of the Mikado. At the same time he said he had come down to ask that the fleet should not be sent against him.

The fleet had, as he was aware, already left. The expedition is composed of nine British, four Dutch, three French, and one United States steamer, (chartered,) the Takiang. The British admiral said he would be willing to order the Jamestown to be towed to Simonoseki, if desired; but, as she would be entirely useless when there, it would only mortify the officers and might embarrass his movements. At the same time both he, Admiral James, and the captain commanding the Netherlands squandron, as well as my colleagues, gave it as their opinion that it was exceedingly desirable that our flag should be represented, and that, though the government of Japan fully understood the position of the United States, the daimios not in the confidence of the government might misapprehend it, and that, although the Jamestown would be necessarily retained at this place, it was possible the impression might be created thereby that the United States was not in harmony with the other treaty powers. Under these circumstances Captain Price and myself felt it to be our duty to charter the Takiang, an American steamer, nearly new, of over six hundred tons, and which it is supposed will prove quite serviceable.

So we did not enter into this alliance and join in the attack because we had any reclamations to make or any injury to avenge.

If vessels of war had the right to pass through the Straits of Simonoseki and if rebels in defiance of the government of Japan planted batteries there, I do not know on what principle it is that the government of Japan could be called upon for pecuniary satisfaction. In our recent war we had batteries on the Mississippi, on the Gulf, at Charleston, and elsewhere. Did that fact create any liability on the part of the United States to give remuneration to any one? It certainly did not. But these batteries were on the territory of Japan and commanded waters that were exclusively her territory. No treaty had ever been made opening the straits or inland seas of Japan to any nation. No port had been opened which could naturally be reached through that strait or by those seas.

Mr. EDMUNDS. The Pembroke was going to Nagasaki from Yokohama through Simonoseki, and Nagasaki was an open port.

Mr. FRELINGHUYSEN. The treaty of 1854 opened a port in the northern part of Japan called Hakodadi, which can be seen in the upper part of Japan, and one other, Simoda, which was ingulfed by an earthquake before this transaction and does not appear upon the map.

Mr. EDMUNDS. It was dropped out of the map.

Mr. FRELINGHUYSEN. The treaty of 1858 opened the port of Kanagawa, which is in the eastern part of Japan, and which you cannot by any possibility reach through the inland seas or through the Straits of Simonoseki. They also opened the port of Nagasaki, which is in the southwestern part of Japan, away below the straits, and in no way connected, or by possibility to be reached through those straits. They also opened the port of Nee-egata, which is in the western part of Japan, three hundred miles away from these seas; so that no one of those ports could by possibility be reached through those straits or through those seas. They opened one other port, which could be reached through those seas, which is the port of Hiogo, at the northerly end of those seas, at the extreme limit of them. But although that port was to be opened by these treaties, by an arrangement it was not actually to be opened until 1868, after this whole transaction. This arrangement appears by the following stipulation by our minister, found in Diplomatic Correspondence of 1864-'65, page 484:

LEGATION OF THE UNITED STATES IN JAPAN,
Kanagawa, January 28, 1864.

By virtue of the power vested in me by the President of the United States of America, I, Robert H. Pruyn, minister resident of the United States in Japan, do hereby consent that the time for the opening of the cities and ports of Yedo, Osacca, Hiogo, and Nee-egata shall be and is hereby extended for the period of five years, dating from the 1st of January, 1863.

ROBERT H. PRUYN,
Minister Resident of the United States in Japan.

So that there was no port opened by treaty which could be reached through the Straits of Simonoseki or the inland seas.

Mr. EDMUNDS. Will the Senator give me a reference to the volume that contains the treaty he refers to?

Mr. FRELINGHUYSEN. It is in the second volume of the Revised Statutes, page 449. The treaties are all there.

Mr. HOWE. If the Senator will allow me, I should like to ask him whether he does or does not understand that there is a public right secured to all nations of passing through those straits?

Mr. FRELINGHUYSEN. I insist that there is no public right for ships of war to enter or to pass through those straits. There is a right of passage for merchantmen, which is a right established by usage. The Pembroke was lawfully going through those straits when she was fired upon. She was a merchantman, and usage gave her that right. Therefore the Wyoming is commendable in vindicating the rights of the United States; but after those rights were fully vindicated by the destruction of $350,000 worth of property and forty men's lives, after they paid just that bill our Government presented, I say that the claim of this country upon Japan was terminated. In support of the answer I have given to the question put to me by my friend from Wisconsin, I refer to 1 Phillimore on International Law, page 210:

Though the open sea be thus incapable of being subject to the rights of property or jurisdiction, yet reason, practice, and authority have firmly settled that a different rule is applicable to certain portions of the sea.

And first with respect to that portion of the sea which washes the coast of an independent state. Various claims have been made and various opinions pronounced, at different epochs of history, as to the extent to which territorial property and jurisdiction may be extended. But the rule of law may be now considered as fairly established, namely, that this absolute property and jurisdiction do not extend, unless by the specific provisions of a treaty or an unquestioned usage, beyond a marine league (being three miles) or the distance of a cannon-shot from the shore at low tide.

And again, on page 212:

Besides the rights of property and jurisdiction within the limit of cannon-shot from the shore, there are certain portions of the sea which, though they exceed this verge, may, under special circumstances, be prescribed for. Maritime territorial rights extend, as a general rule, over arms of the sea, bays, gulfs, estuaries which are inclosed but not entirely surrounded by lands belonging to one and the same state.

Kent, in the first volume of his Commentaries, pages 29 and 30, says:

Considering the great extent of the line of the American coasts, we have a right to claim, for fiscal and defensive regulations, a liberal extension of maritime jurisdiction; and it would not be unreasonable, as I apprehend, to assume, for domestic purposes connected with our safety and welfare, the control of the waters on our coasts, though included within lines stretching from quite distant headlands, as, for instance, from Cape Ann to Cape Cod, and from Nantucket to Montauk Point, and from that point to the capes of the Delaware, and from the south cape of Florida to the Mississippi.

I also read——

Mr. EDMUNDS. May I ask the Senator before he goes on—for I think by this treaty he has fallen into a mistake—about the time when the port of Hakodadi was to be opened?

Mr. FRELINGHUYSEN. The port of Hiogo.

Mr. EDMUNDS. But the treaty of 1854 does not mention Hiogo, as far as I can see.

Mr. FRELINGHUYSEN. I will come to that in a moment. I call attention to another authority. I read from Travers Twiss on Peace, page 250:

If a sea is entirely inclosed by the territory of a nation, and has no other communication with the ocean than by a channel of which that nation may take possession, it appears that such a sea is no less capable of being occupied and becoming property than the land, and it ought to follow the fate of the country that surrounds it. The Black Sea, while its shores were in the exclusive possession of the Ottoman Porte, was an instance of a territorial sea of this character. So likewise straits, which serve as a communication between two seas, and of which the shores on both sides are the territory of one and the same nation, are capable of being reduced into the possession of that nation. In the same manner a bay of the sea, the shores of which are the territory of one and the same nation, and of which the entrance may be effectively defended against all other nations, is capable of being reduced into the possession of a nation. "By this instance," writes Grotius, "it seems to appear that the property and dominion of the sea might belong to him who is in possession of the lands on both sides, though it be open above as a gulf, or above and below as a strait, provided it be not so great a part of the sea as, when compared with the lands on both sides, it cannot be supposed to be a portion of them."

I suppose there is no question that that is the law. The fact is that the Straits of Simonoseki are at one point only half a mile wide, and there is not one of the straits running into those seas anywhere that is six miles wide.

Mr. EDMUNDS. Is not the eastern entrance of Simonoseki more than six miles wide?

Mr. FRELINGHUYSEN. No; no one of the entrances to the inland seas is six miles wide, as can be verified by referring to the British admiralty chart, which I presume is in the Library; but that question as to any other strait than the Strait of Simonoseki is not material to the case before us.

Mr. HOWE. But, if I remember the geography, the Straits of Simonoseki do not end with what is called the inland sea of Japan. It is a continuous strait reaching from the ocean outside of Japan to the great sea, the Yellow Sea I think, which separates the island of Japan from the continent. I understand the straits extend clear through.

Mr. FRELINGHUYSEN. The strait connects these inland seas with the Sea of Japan.

Mr. HOWE, [pointing to a map.] That is the Sea of Japan. It extends clear through.

Mr. FRELINGHUYSEN. The straits are not six miles wide, and on both sides of the straits and the inland sea is the territory of Japan. That being the case Japan has always had the right to control the seas and the straits and had the right to exclude ships of war.

When you come to the case of the Pembroke it is entirely different. There usage had established the right of the merchantman to pass through those waters, and consequently the Wyoming is to be commended in vindicating that right.

The expedition on the 5th, 6th, 7th, and 8th of September, 1864, made their attack upon the batteries. The United States had no insult to avenge, no indemnity to claim. Against the entreaty of a friendly power this attack was made. When this expedition was over, immediately before the treaty of October, 1864, under which we received in gold $785,000, Japan was under obligation to pay us for nothing unless she was under obligation to pay us for the expense of the unlawful attack of September, 1864. The expense of that attack to the United States was about $12,000, not $785,000 in gold, as appears by the Diplomatic Correspondence of 1864 and 1865, pages 540 and 579. Mr. Pruyn in writing to Mr. Seward, page 580, states the charter-party for the Takiang. The sixth provision reads thus:

The said parties of the second part do engage to pay to the said party of the first part, for the charter or freight of said Takiang during the voyage aforesaid, which shall not exceed the term of one month from the date hereof, the sum of $9,500, lawful gold coin of the United States, in their draft at thirty days' sight on the Secretary of the Navy of the United States, or on the Secretary of State of the United States.

And on page 581 our consul makes the bill of items of the additional expense, English coal, for fuel, $630; Japan coal, &c., making the whole sum $1,848. So the whole amount would be $11,348, for which we received $785,000.

Now we come to the treaty which was thus exacted. The treaty is found in volume 14 of the Statutes at Large, page 665, and provides thus:

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, agree, &c.

I should like to know on what principle of natural justice or of international law it is that a government contending with a rebellion is bound to pay damages because it did not put down the rebellion. What principle of law is it that places a nation under greater obligations to another nation for damages than it is to its own citizens for not preserving the peace? There is no principle to base such a claim upon. The very basis of the treaty is such that we would not for one instant recognize. Then the treaty further provides that they are to pay $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.

All these claims had been paid, with the exception of the $11,348 for the charter-party of the Takiang, for the fuel and the ammunition. Just what our Government asked Japan paid. We had destroyed $350,000 of their property and killed forty of their men. We had no earthly claim against that government. We ought not to exact of a friendly nation a pretended indemnity which we would refuse to any nation under the sun.

Mr. MERRIMON. I desire to ask the Senator a question. If we are not entitled to anything from Japan, as the Senator now declares, I ask is there any reason in point of justice and common honesty why we should not return every dollar of the money if we have obtained it through inadvertence? I cannot suppose that we got it dishonestly.

Mr. FRELINGHUYSEN. I will answer the question, which is a pertinent one. I suppose my friend means whether we should deduct from this sum the prize-money which is provided for in the second section of this act.

Mr. MERRIMON. Yes, sir. I understood the Senator to say a while ago that we were not damaged at all.

Mr. EDMUNDS. And were not entitled to anything.

Mr. MERRIMON. And that we were not entitled to anything. If we are not entitled to anything, then we must have obtained the money through inadvertence. If so, are we not bound in honor and common honesty to return every dollar of the money?

Mr. FRELINGHUYSEN. That is the conclusion to which I hope to bring my friends.

Mr. MERRIMON. I think the Senator has a bill in charge which proposes that we should return about $125,000 of the money.

Mr. FRELINGHUYSEN. I will repeat very briefly the true position. By usage merchant-vessels had a right to pass through the Straits of Simonoseki. The Pembroke was a merchant-vessel passing through those straits. Batteries that had been erected by the rebels and in defiance of the government of Japan fired upon the Pembroke, carried away her mainmast and otherwise injured her, whereupon the Wyoming undertook to punish the wrong.

Mr. MERRIMON. They paid for that.

Mr. FRELINGHUYSEN. That was a wrong, and the Wyoming did right in trying to avenge it. She did so most gallantly. She destroyed their vessels; she silenced their batteries; she destroyed three hundred and fifty thousand dollars' worth of their property and killed forty men. It is right that those men who performed that deed should be rewarded; whether they should be paid out of this indemnity fund is a question for the consideration of the Senate.

So I say that when this expedition took place in September, 1864, Japan did not owe us a farthing; she had paid everything. And she owed us nothing after the expedition of 1864 was over, unless the expense of chartering the Takiang and her expenses are a proper subject-matter for charge, and I think they are not.

Mr. President, our resident minister at Japan, Mr. Pruyn, writes to Mr. Seward on the 29th of October, 1864, that he is not satisfied with this convention. He says in his letter that he would have preferred two million to three million; strange preference if our claim is just. He says that that $3,000,000 was claimed by this treaty, which by its very terms is for indemnity in order that the sum might be an inducement to the Japanese to open to our country other ports, there being a provision in the treaty that if Japan would open other ports they need not pay the $3,000,000. Here is a treaty of indemnity made exorbitant, made more than our minister says it ought to have been made for $785,000 when they did not owe us in any view but $11,348, so that in order to get rid of the exaction Japan would open the ports which they had a perfect right to keep closed. Then he says that the United States is to be paid rather for the moral support than for the material aid that the Takiang afforded.

Mr. President, what is the pecuniary price that the United States ask for the moral support which is put forth against the remonstrances of a friendly power for the promotion of our own interests? We should not charge too highly for moral support, when the expedition which is to render it gives it in the very face of the entreaties for a few days' delay from a friendly power.

The following is from Mr. Pruyn's letter to Mr. Seward, Diplomatic Correspondence 1864-'65, pages 581, 582:

The British minister and myself, prior to meeting the Japanese commissioners, had agreed on $2,000 000 as the sum to be paid, and would have had no difficulty in its division among the powers interested. But some difference was suggested as likely to arise from the considerations whether the moral support afforded was not entitled to weight in such adjustment, and I did not feel that it was incumbent on me to interpose any objection to this view, as the moral support afforded by the United States was considerably in excess of the material support I was enabled to give. I therefore readily agreed to the reference of this delicate question to the home governments, with the understanding that a memorandum which I prepared should be signed and accompany the convention, so as to provide an equitable basis if any should become desirable or necessary by reason of payment of the indemnity being demanded by them. I assented the more readily to the proposition of the envoy of His Imperial Majesty the Emperor of the French to fix the amount at $3,000,000 because I thought it more likely to lead to the substitution of a port as a material compensation for the expenses of the expedition.

Should the Tycoon be averse to the opening of another port and fail to make such offer in lieu of the payment of indemnities and expenses, the amount agreed on will not be regarded as unreasonable. But should he make the offer, it will be at the option of the four powers to accept it in full or in part payment, and in that event a moderate pecuniary fine may be imposed.

In either case provision will be made for a reasonable indemnity for injuries sustained by the Wyoming and Monitor and for the insult to our flag offered by the attack on those vessels, as well as on the Pembroke, the owners of which have received from the Japanese government a sum which covers their loss as estimated by themselves.

There is no possible justification for our retaining this money.

It has been suggested that to return this money would be establishing a bad precedent. Sir, if considering that the insult to our flag had been fully punished, if considering the fact that neither our nation nor our citizens had sustained any damage; if considering the fact that we were dealing with a feeble friendly people, it is right that we should pay back this money; it is establishing a precedent to do right, and the sooner we establish such a precedent and the better and more faithfully we follow it, the more it will be for the glory of our country.

But it has been urged that if we pay back this indemnity money and it shall turn out that the claims brought against the Alabama award do not consume it, then we shall be obliged to pay back to Great Britain the residue of that award. If that result should follow, it ought not to deter us from doing right. But, sir, the claims against that award will consume it, and I fear that for many years after it is gone we shall be pressed to pay claims to be made under that award. The treaty of Washington was this: it fixed certain rules and principles, and then left it to the Geneva tribunal either to refer to arbitration specific claims or to pay the United States an amount in gross. They saw proper to pay us an amount in gross, which was indemnity for the loss of national wealth, that loss being measured by the losses of a certain class of our citizens included within the principles of the treaty. If they added two or three ciphers to the fifteen million that they paid us, they would not have indemnified this country.

But why talk about that? What considerations are there that apply to this case would apply to Great Britain? Here is a feeble, friendly power just emerging from the darkness of ages. The British lion would roar with laughter at the idea of this country being conscience-stricken for fear we had got the advantage of Great Britain. She is out of her tutelage; her teeth are cut. Has she not gathered to herself the manufacturing interests of the world? Has she not swept our commerce from the seas? Is she not the great moneyed center, the vortex that swallows up the wealth of the world and makes every nation pay her tribute?

I hope that the United States will always have a national conscience; but I hope it will be a robust and healthy, and not a morbid, sickly, conscience. When we come to that state of mind, we shall indeed be substituting imbecility for integrity.

Mr. President, by the favor of this people we had opened to us their ports. The inland seas and the approaches to them were their territory. No foreign ship of war had a right to enter those waters. Four

powerful nations with seventeen ships of war enter their waters and destroy the batteries. In doing that they did, perhaps, no great injury. It was only an infraction of right. They were rebel batteries. The government of Japan did not want them there. But they did not stop with the destruction of rebel batteries. That being done these four powerful nations with their seventeen ships exact a treaty by which Japan has been obliged to pay $3,000,000 in gold for nothing. It is an exaction that can only be justified on the plea that might makes right. Would we have dealt so with England, with France, or with Germany? Would we have submitted to such an exaction from any nation on the earth? Would we have made such a claim of a nation even inferior to us in power, which was cultured and Christianized? We certainly would not.

It may be true, sir, that the leading nations may modify or reject the just and equitable principles of international law when they are dealing with nations of inferior culture and advancement. It may be true, possibly, though I deny it, that in dealing with Japan as she was in 1863 we need not have been so strict as we would be in dealing with a more enlightened nation; but that consideration fails when we come to consider in 1876 whether we shall cover this money into the Treasury or pay it back. Sir, Japan in these last fourteen years has taken position among the nations of the earth. There never has been a nation which in the same period has made such progress. The office of Tycoon has been swept away. The Mikado has asserted his ancient sway, and now rules over his entire empire with an effective central government. Feudalism and the rule of the daimios have been abolished. The Mikado has ratified the treaties, and the prejudice against foreigners disappears. Japan has ceased to be isolated and secluded and has become a part of the community of the world. A nation of fragments is consolidated. A nation of 33,000,000, inhabiting a country little more than twice the size of New England, extends her hand to us across the Pacific and asks us to be her friend. She has introduced our machinery and our manufactures, our literature, our science, and our arts. She sends her young men to our colleges, where they are the equal in native ability of our own sons. Her representatives are here with us, and nothing deficient in diplomatic propriety or in social culture or courtesy; and the last tidings that come from Japan are that, instead of every sixth successive day being their day of rest, they have adopted the Christian Sabbath, not as a religious day but as a day of rest, and thus by that act adding another proof that that day was made, and was made for man.

Sir, if it were true that enlightened nations were not bound strictly to carry out the principles of international law toward the cannibals of the South Sea Islands, and might even modify them when in 1863 dealing with Japan, still it is not true that in 1876 we can cover that money into the Treasury, for since 1863 Japan has taken her place in the family of nations and can plead her equality as her title to equity.

I do not suppose that there has ever been a subject before Congress which has had so intelligent a support as the measure of paying back this indemnity. We have had petition after petition. In 1873 we had a petition sent to Congress that we should return this money, from many colleges. I will mention a few of them: Williams, Harvard, Vermont College, Yale, California, Bowdoin, Union, Wesleyan University, Burlington (New Jersey) College, University of Michigan, Oberlin (Ohio) College; Northwestern, Illinois; Hartsville University, Beloit College, Wisconsin; Hamilton College, New York; Ripon, Wisconsin; Carroll, Wisconsin; Lafayette; Howard, Alabama; Roanoke, Virginia; Saint Joseph, Missouri, and many others.

Mr. EDMUNDS. Will the Senator tell us on what ground the petitioners prayed what the petitioners asked?

Mr. FRELINGHUYSEN. I will read it:

> The undersigned would respectfully represent that there is a large sum of money subject to your disposition, and not yet appropriated, derived from Japan under such circumstances that it would be unbecoming the character of the United States, as a just and generous people, to make use of it for the ordinary purposes of the Government.
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> For these and other obvious reasons the undersigned would urge upon the attention of Congress the justice as well as the manifest propriety of making provision by which this money should be wisely and efficiently applied for the purposes of education among the people of Japan, under such rules and limitations as Congress may think proper to prescribe, or by which it should be returned, without conditions, to the Japanese government.

Mr. EDMUNDS. Was there not some talk of establishing an American college with it in connection with this petition?

Mr. FRELINGHUYSEN. I think not. There is nothing of that kind in the petition that I have observed.

Mr. EDMUNDS. I will not interrupt the Senator, but will take the paper if the Senator please.

Mr. FRELINGHUYSEN. There are two petitions. There is another petition which may have some reference to establishing a college there. I do not know how that is.

Mr. President, the cities and counties and States of the Union are all proposing properly to commemorate the centennial of our freedom. Let the Legislature of the nation now, with the approval of the people, perform this act of magnanimity. It will be the commencement of a new era in the intercourse of nations; and better than arch or pyramid, exposition or pageantry, will such a deed at such a time signalize that day and be memorable in history.

Now I come to the question how much shall we pay back? We received $750,000 in gold which, when it reached the Secretary of State, amounted to considerably more by reason of exchange. That sum now amounts, under the care of the Secretary of State, who generally makes everything thrive that he has to do with, to $1,200,000 in gold. A part of the increase is by reason of the appreciation of securities in which the fund has been placed as from time to time transferred. I call the attention of my friend from North Carolina [Mr. MERRIMON] to the fact that the difference between the sum we received from Japan with interest at 6 per cent. and the sum actually now in the fund is $351,681. If we paid them back what we received with 6 per cent. simple interest we should still have $351,681. If we paid them 7 per cent. we should have $300,000. If we paid 10 per cent. we should have $160,000. I understand, and I presume correctly, that the money which was paid us was borrowed from England, a part of it at 7 per cent and the loan sold at 93, and a part of it at 10 per cent.

My own opinion is that, after making just deductions, if there are any just, we should pay them back the whole sum. I can see that there may be a difference of opinion in reference to this. A very considerable part of this money is, as I have stated, from the appreciation of the securities from time to time in which the fund was invested. Much of it is made up by compounding interest, which Mr. Fish has been very careful to do. But I do not think we want any of this money. It did not come to us in the right way.

A word now as to retaining the $125,000 for the officers and crews of the Wyoming and Takiang. The claim of the Wyoming is for punishing the unlawful attack which was made upon the Pembroke, and has no connection with the unlawful expedition of September, 1864. The treaty of 1864 speaks of that transaction as an item of the indemnification. The officers of the Takiang are not responsible for the character of the attack made in September, 1864, because they obeyed the orders of the representative of the country. These vessels, the Lancefield and Lanrick, were piratical vessels. They were making war and cruising against our Government in defiance of and contrary to the will of their government with whom we had a treaty, and that is just what makes a pirate as we have defined in our statutes. On page 1047 of the Revised Statutes, section 5374, it is enacted that any subject of a nation making war at sea or cruising against a vessel of the United States, contrary to a treaty of the United States with such nation, is a pirate and is to be punished as such. It appears by the Revised Statutes, page 834, section 4296, that if these vessels which were sunk had been brought into port and condemned the crew would have been entitled to prize-money. It appears that the value of the property destroyed was $350,000.

Then again, by the Revised Statutes, page 909, section 4635, it is provided that for each person on board a ship of war belonging to an enemy on the destruction of the vessel $100 shall be paid if the enemy is of inferior force, and $200 if it is of equal or superior force to the officers and crew of the ship effecting the destruction. The only technical objection to their receiving this bounty is that they do not come within the provision of the statute because these were not ships belonging to an enemy; they belonged to the pirates, to the daimios; the war was made in direct defiance of the government of Japan.

There are abundant precedents for an allowance of this kind. Captain Oliver Perry and the officers and crew of his squadron for capturing the British vessels on Lake Erie received $255,000, as appears by the Statutes at Large, volume 3, page 130. In a recent case the officers and crew of the United States ship Kearsarge, for the destruction of the Alabama, received $190,000. (17 Statutes at Large, page 53.) Captain Bainbridge, his officers and crew, for the destruction of the British frigate Java, received as prize-money $50,000. (2 Statutes at Large, page 818.)

Mr. President, I think that the officers and crews of these vessels should be paid; but I am much more interested that this money should be returned to Japan for the honor of this country and as a matter of justice than that the officers and crews should be paid. Our nation is financially not absolutely poor, but it is and must be characteristically honest. Our people seek economy, but at the same time they seek fair dealing in all our foreign as well as our private relations, and most of all do they demand that this enlightened Republic shall not take advantage of a feeble friendly power just emerging, in many respects, from the darkness of ages.

I do not believe that we shall lose anything by availing ourselves of this opportunity to perform an act of distinguished justice and magnanimity. I do not think that we can make a better moral, and I doubt whether we can make a better material, investment. It seems to me that the political economy of the whole subject is summed up in the proverb of the wisest of men when he said, "There is that scattereth and yet increaseth; and there is that withholdeth more than is meet, but it tendeth to poverty." We shall never be poorer by performing this act of American justice.

Mr. THURMAN. Mr. President, I believe the pending motion is to strike out the second section.

The PRESIDING OFFICER, (Mr. WEST in the chair.) The pending question is on the amendment of the Senator from Connecticut, [Mr. EATON,] which will be read.

The CHIEF CLERK. The amendment is to strike out of the first section the words "if not incompatible with the relations of the United States to other powers."

Mr. THURMAN. I thought that had been adopted.

Mr. EDMUNDS. I believe not. I should like to make a motion that will bring up the whole bill for consideration.

Mr. THURMAN. Before that is done, I wish to move an amendment.

Mr. EDMUNDS. I was going to move an indefinite postponement.

Mr. THURMAN. I have no objection to the Senator making that motion.

Mr. EDMUNDS. I move to postpone the bill indefinitely, and we can test the opinion of the Senate on the general merits of it in that way.

Mr. THURMAN. That leaves the merits of the bill open to debate as much as before.

Mr. EDMUNDS. And if the bill should not be postponed, then it can be amended if amendment be deemed necessary.

Mr. THURMAN. Yes.

The PRESIDING OFFICER. The question now is on the motion of the Senator from Vermont [Mr. EDMUNDS] that the bill be postponed indefinitely.

Mr. THURMAN. I do not know, Mr. President, how many reports of committees who carefully examine a subject and report in favor of a measure are necessary in order to secure the approbation of the Senate. In this case I hold in my hand five reports, the expression of the unanimous judgment of five committees, three of the Senate and two of the House of Representatives—opinions formed, as the reports show, after careful investigation of this subject, and opinions which are all in favor of a measure like that which is now before the Senate—all in favor of allowing to the officers and crews of the Wyoming and the Takiang an allowance in analogy to an allowance for prize-money where the piratical vessel is captured, brought into port, and condemned. There has never been an adverse report upon this subject. There has never been a committee that has examined it that was not struck with the justice of the proposition, and consequently it has always been reported favorably from the committees that examined it, and I believe without exception unanimously.

Why is it that it has thus been reported? Because, first, the thing is plainly just on its face, and, in the second place, it is in accordance with the usage of this Government for more than half a century. What is it that makes this bill necessary at all for the benefit of the officers and crews of the Wyoming and Takiang? Simply this, that under our statute as it stands, absurdly as it seems to me, the officers and crew of a vessel of war which sinks a piratical vessel are not entitled to any prize-money at all. It must capture the piratical vessel and bring it into port and have it condemned in a prize-court before they are entitled to prize-money; and hence, if they sink the piratical vessel and cannot bring it into port and have it condemned, they get no prize-money at all. That was precisely this case. We are compelled to treat the Japanese vessels that were sunk by the Wyoming and Takiang as piratical vessels because the Japanese government disavowed the acts of their daimios who ordered those vessels to fire on the Pembroke and to stop all intercourse of the European and American nations with Japan. We are obliged to treat them as piratical vessels because by a sort of convention between Japan and the United States they were treated as pirates. That really was an artificial thing, for, although we were not at war with Japan, flagrant, open war, yet the daimio who undertook to oppose the navigation of the Straits of Simonoseki was acting in accordance with the orders of the Mikado. That is the truth about it, and though the Mikado afterward saw fit to disavow any responsibility for his acts and to insist that they should be treated as piratical or, at least, as unauthorized acts, yet in truth they were acts for which the Japanese government itself was responsible. But we treat them as piratical acts and the vessels as piratical vessels because they were so treated in the convention between the three powers and Japan.

Then comes the application of the rule that where the piratical vessel is not captured and brought into port and condemned there is no prize-money. Very well, let us see how that will work. Where the piratical vessel is sunk, manifestly she cannot be brought into port. What then is done? All that Congress requires is that Congress shall be satisfied that, if she had not been sunk but had been captured and brought into port, she would have been condemned. The fact that our vessels have sunk her and made it impossible to bring her into port and have her condemned in a prize-court shall not defeat the right to prize-money of the officers and crew who have behaved so gallantly in sinking her in the engagement with her, just as gallantly as if she had surrendered, and perhaps more so—that shall not deprive them if you are satisfied that she was a vessel of the description which, if condemned in a prize-court, would have entitled them to prize-money. That is the principle of it. Then how stands this case? We by our treaty with Japan have settled the very question which would have been settled in a prize-court. We have received from Japan six hundred and odd thousand dollars upon the very ground on which a prize-court, if the vessel had surrendered and had been brought into port, would have condemned her as a lawful prize to the Wyoming; and it does not lie in our mouths now to say that she was not a piratical vessel.

What is the object, pray, of having a condemnation in a prize-court? Simply that it may be ascertained that she was a piratical vessel. We have, by our convention with Japan and by receiving from her, in conjunction with two other powers, $3,000,000, of which our share was over $600,000, settled that question; and I say it does not lie in our mouths now to assert that she was not a vessel which would have been condemned if she had been captured—instead of having been sunk—and brought before a prize court. What did we do in the case of the Alabama? Some people called her a pirate; a good many called her a pirate; some people called her a belligerent; but, whether pirate or belligerent, we voted to the officers and crew of the Kearsarge the full value of the ship; whereas in the case of a pirate our prize-laws provide only for giving one-half of the value to the officers and crew of the vessel that captures her, and the other half of the value the United States keeps. And this bill goes on that principle. It does not do even that justice, for the vessels destroyed by the Wyoming were valued, according to the estimates, as is shown by these reports, at $350,000; and instead of giving $175,000, or one-half, to the officers and crews of the Wyoming and Takiang, you propose only to give them $125,000; but in the case of the Kearsarge we gave the whole value of the Alabama and her armament to the officers and crew of the Kearsarge.

Mr. HOWE. Will the Senator allow me a moment?

Mr. THURMAN. Certainly.

Mr. HOWE. Does he understand that these vessels, which were sunk in 1863, constituted any part of the consideration for which this money was paid?

Mr. THURMAN. I do say that, but for the gallant act of McDougal and Pearson in the Wyoming and the Takiang, you would not have had your $600,000, a part of the $3,000,000.

Mr. HOWE. I do not understand that the Wyoming took part in the attack in the Straits of Simonoseki at all.

Mr. THURMAN. Then my friend has not read any one of these reports.

Mr. HOWE. I am not sure that I have; but I have read several other things, and I think the Senator will find that the Wyoming was not there at all.

Mr. FRELINGHUYSEN. The Wyoming made her attack on the 26th of June; she shelled the batteries; she destroyed the Lancefield; she destroyed the Lanrick, which our consul, Mr. Fisher, with the property on board of them, says were worth $350,000. In the attack which was made in September, from the 5th to the 7th, the Wyoming was not present, but there the Takiang, having the crew of the Jamestown on board, represented this country.

Mr. THURMAN. So I understood the fact; and I undertake to say that if it had not been for that attack of the Wyoming in July the allied powers would not have had the $3,000,000. It was that action, than which there is no more gallant action in the naval history of this country, which led the way, and showed the power of the United States in those seas, and brought the rulers of Japan to a sense of justice and reason.

Now, sir, I say once more that the fact that the Japanese vessels were destroyed by the Wyoming is no reason why her officers and crew should not have prize-money, any more than it was a reason why the officers and crew of the Kearsarge should not have had prize-money. We voted prize-money to the officers and crew of the Kearsarge, and I believe without a single vote in opposition to it. I may be mistaken about that, but I think I am not mistaken about it; and the very principle upon which we did that authorizes me to say that in this case, too, there should be voted this money to the officers and crews of the Wyoming and the Takiang.

Mr. MORRILL, of Maine. Will the Senator allow me to ask him a question?

Mr. THURMAN. Yes, sir.

Mr. MORRILL, of Maine. My understanding is that the attack of the Wyoming was in 1863, and the allied assault was in the following year, so that the immediate cause of the treaty was the attack by the allied powers; and if that be so, I should like to understand what relation the honorable Senator thinks the Wyoming affair had to the treaty securing the indemnity?

Mr. THURMAN. I say it had nearly everything to do with it. The Wyoming alone steamed into that bay; and let me give the Senator some idea of what she did:

In obedience to the orders of the properly constituted authorities of the United States Government, the Wyoming weighed anchor at Kanagawa on the 13th of July, 1863, and set out on her voyage to the Straits of Simonoseki. She entered the bay of Simonoseki on the morning of the 16th of July. When she approached the entrance of the bay the fort next to her fired a signal gun, which was answered by all the forts and by the ships in harbor. At this time the Wyoming had no flag up, but upon the signals being fired she hoisted her flag and proceeded into the bay, keeping as close as she could to the northern shore, contrary to the expectations of the Japanese. The first fort immediately opened a heavy fire upon her, and so did all the others, as she moved slowly on shelling the forts with such an effect as to silence such of them as received her fire. The men in the forts which received shells from the Wyoming were observed to rush off and to jump from the heights in such a precipitate manner as to lead to the belief that the shells must have told with greater effect and done more damage than the Japanese anticipated.

The bark and the brig Lanrick—the two vessels which fired on the Pembroke—were still there, and another vessel also, the steamer Lancefield. Those vessels lay close under the town, the bark being inside, the Lanrick next to her, and the Lancefield outside with steam up, and a great number of men on board apparently making preparations to approach and board the Wyoming. Captain McDougal ordered the Wyoming to be taken in between the Lancefield and the Lanrick, and prepared to give each of them a broadside in passing. The Lanrick fired first, but immediately after the Wyoming delivered her broadside on the two Japanese and sent a ball through the stern of the Lanrick in such a way as to leave her apparently sinking. The Wyoming moved on slowly, firing into the forts and the town as she went, and making a curve to enable her to return to fire on the ships again; but as she was turning the Lancefield moved on across the track of the Wyoming farther into the bay to escape at the western outlet, but the Wyoming while curv-

ing brought her great pivot-gun to bear on the Lancefield in her new position and sent a ball right through her boiler, causing her to blow up, and scattering destruction through every part of the vessel; steam, cinders, &c., were blown out in all directions, and such of the crew as were not immediately overwhelmed jumped overboard. The Wyoming returned under a slack fire from the forts, and having done all that she deemed necessary for that time, she returned to Kanagawa to report what had taken place. She arrived here about two a. m. on the 20th of July. The engagement lasted an hour and ten minutes. The Wyoming received eleven shots, and had four men killed in action and seven wounded, one of whom died on the passage back.

That is from the report of one of your committees. I see from another statement that Captain McDougal had six guns and one hundred and sixty men and the Japanese had one hundred and thirty-four guns and about thirteen hundred men. If Senators will look at these reports they will see that no more striking and gallant action perhaps ever was performed by an American ship than was performed by the Wyoming on that occasion. Its effect cannot be doubted.

But what in the world does it matter (although I mentioned it) whether or not we got money out of the Japanese on that account? If the Senator will look back to the treaty he will find that we did, and that the treaty covers the cost of sending the Wyoming there and the injury to the Wyoming. Who can doubt it then? Does anybody doubt it?

Let us see what has been said in answer to the question whether the Wyoming had anything to do with it. Let us see what your committees have thought on that subject, who have examined it, as to whether the action of the Wyoming had anything to do with it. I read from the report of the Committee on Naval Affairs, made by the Senator from Rhode Island, [Mr. ANTHONY,] February 27, 1872:

The Japanese vessels having been destroyed were not prizes. Moreover, it may be doubted if they came under the head of "enemy's ships," being piratical and their hostile character not recognized by the Japanese government. Yet it seems to the committee that in equity the officers and crew of the Wyoming are entitled to no less credit for their gallant and meritorious service because they sunk the Japanese ships than they would have been entitled to had they captured them and brought them into port.

Now I ask the attention of my friend from Maine [Mr. MORRILL]—

The indemnity paid by the Japanese government was the result of their good conduct—

That is what your committee said in speaking of the Wyoming—

The indemnity paid by the Japanese government was the result of their good conduct, and their own valor has supplied the Government with the means of rewarding it.

The committee believe that justice and public policy demand that they should be compensated.

That is what your committee said on the 27th of February, 1872. What said your committee on July 9, 1870? I read from the report, made by Senator Scott, of Pennsylvania, a very careful report indeed:

It is also manifest that the officers and crew of the Wyoming did their duty gallantly, and that the fund now invested in bonds is really the product of their service.

I read this in answer to the question of the Senator from Wisconsin and the question of the Senator from Maine. Let us see further what is said about this matter. I will not take up the time of the Senate by reading at length from these reports, but I will read an extract from the report submitted by Mr. Archer, from the House Committee on Naval Affairs, February 2, 1870:

The firing into the Pembroke and the attack upon the Wyoming were piratical acts, and have been so treated, both by the United States and Japan. Prize is allowed in piratical cases only when the craft is captured and condemned, in which case the proceeds of the capture are equally divided between the Government and the captors. In this case there was no capture, although the benefits which accrued to our Government—

That is, from the acts of the Wyoming—

were infinitely greater than if an actual capture had been made, and it does not come within the letter of the law. Can the claim then rest upon the equity that the "officers and crew, constrained by a discreet and patriotic sense of duty," fought "three piratical or hostile Japanese vessels," and sunk and destroyed two, and that the United States subsequently justified their conduct, by concluding a convention with Japan, whereby she received a full indemnity? The conduct was gallant; it aided to suppress formidable hostilities to our commerce, and contributed to securing the convention of October, 1864, whereby an indemnity was received far beyond the injuries done to the Pembroke and Wyoming.

I have read from the reports of three committees, two of the Senate and one of the House, and all of them attribute in a large part to the effect produced by the gallant conduct of McDougal and his officers and crew in the Wyoming the convention which resulted in the payment of this indemnity.

I do not rest this claim, however, upon that ground alone. I am not going into a question of dollars and cents and a balancing of accounts between the United States and Commodore McDougal and his officers and crew in order to find whether he has poured more money into our Treasury than it is now proposed to pay to him, his officers and crew, for their gallant services. I will not undertake to compute such an account as that, or strike any such balance. I say that the uniform policy of this country has been to recognize the gallant acts of its naval officers, its sailors and seamen, and to reward them whether the United States ever received one dollar of benefit in a pecuniary point of view from that gallantry or not. I will refer to a few cases, and they are only a part. Others could be cited. What has Congress considered to be good public policy? What has Congress considered to be a proper thing to reward the valor of her naval officers and seamen? What has she considered to be a good thing to do to build up and sustain her Navy, which, small as it has ever been, has yet been great in glory and renown? In order to show what Congress has done let me refer you to a few of the acts of Congress on this subject.

1. To the officers and crew of the United States frigate Constitution, Congress awarded the sum of $50,000 to be distributed as prize-money because of her destruction of the British frigate Guerriere. (2 Statutes at Large, page 818.) That was not prize-money under the general law. That was $50,000 voted as prize-money by a special act of Congress on account of the merits of those officers and seamen and the glory they had shed upon the country.

2. To Captain William Bainbridge, his officers and crew, for the destruction of the British frigate Java, $50,000 was voted to be distributed as prize-money. There is another instance.

3. To the officers and crew of the sloop of war Wasp, for the capture of the British sloop of war Frolic, Congress voted $25,000.

4. To Captain Oliver H. Perry and the officers and crew of his squadron, for the capture of British vessels on Lake Erie, September 10, 1813, $255,000 was voted, and $5,000 to Captain Perry in addition to his share of the aforesaid sum.

These are not instances of money received under the general law in relation to prizes or anything of the kind, but they were acknowledgments by Congress of the obligation due to these gallant men for services so beneficial to the country which contributed so much to its glory and renown. I will pass over the special acts giving medals, swords, &c., for meritorious service in the Navy; but to the officers and crew of the sloop-of-war Wasp, for the capture and destruction of the British vessels Reindeer and Avon, $50,000 were given and one year's pay in addition; to Commodore Decatur, his officers and crew, for the capture of Algerine vessels, which were afterward released and restored to the Dey of Algiers, $100,000; to the officers and crew of the United States steamer Kearsarge, for the destruction of the Alabama, $190,000, the full estimated value of the Alabama.

All these are instances of what Congress with the full approbation of the country has always thought that justice to our sailors and seamen, the interests of the Republic, and the maintenance of a Navy require at the hands of Congress. The bill before the Senate presents another one of this class of cases. Here is a case which more strongly than any I have mentioned appeals to the sense of justice of Congress. In the cases which I have mentioned our officers put no money into the Treasury of the United States, but here the gallant conduct of the officers and crew of the Wyoming did put money into your Treasury, far more money, five times as much money nearly, as it is now proposed to vote them.

I do say, Mr. President, in view of the history of legislation on this subject, in view of the facts of this case, that this is a case of justice delayed. This is a case in which long ago, in my humble judgment, such a bill ought to have been passed, and I for one cannot but hope that a sense of justice will induce the Senate to pass this bill without further delay.

The PRESIDING OFFICER. The question is on the motion of the Senator from Vermont [Mr. EDMUNDS] to indefinitely postpone the bill now under consideration.

Mr. FRELINGHUYSEN. My impression is that the Senator from Vermont wishes to be heard on the bill. I have sent a page for him, and while he is out of the Chamber, if no one else wishes to say anything on the subject, I will call the attention of the Senate to the treaty. The point was made by the Senator from Maine [Mr. MORRILL] that inasmuch as the Wyoming performed her exploit in July, 1863, and the attack by the allied forces was not made until September, 1864, therefore the Wyoming did not contribute toward obtaining this fund. The parties to the treaty seem to have treated the two encounters as one transaction. In the treaty it is expressly provided that the $3,000,000 is paid as full indemnity for all acts of aggression commencing with the first one in June, 1863. Therefore, in its indemnification the treaty by express terms covers the attack which was made upon the Pembroke, which the Wyoming so gallantly punished.

Mr. CHRISTIANCY. Mr. President, I only wish to say a very few words on this subject. I examined this question last December somewhat thoroughly, and came to the conclusion that this fund ought to be repaid; that as this money was unjustly extorted from a weak nation it ought to be returned. I shall therefore vote against the postponement of this bill. I shall support the bill with or without the second section. I see no special objection, however, to putting the case, so far as that question is concerned, on the principle of prize-money, and allowing whatever may be found justly due on that ground.

I think this example of national justice and impartiality would redound to the honor of this nation and that it would be an example to other nations. It would show that we are willing to place ourselves upon the ground of strict and impartial justice in dealing with all nations and that when we have received more than was our due we are willing to return it.

Mr. EDMUNDS. Mr. President, I have been forced to look into this matter a little, and my only doubt about the correctness of my conclusion arises from the circumstance that the honorable Senator from New Jersey seems to have been led to an exactly opposite one; but I still think that, if the Senate will take the trouble to look at exactly what this case is in all its aspects, it cannot fail to come to the conclusion that we obtained this money justly, upon just prin-

ciples of public indemnity, and that we did not exact any exorbitant sum.

The effort to open Japan, to say nothing now of China, to the influences of civilization and of trade has been a long one. A great many years have been occupied by what are called the treaty powers, the Dutch, the French, the English, and ourselves, and others, in endeavoring to persuade that people to enter into relations with us and to allow our citizens and subjects the same rights of personal freedom and liberty in that country that their subjects would enjoy in ours respectively. More than twenty years ago, in 1854, we entered into a treaty with Japan which was designed to accomplish that object. That treaty provided for freedom of trade and intercourse and the security of private rights, subject to limitations; but in the treaty it was provided that two ports, Simoda and Hakodadi, should be opened, one immediately and the other one year afterward, which would be in 1855 or 1856. There was great delay and difficulty in respect of doing even that. Under a kind of two-faced policy, which seems to have characterized the government of that country, as it does indeed the governments of all Oriental peoples, without exception almost, the Japanese were disinclined, although very ready to make a treaty, to take any steps to make any one of its provisions really effectual to the purposes for which they were designed. So the thing ran along until 1857, when we made a revised treaty with that country by which it was provided that another port, Nagasaki, should be opened. Other provisions were made in respect of the rights of consuls and in respect of the rights of American ships resorting to these ports, now free, that should be opened to American commerce. The next year afterward, in 1858, we made still another treaty, the former one seeming to amount to nothing at all, under which by the third article there were to be opened the following ports:

In addition to the ports of Simoda and Hakodadi, the following ports and towns shall be opened on the dates respectively appended to them, that is to say: Kanagawa on the 4th of July, 1859; Nagasaki on the 4th of July, 1859—

Although by a previous treaty they had engaged to open that port already, but had not done it—

Nee-e-gota on the 1st of January, 1860; Hiogo on the 1st of January, 1863.

The port of Hiogo was opened in 1866 or 1868, as my honorable friend from New Jersey stated, if I correctly understood him.

Mr. FRELINGHUYSEN. The Senator did correctly understand me. I so stated and I still maintain that that is the position. The treaty was made in 1863, but by a reference which I gave in my speech, and which I have not now before me, the port was not to be opened until 1868. That was afterward modified and it was opened in 1866.

Mr. EDMUNDS. My friend will bear in mind that I am reading from the treaty of 1858.

Mr. FRELINGHUYSEN. I know. It was agreed by the treaty of 1858 that that port should be opened. It was then extended to 1868, and was not to be opened until then.

Mr. EDMUNDS. O, Mr. President, I will come to that. This is a part of the story that my honorable friend forgot to call the attention of the Senate to. I repeat that by the treaty of 1858, the ratifications of which were exchanged at Washington on the 22d of May, 1860, before these dates, every one of these ports, including Hiogo, the last, was to be opened on or before the 1st of January, 1863; and when, in the year 1863, these difficulties took place that treaty was in force. My honorable friend says that by a subsequent arrangement it was postponed. So it was, which merely illustrates what I was endeavoring to call the attention of the Senate to, that these people did not understand and did not in fact observe any treaty. They made treaties for the purpose of obscuring and delaying rights, instead of with any intention of carrying their substantial provisions into effect. That was the situation; and they would have continued to make treaties with us year after year as often as we liked, so long as they could avoid anything under them by making a fresh one with an extension of time and other provisions to take the place of the old. That was the situation in 1863, when the first of these events took place.

The treaty of 1858 was a long one. It provided for the freedom of commerce and of trade, for international rights, the security of private and personal liberty, and the right to trade and to travel, with certain limitations which it is not necessary to refer to. We made no treaty after that until 1864, after these difficulties had commenced, and as a consequence of the fact that the United States had undertaken by force to assert the rights that by public law and by the treaty with this country it was entitled to enforce. I venture to say, and nobody who reads the history of these Oriental nations can doubt it, I believe, that, if we had not resorted to the only right there is among nations for establishing the provisions of treaties, and that is the exercise of power, not one of these ports would have been opened to this day.

Then let us see what took place in 1863 and 1864. The strait of Capellen, as it is called on the charts, anybody who will look at the maps will see is really a species of inland sea that cuts off the lower and southwestern section of the island of Japan and makes the empire of Japan really a series of two or three islands. This strait, the northwestern entrance to which is called the Straits of Simonoseki, connects the great sea of Japan, so called, and the Pacific, two oceans, and that strait according to this chart and according to the atlases, excepting at one northwestern point, averages more than twenty-five miles in width, like the English Channel and the Straits of Dover connecting the Atlantic with the North and the Arctic Seas, excepting that the Straits of Dover happen to be fifteen to eighteen miles wide at the narrowest place, while this at the narrowest place is, as my friend says, only a mile or half a mile, whatever the distance may be, much less than six, which is all that is necessary for my purpose. Therefore, as I understand the principles of public law settled by the writers on public law, it is the right of every ship that sails the seas to pass through those straits unstopped by batteries or any other order of the country that happens to lie upon the side of them. It is not like a great bay or a sea that is inclosed, entirely without exit, within the dominions of a particular government; but it is a passage-way, a highway, that connects two great public seas over which no nation individually has any exclusive jurisdiction whatever. That was the nature of this passage, and through it, to say nothing of public right, in order to enjoy the rights that the treaties gave to the citizens of the United States of trading at these various ports, it was necessary and useful as a matter of safe and convenient navigation to pass through this strait of Capellen and the Straits of Simonoseki to reach these various ports. My honorable friend says that the port of Hiogo is at the southern or southeastern outlet of this strait. At the southeastern part the strait is more than thirty miles wide. Nagasaki, another open port, is on the opposite side of the southwestern island that composes the empire of Japan, and any prudent sailor or ship-master, in reference to the particular climate and the typhoons of those seas, would naturally and always almost, certainly for half the year, in going from Hiogo to Nagasaki, over on the southwestern side, would go through those seas, the distance being but very little greater than to go around the southern end of the island, going around which he is exposed all the time to the dangers of the great ocean. That was the condition of things.

Before I leave that topic, I wish to call the attention of the Senate and of my honorable friend from New Jersey to what is said by writers on public law upon the subject of the public rights of all nations to straits of this character. Vattel, on page 130, says:

All we have said of the parts of the sea near the coast, may be said more particularly, and with much greater reason, of roads, bays, and straits, as still more capable of being possessed, and of greater importance to the safety of the country. But I speak of bays and straits of small extent, and not of those great tracts of sea to which these names are sometimes given, as Hudson's Bay and the Straits of Magellan, over which the empire cannot extend, and still less a right of property.

The Straits of Magellan, as every school-boy knows, are much shorter and much narrower, on the average, than this strait of Capellen which crosses the southern end of the empire of Japan between the Japanese sea and the Pacific Ocean.

A bay, whose entrance can be defended, may be possessed and rendered subject to the laws of the sovereign; and it is important that it should be so, since the country might be much more easily insulted in such a place than on the coast that lies exposed to the winds and the impetuosity of the waves.

I read this in order that Senators may see that I do not make an extract that may be thought to present a one-sided view of the case. I am reading the qualifications and the limitations on both sides of the rule. He proceeds:

It must be remarked with regard to straits that, when they serve for a communication between two seas the navigation of which is common to all or several nations, the nation which possesses the strait cannot refuse the others a passage through it, provided that passage be innocent and attended with no danger to herself.

That was the sort of passage that the commercial marine of the United States were entitled to make through these straits. It was the passage that they were not permitted to make.

Now, Mr. President, I call your attention and that of the Senate to the observations of Mr. Wheaton, and I read from Mr. Lawrence's Wheaton, in order that it may be authority with all sides of the Senate:

Straits are passages communicating from one sea to another. If the navigation of the two seas thus connected is free, the navigation of the channel by which they are connected ought also to be free. Even if such strait be bounded on both sides by the territory of the same sovereign, and is at the same time so narrow as to be commanded by cannon shot from both shores, the exclusive territorial jurisdiction of that sovereign over such strait is controlled by the right of other nations to communicate with the seas thus connected. Such right may, however, be modified by special compact.—*Lawrence's Wheaton*, page 328.

We had not made any such special compact, neither had any of the treaty powers, (the Christian nations, as they are called in Japan, I believe,) to exclude our commerce from passage through these straits. Quite the reverse; we had undertaken year after year by treaty with this empire to provide for commercial intercourse. We had not undertaken to provide for the passage through these straits, for the reason that by the settled principles of public law and the public practice of all nations we had that right without any treaty. My learned friend from Wisconsin [Mr. HOWE] recalls to my attention, as an illustrative instance of what I am saying, the Straits of the Dardanelles and the Straits of the Bosporus, connecting the Mediterranean with the Black Sea, which are, it is true, in respect of vessels of war, closed under certain conditions to foreign powers, but they are closed by special compact made with the Ottoman Porte, other nations having regard to the protection of the health of what the European writers have called that "sick man" in public law.

Mr. FRELINGHUYSEN. If my friend will permit me, I think the case to which he has alluded, the Dardanelles, the Sea of Marmora, the Bosporus, which connect the Black Sea with the Mediterranean,

is a case in point. Russia owns the territory bordering on the Black Sea. It has, as a necessity of commercial intercourse, to have connection between the Black Sea and the Mediterranean; but it has never been claimed that ships of war had a right to pass through those straits and that sea. From immemorial usage it has been recognized and it has been confirmed by the treaties down as late as 1856, that the Ottoman Porte had the right to exclude ships of war from those straits. I presume it has never been claimed as against Japan that ships of war had a right to pass through these inland seas.

Mr. EDMUNDS. Now, Mr. President let my friend behold "how plain a tale shall put him down." It shall not be any tale of my own, but that of Wheaton:

So long as the shores of the Black Sea were exclusively possessed by Turkey, that sea might with propriety be considered a *mare clausum*.

Therefore, says my friend, so long as the shores of the Japanese sea bounded upon one side by the Corea and by China, and, I believe, a part of the Russian possessions of Kamtchatka, and by Japan upon the other, exclusively belonged to Japan, the Japanese sea might be a *mare clausum*, but it so happens that that condition never existed. Japan was never the sovereign of the shores of the Japanese sea on all sides as the Ottoman Empire at one time was of the shores of the Black Sea.

Mr. CHRISTIANCY. Will the Senator allow me to ask a question?

Mr. EDMUNDS. With much pleasure.

Mr. CHRISTIANCY. Were not both sides of the strait possessed by Japan?

Mr. EDMUNDS. Undoubtedly; but if my honorable friend will look at the course of history and at the law he will find that that is not the question. The question is whether the sea at the two entrances or one entrance of the strait is in the exclusive dominion of the power controlling the strait. In that case it may be considered, they say, a *mare clausum;* in the other case it may not; and, as Vattel says and as Wheaton says, if the seas at the two ends of the strait are of public right, the strait also is of public right.

Mr. FRELINGHUYSEN. Mr. President, the tale which my friend read to me——

Mr. EDMUNDS. I have not finished the tale.

Mr. FRELINGHUYSEN. Was no new tale to me. I had read it, and it seems to me that he does not state it with his usual clearness. I understand that Russia, not the Ottoman Porte, owns the land on a part of the Black Sea, so that the Black Sea is not exclusively within the territory of the Ottoman Porte; and notwithstanding that while Russia owns a part of the land on the Black Sea ships of war are entirely excluded from the Dardanelles and the Bosporus.

Mr. EDMUNDS. Now, Mr. President, the Senator will excuse me. He says it is not a new tale to him; it is an old one; he has read it. I am sorry he has not profited by it more largely than he appears to have done. I have not made any statement myself about the Black Sea. All that I said I read out of Wheaton, and I will read it again, because it is Wheaton that my honorable friend is contending with, and not with me. I should not venture to enter the lists with my friend on a question of this kind unless I was fortified——

Mr. FRELINGHUYSEN. There is no necessity for such remarks, I think. It is a plain question of law. It is not entering into any personal contest with my friend.

Mr. EDMUNDS. My friend must understand that I am not entering into a personal contest with him, and I must repeat that if it were a question of personal consideration and capacity I certainly should not enter into it; but being fortified by Wheaton, and by Lawrence's Wheaton too, as I have said, I feel rather safe in reading it to him:

So long as the shores of the Black Sea were exclusively possessed by Turkey, that sea might with propriety be considered a *mare clausum;* and there seems no reason to question the right of the Ottoman Porte to exclude other nations from navigating the passage which connects it with the Mediterranean, both shores of this passage being at the same time—

That is, at the same time that the Black Sea was exclusively a *mare clausum* in her dominions—

both shores of this passage being at the same time portions of the Turkish territory.

My friend is only in error, as we sometimes are, because he and I are talking about two different periods of time.

But since the territorial acquisitions made by Russia and the commercial establishments formed by her on the shores of the Euxine both that empire and the other maritime powers have become entitled—

I beg my honorable friend to mark the word—

have become entitled to participate in the commerce of the Black Sea, and consequently to the free navigation of the Dardanelles and the Bosporus.

Mr. CHRISTIANCY. Does not that refer entirely to the mercantile marine?

Mr. EDMUNDS. It may be that it does. I do not at this present time go into the right of vessels of war of other nations to go through the Straits of Simonoseki. No such right has been brought into contest.

Mr. FRELINGHUYSEN. Then there is no controversy between the honorable Senator and myself.

Mr. EDMUNDS. I beg the honorable Senator's pardon. These straits were closed by the authorities of Japan, either national or local, one or the other, either exercising national jurisdiction or exercising local jurisdiction consonant to the national jurisdiction or in opposition to it; some one of these three grounds. While they were closed, no ship of war of ours that I know anything about undertook to go through. What our treaties with her entitled us to do was to trade, and, as an incident of trade, to pass through those public passages which connected two seas; and when at last the Pembroke, having more zeal than discretion, undertook peaceably to go through the straits, that her compeers seeking commerce did not dare to do, she came to grief; and the first visit that I know of from these documents that any vessel of war of the United States made to these straits was that of the Wyoming afterward to endeavor to obtain redress. So I need not discuss the question whether the vessels of war of the United States are entitled of public right to go through or not. We did not ask an indemnity because they had been refused. I do not know that they had been refused. Certainly, so far as the documents show, they never had undertaken to do it. When they went there on two occasions, one in 1863 and the other in 1864, it was not for the purpose of peaceable passage of a vessel of war, as that of one of the nations going through the Dardanelles or the Bosporus, but it was to assert the majesty of the United States at the cannon's mouth, and that right did not depend upon the law of nations in respect of peaceable passage, but upon that law of nations which compels every nation to defend its own interests and the rights of its citizens by force. So we may dismiss the question, so far as this case is concerned, as it appears to me, whether under the particular condition of those straits vessels of war in time of peace might or might not go through.

Mr. FRELINGHUYSEN. That was my position.

Mr. EDMUNDS. Then my friend and I, as we usually do by discussion, are coming to a common understanding.

Mr. FRELINGHUYSEN. I not only did not deny the right, but expressly said that merchantmen had a right by long usage to go through there.

Mr. EDMUNDS. I do not agree with my friend when he speaks of long usage. I assert again that, according to Vattel and Wheaton and public law, the right of vessels to go through straits of this character does not depend upon usage; it is an inherent right that belongs to the public law of nations. That is my proposition. Usage is a thing that arises upon the presumption of a compact at some distant period of time upon which the parties have agreed, but the evidence of which is now lost. That is usage or prescription. Now, my point is that the right of the vessels of the United States, its merchant vessels, to pass these straits did not depend upon usage, but it was a fundamental and inherent right belonging to the ships of the United States sailing the public seas peaceably and for purposes of trade to pass through this strait connecting one great sea with another. My friend says that by long usage the right had been acquired, if I correctly understand him, and he and I in that respect differ about the law.

Mr. FRELINGHUYSEN. I would submit to my friend that it is an immaterial difference inasmuch as we both agree (unless for the sake of disagreeing we shall depart from our position) that the merchantmen had a right to go through, and neither asserts that the ships of war had that right.

Mr. EDMUNDS. Well, I do not feel called upon to assert anything about the ships of war. I should maintain, if I were called upon, (but it is quite out of the necessary discussion of this case,) that in the situation of these straits, ships of war going through in the ordinary course of navigation, as convenient in respect of the dangers of the sea and not with any intent to disturb the peace of the inhabitants upon either shore, or to menance their safety, had just as good a right to go through as the merchant ships. That I should maintain, but I need not go into that discussion at all. We all agree now that through these straits at all times the merchant marine of the United States and of the other powers had an absolute right to pass free and unmolested; and we have seen by the treaties which I have read, three or four of them, one after another—the first one never performed by the Japanese; the second one not performed, and the third, and so on—there had been a constant frustration by this nation of the rights that it had professed to bestow upon the citizens of the United States in respect to trade, aided and supported in a most material and effective way by closing these straits to the passage of our merchant ships. That was the situation, and that situation continued, as these public documents show, which Senators can find in the diplomatic correspondence of 1863 and 1864 in all their committee-rooms and in the libraries—the closing of these straits had continued when the affair of the Pembroke took place, in 1863, for more than a year. It had continued for the purpose, I think the documents show, a part of the policy of the Japanese Empire, to avoid coming to blows with foreign powers by making fair-looking treaties that it never intended to observe and did not observe, and in aid of that disposition of frustration it had planted batteries on both sides of these straits and allowed no merchant vessels of any of the nations to go through except at its beck and pleasure.

Was not that an injury to the rights of the United States, as well as an insult to it? It was not the question of whether one vessel or two vessels should be turned away. When it came to be publicly known, as it was immediately, that these seas were closed to commerce and to passage, no wise ship-master would undertake it. No wise merchant would send a venture from any port of the United States or would dispatch a ship when he knew that when it was to reach its point of destination and to endeavor to pass through these

public highways of all nations it would be turned away, and when it should endeavor to trade with the ports that the treaties had declared should be opened at a certain time, it was to find them closed. You cannot measure general damage of that kind, as we found at Geneva, on a slate with a pencil by figures. You are obliged to make a general estimate of it and take it in a lump.

Mr. MERRIMON. If it will not be disagreeable to the honorable Senator at this point, I should like to ask him a question; for I am anxious to give a just and wise vote upon this bill. There was rebellion in a locality under the dominion of the Japanese government, and the rebellious authorities fired upon an American ship, offered an insult, and damage was done. I understand from the reports, and from the speech of the honorable Senator from New Jersey, that the Japanese government, as fully and as thoroughly as they could do it, disavowed the insult and disavowed the insulting acts. Afterward, by express stipulation, they agreed that the actual damage done should be measured by $3,000,000; that is, the damage done to the four powers—the British and the French governments and our own and the Netherlands, I believe. Our share of that fund was $785,000. That was supposed to be the amount that would cover our actual damage. Afterward, however, when the account was actually taken, it turns out that our actual damage is much less than that sum, to wit, say $125,000. Now, inasmuch as the Japanese government disavowed the insult and therefore wiped that out, disavowed the hostile act, after we have received the actual indemnity, not speculative indemnity, but the actual indemnity, I submit to the honorable Senator whether we are not bound in common honesty and honor, as well as in sound policy, to return the surplus of that fund.

Mr. EDMUNDS. As the honorable Senator states the question, I as of first impression should be largely inclined to agree with him; but I think if the honorable Senator will look at these two volumes of Diplomatic Correspondence, which he can do in one evening, and then at the treaty of 1864 which provided for this indemnity and at the course of historic events that I have been speaking of, he will be satisfied that the case he has stated as an inquiry does not exist here at all.

The firing upon the Pembroke and the amount claimed for it was known before; it had been figured up and submitted to the Japanese government, and I do not know but that they had paid it before. Certainly it was a very small part, if any, of this matter, and I was about coming to the point of knowing exactly how these straits came to be closed, because if they were closed by the power itself, and not by persons in rebellion whom that power by the utmost diligence could not overcome, then I should agree with the Senator from New Jersey that upon the principles of public law the power would not be responsible for it. But was that the case? These straits were opened, not by the Wyoming in 1863 when she went up after the Pembroke had been fired into. She could not do it; she was getting into trouble herself; she sunk two of their ships there easily, and she shelled their batteries, but found it quite convenient and wise to go back again to Yokohama, or wherever she started from, in a hurry. She was not strong enough to accomplish that object. She did not open the straits. The next year, the thing still hanging on, the straits still being closed, the combined powers sent an expedition, our part of it being a hired vessel because the Jamestown then in the Japanese waters was of too deep a draught to get to the proper place. Our authorities hired a vessel which did good service, and went up and all together the powers actually opened the straits. Now let us see what the fact was about how those straits came to be closed.

As in all other well-regulated dominions, there were several parties in Japan. The grand emperor was the Mikado, and his deputy, or whatever he might be called, was the Tycoon. Then he had his cabinets and departments and ministers and the Lord knows what, who carried on the government. When these treaties in respect to foreign powers and in respect to the rights of trade came to be agitated and made by the supreme authority, there was a natural jealousy against them among all the people. It was an innovation; it overturned traditional policy, and was thought to represent quite the reverse of progress. The people were restive; and then there were questions respecting the succession to the crown and the rights of their internal rulers that led to what might be called a state of rebellion, more or less sincere nobody can tell.

But when these straits were thus shut up during 1863, the Tycoon, not the Mikado, told the foreign powers, as these documents show—of course it would be tedious to read them through, but I wish every Senator would do so—and it was told them when the treaty was made, and was put in as a convenient method of easing off the Japanese, (a diplomatic lie, so to speak,) that the prince of the province of Nagato, that lay at the northern narrowest part of the strait, called the Strait of Simonoseki, or whatever it is, was a rebel, and that he was out of his relations, as President Lincoln used to say about the Southern States. He was out of his orbit in respect of the general government, and therefore he had not strength enough to open these straits as he admitted he ought to do. Our representative, Mr. Pruyn, and the English representative, and everybody believed it, and thought that they were doing the Tycoon and Mikado a grand service by going up and opening that thing and clear out this rebel. How did the truth turn out? Now listen. When they went up and opened the straits, and conquered this prince, whose name, signed to a document here, which he submitted to them publicly, and in his own hand, is too long and terrible for me to undertake to read, he said this to them, to which I beg the Senate's attention:

The instructions of the Emperor of Japan—

That is, the Mikado—

and those of the Tycoon are different. Because, in obedience to the Emperor's commands, I, at Simonoseki, fired upon foreign vessels, I have received the name of rebel.

When I appeared to be acting in opposition to the imperial orders a messenger came from the foreign nations to make it known to me and demand its discontinuance. This being the case, Nagato-no-kami (son and heir)—

His son, I suppose—

went on horseback to Kioto to learn the Emperor's will. Before arriving there, an insurrection having arisen in Kioto, there was no alternative but to return without having accomplished the mission. Three days ago I heard your illustrious country's ships had come to Ituma Sima. I sent a messenger, Mr. Ama, to you by boat to say that I did not care whether you passed through the straits or not. While on his way you left the island, and the boat returned, thinking to reach you from Simonoseki. Much time having elapsed, in the interval war broke out.

That is, in the interval before he could get into communication with these hostile ships and with his Emperor, and see whether he was to carry out his orders to close the straits or not, the event took place, as often happens in war as we all know.

For this inability to prevent its breaking out I am exceedingly sorry. I have not, from the first, hated foreigners. I consider this war a great affliction to thousands of people. I desire nothing but amity. Please consider the subject well.

That is what this rebel, so called—this prince of Nagato—stated on the spur of the moment, after the straits had been opened and his batteries silenced, was his ground for having resisted, that he was acting under the express orders of the Emperor, and, as he supposed, against the wishes of the Tycoon, because by the messages that had been sent by the ships there seemed to be a misunderstanding about it. Now turn to page 561 of this volume of Diplomatic Correspondence, to the memorandum of the conference held at Yokohama on the 18th of September, 1864:

Present: Sir Rutherford Alcock, K. C. B., Her Majesty's envoy extraordinary and minister plenipotentiary; Monsieur Léon Rocher, minister plenipotentiary of his Imperial Majesty the Emperor of the French; Robert H. Pruyn, esq., minister resident of the United States; Monsieur De Graeff van Polsbrock, his Netherland Majesty's consul-general and political agent; Takemoto Kai-no-kami, principal governor of foreign affairs and confidential agent of the Tycoon; Shibata Hinga-no-kami, governor of foreign affairs; Kolimoto Kai-no-kami, Ometske of the first class.

Then they go on to state their motive. You will observe that both parties are present, the representatives of the Tycoon and all. Now what is said?

Such being the substance of the news brought by the Perseus—

After these batteries had been silenced—

and the result of the operations against the Prince of Choshu, who had held the straits closed by batteries for fifteen months, it was now necessary to advert more especially to the prince's alleged justification of this long violation of treaties. The prince not only declared that, as a daimio of Japan, he had acted under the orders both of the Mikado and of the Tycoon in all that he had done, but he further produced certified copies in Japanese of these orders. The foreign representatives, under these circumstances, desired to know what answer the Tycoon's government had to make to this direct charge of complicity.

There being the official documents.

Takemoto Kai-no-kami replied that he would shortly have something to say on this subject—

Which was a diplomatic way of putting it off—

but would be glad first to hear anything which the representative might further have to communicate.

Then it goes on to state what the French minister said. I cannot take up your time to read these long things. Finally:

Takemoto Kai-no-kami had to remark:

First. That the order, such as it was, had been transmitted, not by the Tycoon, but by an act of treachery on the part of persons about the Mikado, and without competent authority.

That is to say, although this order was official, and under the great seal of the Empire of Japan, if they have such a thing, somebody had been guilty of an act of indiscretion in carrying the order to that prince, which in diplomatic language (because I have the greatest respect for the Japanese and that empire) is rather a circuitous way of getting around the truth.

Second. That it did not order the prince to fire upon foreign ships, and the proof that such was not its proper meaning might be found in the fact that although a similar order was communicated to all the other daimios, he alone had put that interpetation upon it because it suited his own designs.

To this the American minister replied that although it was true the order was not in express terms to fire, yet as it declared the intention of the Tycoon to cease all intercourse with foreigners on the 20th June, 1863—

Notwithstanding the three solemn treaties that it had made with us, to say nothing of the other powers—

the prince might naturally draw the inference that he was expected to treat them as enemies.

Takemoto replied, that such acts were contrary to the Tycoon's wish was further established by his sending down an aid-de-camp at once to cause the prince to stop firing, and this emissary was murdered in the territories of Choshu.

As to the appearance of double-dealing on the part of the Tycoon's government on the one side, concerting measures for the closing of the port of Yokohama, and, on the other, for maintaining the treaties in their integrity, the Tycoon had hitherto been, as the representatives well know, in a position to make something of this kind unavoidable.

There he leaves the strait question, and goes to one of the other numerous—I might say innumerable—acts of aggression and injury to our citizens and to our trade, right in the face of these repeated treaties;

and upon this strait question, I cannot do better in getting at the real truth, as I have no doubt this prince stated it, than just call attention to the very next sentence of this double-dealing people. When they come down to Yokohama and refer to the intention to close that port and the efforts made to do it in spite of the treaty, after it had been opened, and asked him what was meant by the apparent double-dealing about that, he says that the position of affairs made "something of this kind unavoidable." That is to say, it was necessary, in order to meet the views of the people of Japan, that the treaties should be skillfully dodged and put off, and that one face should be held out to the foreigner, and that face should be, "We are unable to carry these treaties into effect, because our people are so rebellious and wrong-doing;" and, turning inland, say to the princes and to the people, "Just push on and make all the disturbance you can, and we can persuade these foreigners that the government has no power to let them in, and we shall get the advantage, while they will get the loss, and nobody will be the wiser."

That was the eastern policy; it always has been the eastern policy; and I repeat that no man, as it appears to me, can read all this correspondence consecutively, from beginning to end, and the events that took place in and as a part of it, without being thoroughly satisfied that it was the steadfast policy of this people, government and all, to escape pressure from foreign nations by making these treaties, and then to have them sink like ashes into the sea without a single result coming from them; and to do that, it was a part of their policy to have an apparent rebellion in one province that commanded this great key of the passage between these seas and interfere with the commerce of the ports they had opened, not to open the ports that they had engaged to do, and in other words to absolutely discourage the enterprising merchants and ship-masters of the western nations from undertaking any intercourse or commerce with them at all.

That was the policy, and as a most important part of this policy, as everybody can see, the shutting up for fifteen months of this strait was almost an essential and indispensable step; and they did it. Then came the treaty—because I cannot weary the patience of the Senate by going more into detail in respect to these things. Now what does the treaty under which this money was paid say on its face was the ground for paying it?

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 is this same Choshu, for he has another name of Choshu—

which were assuming such formidable proportions as to make it difficult for the Tycoon faithfully to observe the treaties.

That is, you will see, literally true. There is diplomatic language. Even if this Prince of Nagato was going, as is shown by the official correspondence, to stop all intercourse with foreigners on the 20th of July, 1863, under the express orders of these people, still that action would make it difficult for the Tycoon to carry out the treaties. To be sure it was the Tycoon's own act, or the act of the Mikado; but that act of closing the strait did make it difficult, not only difficult but impossible, to carry out in their real sense and their literal spirit the treaties that had been made, which by necessary implication, if this had been a *mare clausum*, entitled our commerce to pass in reaching Hiogo from Nagasaki, and the reverse, for by the treaty of 1858, as it stood in force when these events took place in 1863 and 1864, Hiogo long before should have been opened. So they say in this carefully-prepared language, which shall injure nobody's feelings and expose nobody to public reproach, that these hostile acts of this Prince—

Make it difficult for the Tycoon faithfully to observe the treaties—

And these powers:

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—

Bear in mind "and the stoppage of trade"—

and the government of the Tycoon, on whom devolved the duty of chastising this rebellious prince—

Acting under their own orders, exposing the document to the firelight, as the saying is, so as to bring out the words between the lines—

being held responsible for any damage resulting to the interests of the treaty powers, as well as the expenses occasioned by the expedition—

What is he held responsible for? He is held responsible for the establishment of those batteries, the stoppage of trade by this rebellious prince. It does not say that he as a rebellious prince was doing it, and against the will of his government, but that he was a rebellious prince because he did not go in fully and cheerfully to support these treaties, as the Tycoon and Mikado pretended they wanted to do. That was all he was in rebellion about that anybody knows of; and at the same time that he was doing that, as I have shown, he was acting under the express orders of the Tycoon himself, that he should stop all intercourse on the 20th of July, 1863. Now then, the government of Japan says the treaty is held responsible—

for any damage resulting to the interests of the treaty powers as well as the expenses occasioned by the expedition.

My honorable friend from New Jersey seems to have discussed this case on the theory that the damage resulting from the expedition was the thing for which we received $750,000, or rather, to state it more broadly, because the proportion was a matter with which the Japanese had nothing to do, that the four powers received $3,000,000 for the damage resulting from that particular expedition to their public vessels of war. He shuts one eye tight and only opens the other who reads the treaty in that way, because the first and leading proposition of it is that the Japanese government is held responsible for the damages resulting to the interests of the treaty powers; and, second, for the expenses occasioned by the expedition.

What were the damages resulting to the interests of the treaty powers? Here was the closing or the keeping closed of three or four or five ports that by treaty obligation they had been bound to open years before. Here was the damage resulting to the general interests of American and European commerce by the constant harassing, wherever any of these commercial enterprises touched the shores of Japan, of the people engaged in them. They could not turn the corner of a street but they were in danger of the stiletto; they could not build a house that it was not in danger of being burned down the next night, and it often was. All these things growing and accumulating and culminating, and accompanied by this shutting up of this great passway of commerce, these people say are the damages resulting to the interests of the treaty powers as well as the expenses of the expedition for which the money was paid.

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—

And this was the 22d of October, 1864, almost a year and a half—

against the flags of divers treaty powers, and at the same time to regulate definitively the question of indemnities of war.

And I take it we all understand that indemnity of war in case of collision covers all the items and respects to which I have referred, the exclusion of commerce from where it was entitled to go; the constant annoyance and harassing of the citizens and subjects of foreign powers, in spite of their treaties to treat them well; all these as well as the closing of these straits.

To regulate definitively the question of indemnities of war of whatever kind—

Everything, in the broadest possible language, every injury that had been committed to American rights, to English, French, and Dutch rights, was to be covered by one lump sum—

in respect to the allied expedition to Simonoseki, have agreed and determined upon the four articles following:

1. 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.

2. The whole sum to be payable quarterly, in installments of one-sixth, or half a million dollars, to begin from the date when the representatives of said powers shall make known to the Tycoon's government the ratification of this convention and the instructions of their respective governments.

3. Inasmuch as the receipt of money has never been the object of the said powers—

And obviously enough, because you cannot estimate in money alone the damage that had been done to their respective rights by this constant system of duplicity and evasion and annoyance and force combined—

3. 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.

What happened then? The government of Japan said, "We do not want to open this port. We would a great deal rather square accounts with you down to the 22d of October, 1864, by giving you $3,000,000, than to carry out the spirit of the system that these treaties had inaugurated of opening trade by giving you any spot in the inland sea where you can set your foot on land. You are entitled to go through it; we have prevented you going through it for a year and a half; but when it comes to making a choice between giving you $3,000,000 and opening a port on this inland sea we give you the money." That shows, if the letter of the treaty did not show, that this $3,000,000 was not got as the estimated sum for any special and specific damage to any citizen of the United States or to any vessel or property of the United States. It was the only means left, except that of extermination, so to speak, that these foreign powers had after they had shown this government and its people that they could enforce their rights, of making them feel that it was for their interest to observe treaty stipulations and carry out in good faith the engagements they had entered into with foreign powers.

Mr. THURMAN. Will it interrupt the Senator's line of argument if I ask him a question?

Mr. EDMUNDS. Not in the least. I have no line of argument except to state my views and call the attention of the Senate to these facts.

Mr. THURMAN. The Senator has been making an argument of very great force, and now I want to ask him this question. Supposing that he is right, that the money paid to us was properly paid to us and that no good reason exists whatsoever for our returning any of the money to Japan, is that any reason for postponing this bill indefinitely? Is that any reason why the second section of this bill ought not to pass? Is that any reason for opposing anything but the first section of the bill?

Mr. EDMUNDS. Certainly not, Mr. President. Nothing I have said is any reason for opposing anything but the first section of the bill, except perhaps an incidental reason; but the first section of course is the main question. On that I have said all that I care to say, because I have only come into this debate incidentally after having heard the question discussed. Then what is the second section?

If this money was rightly obtained, then the question arises whether any part of it ought to be paid to the officers and crews of the Wyoming and the Takiang, which was the hired vessel that went up on the second occasion in 1864. If the money was not rightfully paid and was wrongfully exacted, then, of course, whatever duties we may owe to these gallant sailors should not be satisfied at the expense of the empire of Japan. We should pay them out of our own Treasury if we owe them anything. We must not "rob Peter to pay Paul." But if, as I most sincerely believe, there is no ground either of public law or of public morals, when you read the whole history of this affair, upon which Japan could justly claim, or, to state it in a fairer way, upon which we could justly feel that we were under any obligation to return this money, the question arises then, as the Senator says, whether it is worth while to postpone the bill indefinitely because the second section provides (the money being ours) to pay a part of it to these officers and crews. That raises the question how far the officers and crews of the public vessels of the United States are entitled to special rewards beyond those that the statutes give them.

I think that states the question fairly. In warfare upon land, as we all know, except in cases of loot, which are extreme cases nowadays and those that ought not to be encouraged, the officers and soldiers of the Army, who, in a certain sense, are exposed to equal peril with the sailors, and on the whole to greater peril when you sum up the number of days in a given year when the soldier is exposed to death from the enemy and the sailor is not, get nothing; they claim nothing. We may capture a city, as General Sherman did Savannah, with millions of public property—not private property, the loot of the soldier, as in the case of sacking a town—but property of the Confederated States, so called. I have never heard it claimed by officers and soldiers of the Army that they were entitled to any share of this public confederate property that was captured; and I am bound to say it for the honor and credit of the Navy that I have never or very rarely indeed—I do not remember an instance—heard it claimed by the officers and sailors of the Navy that they ought to have a single penny beyond that which the fixed laws at the time they performed their services gave them for the service performed.

Mr. THURMAN. I ask the Senator whether he heard the cases which I read to-day?

Mr. EDMUNDS. I did not.

Mr. THURMAN. That accounts for the remark.

Mr. EDMUNDS. Then I will ask my honorable friend, as he is asking questions, what were the cases to which he referred? I was unhappily obliged to be absent from the Chamber while he was speaking and hoped to get back in season.

Mr. THURMAN. I read quite a number; but take one single case, and I think the Senator will remember it; we gave to the officers and crew of the Kearsarge the full value of the Alabama.

Mr. EDMUNDS. Ah, Mr. President, now I understand the Senator, I think. He did not pay very exact attention to precisely what I was saying.

Mr. THURMAN. We gave Commodore Decatur and others the values of the Algerine vessels.

Mr. EDMUNDS. I certainly hope the Senator did not suppose I was so ignorant of our history in legislation as not to know that we had often given money. My statement was that I did not remember an instance in which the officers and crew of any one of the public vessels of the United States had claimed anything more than the statutes in force at the time gave them; but as a matter of gratitude for deeds of extraordinary gallantry and heroism, having it may be historic as well as personal effects connected with them, as in the case of the Kearsarge, and in the instance it may be of Decatur, Congress has, not upon demand but out of the gratitude of its heart and the gratitude of the hearts of the people, voluntarily bestowed upon these persons certain proportions or equivalents for the service they had performed.

Mr. THURMAN. Does the Senator understand that in this case Commodore McDougal and the officers have claimed anything?

Mr. EDMUNDS. No, Mr. President; I have not intimated any such thing. I do not. They have not. I should be surprised if they had. That brings me, having cleared up the question of right, to a question of exactly what is our duty, if duty can be said of gratitude, and I think it can. Often gratitude is a duty. What is our duty considering the general interest of the country, speaking of its interest in the best sense—not its interest in losing or saving $125,000, but in its best sense, considered in reference to the stimulus which every country ought to give to its enterprising and gallant citizens to distinguish themselves in time of public peril—how far we ought to go?

If we are to adopt the rule and hold it out to all our people that they are to expect whenever they go into an enterprise of public peril in the service of their country that they are to have some undefined and unknown sum of material compensation and reward beyond what the laws have fixed for them, if that is the policy, then this undoubtedly is a good instance to exercise it.

Mr. THURMAN. May I interrupt the Senator?

Mr. EDMUNDS. Certainly.

Mr. THURMAN. By our treaties with Japan we have treated as piratical vessels those which were destroyed by the Wyoming. If instead of sinking the Lancefield Commodore McDougal had captured her and brought her into port and had her condemned in a prize-court, he and his crew would, under the law, have been entitled to prize-money. Now, inasmuch as we by our treaties have ascertained the fact that she is to be considered as a piratical vessel, does the Senator think that there is no equity in allowing the officers and crew of the Wyoming prize-money just as if she had been brought into port and condemned?

Mr. EDMUNDS. First let me answer the Senator's first question, which I had not fully yet. I had not disposed of the subject of public interest as connected with gratitude with the *stimuli* that are to be held out in an undefinable way in advance to all citizens of a country to uphold it in time of peril. I am one of those who think—it may be old-fashioned or new-fashioned, I do not know which—that every citizen of a country owes to it military and naval service just as much as he owes to it the payment of taxes.

Mr. THURMAN. Did the Senator, as I and most of us have done, ever contribute money to get his ward in his city out of the draft?

Mr. EDMUNDS. No, Mr. President, I never did; neither did the city of which I happen to be an inhabitant. The city of which I happen to be an inhabitant contributed men.

Mr. THURMAN. Not money?

Mr. EDMUNDS. Money by taxation and men by volunteering, which I believe is a pretty good way to carry on a war myself, and I never heard, even obtained in that way, that they disgraced the State of Vermont or the city of Burlington.

Mr. THURMAN. I wish to say, if the Senator will allow me, that I honor them for it, for I am opposed to the whole principle of substitutes.

Mr. EDMUNDS. Now, Mr. President, we have got a good way from the seas we were discussing.

I repeat that I think the true principles, the broad principles of encouraging and stimulating activity and gallantry in the support of the rights of a country must not be made to rest in advance upon any expectation of pecuniary gain of the citizen who enters and performs that service except that which the law provides for it. All beyond that, in my judgment, is a matter of generosity, or rather a matter of gratitude, and if the occasion rises to that condition that makes it a signal instance, that calls for special and peculiar marks of the approbation, of the gratitude of the country, there is the case, as with Decatur, and as with Winslow of the Kearsarge, for this generosity and this gratitude. But I am bound to say, Mr. President—and I incline to believe that the gallant commodore who went up with the Wyoming and that gallant lieutenant who went up with the Takiang would agree with me—that there was nothing in the visit of those public ships of the United States, or of the allied powers, to the Straits of Simonoseki that exceeded the ordinary—the ordinary in its simplest sense—service due from a man-of-war. There was nothing so grand, so heroic, so historic, so peculiar in the warfare that these trained and civilized Anglo-Saxon men made upon these orientals in that little strait as to bring the case within the rule, if you put it upon the ground of gratitude and not upon a general principle that in all cases where there is a collision you are to pay something over. That is the way it appears to me. If I am wrong about that I shall be most cheerfully corrected by the Senate. If I am not wrong about it, then, unless we establish the principle that in all cases of collision property destroyed shall be equivalent to property captured, and therefore the parties are entitled to a share as if it had been captured and the real result of the property had been turned into the Treasury, which is a different thing, I do not see the propriety of the second section. I am content if you wish to establish such a rule, but I doubt its wisdom.

Now, my friend says on the ground of equity, leaving the question of generosity, if the ships that were sunk by the Wyoming in 1863 had been captured and brought into port and submitted to a prize-court and condemned, the officers and crew of the Wyoming would have been entitled to a certain share as prize-money. Granted. If not, why is it not just as equitable in this case, he asks. We might put a thousand cases. If Commodore McDougal had been a rear-admiral he would have received higher pay; but he was not a rear-admiral. The ships were not brought in, and therefore nothing was brought to the Treasury out of which a share could be given to these people. We make an exception and do give it to them, treating the destruction as more valuable than capture, as in the case of the Kearsarge. The grandeur of the instance of the Kearsarge would have been vastly diminished if, instead of fighting it out with great gallantry until the Alabama went to the bottom, aided and comforted by her English crew and her English compeers, she had quietly hauled down her colors and been brought to Boston. The affair would not have been half as grand and half as heroic as it was. I would much rather, we would all much rather in such a case, that the Alabama should have gone to the bottom where she fired her guns and in sight of that coast where she had been fitted out. That was where she belonged; and I should pay with delight double the money that we did give to those officers and crew, as in the place of the petty sum that could have been got for her on a sale when she was brought in and condemned by a prize-court. She finished the figure

of history. Built and manned on English ground and sailing from English seas, she lies for aught I know within a marine league of the English shores—I hope she has washed over there by this time—at home where she belongs. I am glad she did not return to any prize-court. That is a case where generosity, where policy, where pride makes the gift to the officers and sailors take the place of a measure awarded by a prize-court. If this was such a case also, then let us give it to them by all means. If it was not, let us change the general law, and make a rule that everybody who comes into collision and destroys any property of an enemy on the sea shall have a share as if he had turned it into the Treasury.

Mr. President, as the Senator from Ohio has suggested that these two questions may be different, as they are, I will withdraw the motion to postpone indefinitely. I do not wish to embarrass any action about the bill.

The PRESIDENT *pro tempore*. The motion to postpone is withdrawn.

Mr. THURMAN. I have only a single remark to make, which I am very sure I would not have to make if the Senator from Vermont had looked carefully into the precedents. The Senator from Vermont draws a distinction between the engagement of the Kearsarge and the Alabama and the engagement between the Wyoming and the Japanese batteries and ships. He speaks of the engagement in which Commodore McDougal was so conspicuous as an ordinary service of our naval force. What is meant by that I do not know, except that the ordinary service of the American Navy has always been to uphold its flag and the honor of its country. But if he were really to draw a true comparison between the personal heroism and bravery of the commander of the Kearsarge and the commander of the Wyoming, I have no fears that my old schoolmate and friend, McDougal, would suffer by the comparison.

Mr. EDMUNDS. Certainly he would not.

Mr. THURMAN. The Kearsarge was a ship as large and as fully equipped as the Alabama, and if my memory is correct they never were nearer than one-half mile to each other. I say this not to detract from the merit of the commander of the Kearsarge. He deserves all the honor that has been awarded him and more, and he and his officers and crew have received the grateful acknowledgments of the nation in the award to him and them of the full value of the Alabama. But McDougal, with his Wyoming, with his six guns only, fought at pistol-shot distance the shore batteries and the ships of Japan with one hundred and thirty-two guns. He, with six guns and one hundred and sixty men, at pistol-shot distance, fought those shore batteries and ships of war with over one hundred and thirty guns and thirteen hundred men, so that the officers of the Navy to this day speak of it as "Dave McDougal running a muck." That is the fact about it.

The PRESIDENT *pro tempore*. The question is on the amendment proposed by the Senator from Connecticut, which will be read.

The CHIEF CLERK. The amendment is to strike out in section 1, commencing in line 6, the words "if not incompatible with the relations of the United States to other powers."

Mr. FRELINGHUYSEN. I do not think there is any objection to the adoption of that amendment.

Mr. EDMUNDS. I was in hopes that my friend from New Jersey would oppose the adoption of that amendment if the bill is to pass. It seems to me that as this money has been divided, if we have a right to do anything about it at all, as I admit we have, it does not depend upon anybody's will but our own. Of course all there can be about it in respect to foreign powers would be the moral effect. If we pass this bill it might be said that the foreign powers would feel hurt——

Mr. FRELINGHUYSEN. I said that I was in favor of the amendment.

Mr. EDMUNDS. But I am saying that I am opposed to it, because I think it unwise to pass an act of Congress to pay back money, which, if we pass it, we shall have decided belongs of right to the Empire of Japan, depending upon the will of any foreign government. Even if it does disturb our relations with a foreign power, if this money belongs to Japan, let us pay it to her.

Mr. FRELINGHUYSEN. As I understood the amendment, it was to strike out that part of the bill which proposes that we should take into consideration the views of foreign governments.

Mr. EDMUNDS. Ah, if it is to strike that out, I am for it. I thought it was an amendment proposed by the Senator from Connecticut to insert such a clause.

Mr. FRELINGHUYSEN. No, it is to strike it out.

Mr. EDMUNDS. The Senator is quite right; I withdraw my speech. [Laughter.]

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from Connecticut.

The amendment was agreed to.

Mr. SARGENT. I move to strike out the first section of the bill.

Mr. MERRIMON. Mr. President, the evening is far spent, and I confess that I do not feel prepared to vote on this bill. I had about made up my mind to vote for it until I heard the exposition of the treaties and the circumstances under which they are made by the Senator from Vermont; and what he has said has impressed me very much. His speech certainly contains a great deal of information as to the history of this transaction that does not appear in the report of the committee.

The Senator from New Jersey made a very full and, I thought at the time, thorough exposition of the matter, taken in connection with the report of the committee, and I felt very clear in my conviction as to my course of duty; but I confess that now I begin to see the matter in a little different light. I for one would like to have further time to consider the matter. If this money is justly ours—and according to his exposition it would seem to be so—I do not want to return a dollar of it; but, on the other hand, if, as claimed by other Senators and by the committee, it is due to Japan, I would scorn myself and despise my country if we kept a dollar of it.

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

Mr. SHERMAN. I should like to have this matter disposed of tonight or let it be postponed to a later period, so that we can go on with other business. We shall be crowded off in a day or two. The Senate is aware that this has crowded off a bill upon which there ought to be action by the Senate. The Senate is pretty full now. We might as well vote upon this question. It has been very ably discussed.

Mr. THURMAN. Will the Senator from North Carolina allow me to suggest that there is a serious difference of opinion as to whether any of this money ought to be returned to Japan, and the opposition to returning any part of it has been greatly strengthened by the very able argument of the Senator from Vermont. Now those who are opposed to returning any part of this money, or think it doubtful whether we ought to do so, can achieve their purpose by moving to strike out the first section of the bill.

I have said already that in my judgment we had received all the indemnity we were entitled to and more, and that after having repaid ourselves all which we were fairly entitled to, it would be the sublimest act in history, one for which I confess I know no example, for us to return the money to Japan. I may be entirely mistaken about that. Perhaps it was rather sentimental in me than otherwise to say so, and therefore I do not press it; but let the vote be taken on the motion of the Senator from California to strike out the first section. If that carries, then let us perfect the second section, for it needs one or two amendments, and then vote on the bill, and I think we can vote on it and determine it this afternoon.

Mr. MERRIMON. That does not meet my difficulty. I confess I should like to hear more on this subject, and to have an opportunity to examine it myself. I have been going by the report of the committee. I concur most heartily in the sentiments expressed by the Senator from Ohio, [Mr. THURMAN,] taking his premises to be true; but, according to the speech of the Senator from Vermont, [Mr. EDMUNDS,] his premises are not true. Now, which am I to believe? I wish to exercise my judgment. One or the other is mistaken. I want to be informed.

The Senator from Ohio who sits nearest me [Mr. SHERMAN] suggests that we dispose of this bill by postponing it until an indefinite period in the future if we do not dispose of it now. Why, sir, there is a very large sum of money involved in this bill, and possibly—I do not know how that fact is—my vote may determine how it shall go. Perhaps the votes of two or three Senators will determine how it shall go. It seems to me there ought to be a fair opportunity, where a request is made in such sincerity, to have all the information we can get upon it. The sum is too large to be disposed of in a very hurried way, and the question is too serious a one, affecting international rights, international duties, international honor.

I now renew my motion that the Senate proceed to the consideration of executive business.

Mr. PADDOCK. I hope that motion may prevail. I think we ought to have further time to examine this very grave question.

TRANSFER OF AN APPROPRIATION.

Mr. MORRILL, of Maine. Before the Senate goes into executive session I want to ask the indulgence of the Senate to have the House bill that lies on the table laid before the Senate with a view to its reference.

The bill (H. R. No. 3356) authorizing a transfer of a certain appropriation was read twice by its title.

Mr. MORRILL, of Maine. I think on reflection I will ask that that lie on the table for the present.

The PRESIDENT *pro tempore*. The bill will lie on the table.

EXECUTIVE SESSION.

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

Mr. SHERMAN. If the Senator from North Carolina will consent, I will move that the Senate now take up what is called the silver bill.

Mr. EDMUNDS. Let us stick to one thing; otherwise we shall get everything huddled up.

Mr. MERRIMON. I only want an opportunity to examine this matter further.

The PRESIDENT *pro tempore*. Does the Senator from North Carolina yield to the Senator from Ohio?

Mr. MERRIMON. I insist upon my motion.

The PRESIDENT *pro tempore*. The Senator from North Carolina

declines to yield. The question is on the motion of the Senator from North Carolina that the Senate proceed to the consideration of executive business.

The motion was agreed to; there being on a division—ayes 31, noes 12.

The Senate proceeded to the consideration of executive business. After twelve minutes spent in executive session the doors were reopened; and (at four o'clock and fifty-seven minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

TUESDAY, *May* 2, 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.

ORDER OF BUSINESS.

The SPEAKER *pro tempore*. The Chair begs leave to lay before the House certain executive communications which were not submitted yesterday owing to the suddenness of the adjournment.

CAMP AND GARRISON EQUIPAGE.

The SPEAKER *pro tempore*, by unanimous consent, laid before the House a letter from the Secretary of War, transmitting letters of the Quartermaster-General relative to House resolution No. 102, regarding expenditures for camp and garrison equipage; which was referred to the Committee on Military Affairs.

A. B. STEINBERGER.

The SPEAKER *pro tempore*, also, by unanimous consent, laid before the House the following message from the President of the United States:

To the House of Representatives:

I transmit herewith, in answer to the resolution of the House of Representatives of 15th March last, a report from the Secretary of State and accompanying papers.

U. S. GRANT.

WASHINGTON, *May* 1, 1876.

The message and accompanying papers were referred to the Committee on Foreign Affairs.

OPENING OF CENTENNIAL EXHIBITION.

The SPEAKER *pro tempore* also, by unanimous consent, laid before the House the following message from the President of the United States:

To the House of Representatives:

I transmit herewith, for the information of Congress, the report of the president of the Centennial Commission upon the ceremonies to be observed at the opening of the exposition, on the 10th instant. It will be observed that an invitation is therein extended to Senators and Representatives to be present on that occasion.

U. S. GRANT.

WASHINGTON, *May* 1, 1876.

Mr. KELLEY. I desire that the invitation may be read.

Mr. HOPKINS. I was about to make that motion, if I had been able to catch the Speaker's eye.

Mr. RANDALL. It is quite long. It is in all the papers.

Mr. O'BRIEN. I would like to hear it read.

Mr. RANDALL. You can read it in the RECORD. I ask that it may be printed in the CONGRESSIONAL RECORD.

There was no objection.

The message and accompanying report were ordered to be entered on the Journal, and referred to the Select Committee on the Centennial Exposition. The report is as follows:

THE UNITED STATES CENTENNIAL COMMISSION,
INTERNATIONAL EXHIBITION OF 1876,
Philadelphia, April 20, 1876.

SIR: In obedience to the law constituting this organization, I have the honor to submit, in behalf of the commission, a schedule of the ceremonies to be observed at the opening of the International Exhibition of 1876, on the 10th proximo.

Formal invitations to attend have been sent to the President of the United States, the Cabinet, the Supreme Court, the diplomatic corps, the Congress, the Government centennial board, the foreign commissioners to the exhibition, the governors of the States and Territories and their staffs, the Legislature of Pennsylvania, the city authorities of Philadelphia, the chief officers of the Army and Navy, the women's national centennial committee, the centennial board of finance, and others in official positions or officially connected with the work of the exhibition.

On the morning of May 10 the grounds and buildings in general will be open to the public at 9 a. m. The memorial hall, or art gallery, the main building, and the machinery hall will be reserved to the invited guests and the exhibitors until the close of the ceremonies, about noon, when all restrictions will be removed. The exercises will take place in the open air, upon the south terrace of memorial hall, fronting the main building, in full view of the general public.

Invited guests, unless notified to the contrary, will enter the main building by way of the carriage concourse at the east end of that building, or by the south, middle, or western doors thereof. These entrances will be open to them at 9 a. m.

The music will be under the direction of Theodore Thomas, assisted by Dudley Buck, with an orchestra of one hundred and fifty and a chorus of eight hundred.

It is expected that guests will be seated in the amphitheater prepared on the south front of memorial hall by 10.15 a. m. The orchestra will play the national airs of all countries represented at the exhibition.

The President of the United States will be escorted to the grounds by Governor Hartranft, of Pennsylvania, and a division or more of troops from Pennsylvania and New Jersey arriving about 10.30 a. m.

PROGRAMME.

1. Centennial Inauguration March, by Richard Wagner, of Germany.
2. Prayer by Right Rev. Bishop Simpson.
3. Hymn by John G. Whittier; music by John K. Paine, of Massachusetts; orchestral and organ accompaniment.
4. Cantata, the words by Sidney Lanier, of Georgia; music by Dudley Buck, of Connecticut; orchestral and organ accompaniment.
5. Presentation of the exhibition by the president of the Centennial Commission.
6. Address by the President of the United States.

The declaration that the exhibition is open will be followed by the raising of flags, salutes of artillery, the ringing of the chimes, and Handel's Hallelujah Chorus, with organ and orchestral accompaniment.

The foreign commissioners will pass into the main building and take places opposite their respective sections. The President of the United States and the guests of the day will pass through the main building. The foreign commissioners, upon the President's passing them, will join the procession, and the whole body will cross to machinery hall. There, at the proper moment, the President will set in motion the great engine and all the machinery connected therewith. A brief reception by the President of the United States in the judges' pavillion will close the formal observances of the day.

The Centennial Commission is happy to report that the buildings and grounds, so far as the commission and board of finance are directly responsible, will be quite completely ready on the appointed day. The exhibits from foreign countries are extensive and brilliant beyond our anticipations. It would be too much to expect that every exhibitor should have his space in perfect order at the opening, though the most strenuous efforts to that end will be continually made; but the commission ventures to think that no previous exhibition was so far advanced at the same relative day.

The commission begs leave to ask the President to communicate this report to Congress soon, and most respectfully invites both Houses to attend the opening ceremonies of the international exhibition held in commemoration of the one hundredth anniversary of the Declaration of our national Independence.

I have the honor to be, very respectfully, your obedient servant,

JOS. R. HAWLEY,
President Centennial Commission.

To the PRESIDENT OF THE UNITED STATES.

EXHIBITION OF LIFE-SAVING STATION-HOUSE.

Mr. FOSTER, by unanimous consent, introduced a joint resolution (H. R. No. 110) authorizing the exhibition of a life-saving station-house at the centennial exposition; which was read a first and second time.

Mr. FOSTER. I ask that the joint resolution may be put upon its passage.

The joint resolution was read. It authorizes the Secretary of the Treasury to place on exhibition at the centennial exposition, upon such ground as may be alotted for the purpose, one of the life-saving station-houses authorized to be constructed on the coast of the United States by existing law, and for which appropriation has already been made, and to cause the same to be completely equipped with all the apparatus, furniture, and appliances now in use at the respective life-saving stations of the United States, said building and apparatus to be removed after the close of the exposition and re-erected and used for a life-saving station at the place now authorized by law; provided, however, that such exhibition of said station-house and equipment thereof and the return thereof shall not be attended with any expense to the United States beyond appropriations heretofore made in aid of said exhibition from the several Departments of the Government.

The joint resolution was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

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

The latter motion was agreed to.

WORKS UNDER GRANT TO JAMES B. EADS.

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

Resolved, That the Secretary of War be, and he is hereby, requested to send to this House a copy of any report made to him of the official inspection of works going on under the grant of Congress to James B. Eads made since November, 1875.

ELEVATOR IN SOUTH WING OF CAPITOL.

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

Resolved, That the Committee on Public Buildings and Grounds be, and they are, requested to inquire into the feasibility, expediency, and expense of putting a suitable elevator into the south wing of this Capitol.

APPROPRIATIONS FOR LIGHT-HOUSE SERVICE.

Mr. WELLS, of Missouri, by unanimous consent, from the Committee on Appropriations, reported a bill (H. R. No. 3356) authorizing the transfer of a certain appropriation; which was read a first and second time.

The bill was read. Of the sum of $585,000 appropriated in the first section of the act of March 3, 1875, making appropriations for the sundry civil expenses of the Government for the fiscal year ending June 30, 1876, and for other purposes, for salaries of nine hundred and twenty-five light-house keepers and light-beacon keepers and their assistants, the bill authorizes the sum of $16,000 to be transferred to and used in aid of the appropriation made in the same act for the maintenance of lights on the Mississippi, Ohio, and Missouri Rivers, and such buoys as may be necessary, including salaries of keepers.

Mr. WELLS, of Missouri. The appropriation for the maintenance of lights on the Ohio, Missouri, and Mississippi Rivers is exhausted. The appropriation for lights on the coast is in excess of the amount