taining thereto, and used in connection therewith, in the District, held and owned by a religious society having a regular and known place of worship, or by any incorporated institution.

The amendment of Mr. BLOUNT was agreed to.

Mr. ALDRICH, of Illinois. I move that the committee rise.

The motion was agreed to.

The committee accordingly rose; and the Speaker *pro tempore* having resumed the chair, Mr. BURROWS reported that the Committee of the Whole on the state of the Union, having had under consideration the bill to establish a revised code for the District of Columbia, had come to no resolution thereon.

Mr. KLOTZ. I move that the House adjourn.

The motion was agreed to; and accordingly (at eleven o'clock and fifteen minutes p m.) the House adjourned.

PETITIONS, ETC.

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

By the SPEAKER: The petition of the German Society of New York, for legislation for the protection of immigrants arriving in the United States—to the Committee on Foreign Affairs.

By Mr. BALLOU: The petition of pensioners of the late war, against the passage of a bill providing for a traveling court for pensioners—to the Committee on the Payment of Pensions, Bounties, and Back Pay.

By Mr. BERRY: Resolution of the Legislature of California, asking the enforcement of the eight-hour law—to the Committee on Education and Labor.

Also, resolutions of the Legislature of California, relative to the establishment of a first-order light and steam fog-signal station at Point Saint George, California—to the Committee on Commerce.

Also, resolution of the Legislature of California, asking that a quarantine depot be established on one of the islands in the Bay of San Francisco, California—to the same committee.

By Mr. DAGGETT: A letter from Mrs. E. B. Custer, widow of the late General George A. Custer, protesting against the passage of a bill providing for the erection of a statue of her late husband in the city of Washington, a duplicate of the one of him at West Point—to the Committee on Public Buildings and Grounds.

By Mr. DAVIDSON: The petition of citizens of Calhoun County, Florida, for an appropriation for the improvement of the Chipola River—to the Committee on Commerce.

By Mr. GILLETTE: The petition of C. A. Wool and 78 others, citizens of Manistee, Michigan, against the passage of the Wood refunding bill, and for the passage of the bill providing for the payment of the public debt—to the Committee on Ways and Means.

By Mr. HORR: The petition of citizens of Michigan, that certain public lands in that State be open to entry under the homestead laws or by cash entry—to the Committee on the Public Lands.

By Mr. HULL: The petition of citizens of Jacksonville, Florida, for the removal of the duty on salt, and that the same may be placed on the free list—to the Committee on Ways and Means.

By Mr. KETCHAM: The petition of William Tracy, of Poughkeepsie, New York, for the passage of the sixty-surgeon pension bill—to the Committee on Invalid Pensions.

By Mr. KLOTZ: The petition of citizens of Roaring Creek, Columbia County, Pennsylvania, that the Commissioner of Agriculture be made a Cabinet officer—to the Committee on Agriculture.

Also, the petition of citizens of Columbia County, Pennsylvania, for legislation regulating freight charges on railroads and to prevent unjust discrimination—to the Committee on Commerce.

By Mr. LORING: The petition of Goodrich & Porter and other firms and business men of Haverhill, Massachusetts, for the passage of a bankrupt law—to the Committee on the Judiciary.

By Mr. MONEY: The petition of Judd & Detweiler, for compensation for the destruction of the Post-Office Gazette by the publication of the Official Postal Guide—to the Committee on the Post-Office and Post-Roads.

By Mr. MORTON: The petition of Cary, Yale & Lambert, Thomas Michel, William Miller & Son, and 27 other firms of New York City, for the passage of the bill (H. R. No. 5600) to amend the Revised Statutes so that the duties on imported sugars shall be assessed upon the quantity delivered from the warehouse—to the Committee on Ways and Means.

By Mr. MURCH: The petition of Felix Maire and 26 others, citizens of Allegheny County, Pennsylvania, for the passage of the bill (H. R. No. 1383) for the creation of a national bureau of labor statistics at Washington, District of Columbia—to the Committee on Education and Labor.

By Mr. ORTH: The petition of 264 soldiers of Fountain County, Indiana for the passage of the Weaver soldier bill—to the Committee on Military Affairs.

By Mr. PHELPS: The petition of E. E. Hubbell & Son and others, of Bridgeport, Connecticut, for the passage of the bill amending section 2983 of the Revised Statutes, relating to the duties on sugar—to the Committee on Ways and Means.

By Mr. PRICE: The petition of citizens of Iowa, for the passage of a law prohibiting the sale of oleomargarine as butter, and that its manufacture and sale be placed under the supervision of the National Board of Health—to the Committee on Manufactures.

Also, the petition of citizens of Iowa, that salt be placed on the free list—to the Committee on Ways and Means.

By Mr. STEVENSON: The petitions of F. Oterkoetter & Co. and of W. K. Dodson, of Bloomington, and of J. & G. Herget, of Pekin, Illinois, for the passage of the Carlisle revenue bill—to the same committee.

By Mr. SPRINGER: The petition of Louis Huber and 72 others, citizens of Pleasant Plains, Illinois, against the passage of the Wood refunding bill, and for the passage of Mr. GILLETTE's substitute therefor—to the same committee.

By Mr. WELLS: Three petitions of citizens of Saint Louis, for the passage of the Carlisle revenue bill—to the same committee.

By Mr. WISE: The petition of J. W. Morrison and about 300 others, soldiers, for the passage of the Weaver soldier bill—to the Committee on Military Affairs.

IN SENATE.

THURSDAY, *April* 22, 1880.

Prayer by the Chaplain, Rev. J. J. BULLOCK, D. D.

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

ENROLLED BILL SIGNED.

The VICE-PRESIDENT signed the enrolled bill (S. No. 1160) to provide for celebrating the one hundredth anniversary of the treaty of peace and the recognition of American Independence by holding an international exhibition of arts, manufactures, and the products of the soil and mine, in the city of New York, in the State of New York, in the year 1883, which had previously received the signature of the Speaker of the House of Representatives.

PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a memorial of citizens of New Hampshire, remonstrating against the passage of the bill (S. No. 496) for the examination and adjudication of pension claims; which was ordered to lie on the table, the bill having been reported.

He also presented resolutions of the American Numismatic and Archæological Society of the city of New York, in favor of the admission of classical antiquities free of charge; which was ordered to lie on the table, the bill relative to the subject-matter having been reported.

Mr. HARRIS presented the petition of the German Society of New York, asking the passage of a bill for the protection of arriving emigrants; which was referred to the Committee on Foreign Relations.

Mr. MCMILLAN presented a petition signed by Henry M. Rice, A. S. Elfelt, J. H. Stewart, T. M. Newson, David Day, John Farrington, D. A. Robertson, Franklin Steele, John B. Sanborn, Henry F. Masterson, Orlando Simons, and R. R. Nelson, citizens of Minnesota, praying that six hundred and forty acres of land may be granted Anson Northup, a citizen of that State, in consideration of long, perilous, and valuable service rendered to the United States; which was referred to the Committee on Military Affairs.

Mr. ROLLINS presented the petition of N. F. Mathes and 70 others, citizens of Portsmouth, New Hampshire, praying the passage of the bill (H. R. No. 3743) to provide for the relief of navy-yard employés who shall become disabled while employed in the line of their duty; which was referred to the Committee on Naval Affairs.

REPORTS OF COMMITTEES.

Mr. CAMERON, of Wisconsin, from the Committee on Claims, to whom was referred the bill (S. No. 1478) for the relief of Lizzie D. Clarke, administratrix of the estate of Thomas L. Clarke, deceased, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. MAXEY. I am instructed by the Committee on Post-Offices and Post-Roads, to whom was referred the bill (H. R. No. 5524) to establish post-routes, which was reported by that committee and recommitted and printed, to report it with certain amendments.

I gave notice on a former day of the session that on to-morrow morning I should ask unanimous consent of the Senate to put this bill on its passage. That request was made on behalf of the committee, and the time given until to-morrow, and I ask that the bill be laid on the table.

The VICE-PRESIDENT. It will be placed on the Calendar.

CYRUS B. INGHAM AND OTHERS.

Mr. PLUMB. I am instructed by the Committee on Public Lands to report back the bill (H. R. No. 3992) for the relief of Cyrus B. Ingham, of the Territory of Dakota; Harvey Bryant and Guilford A. Wood, of Kansas; and Richard Parker, of Minnesota, with an amendment, and as this is a bill which ought to receive immediate consideration and only affects some four or five persons named in the bill and the amendment, I ask that it be considered at this time.

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

Mr. CAMERON, of Wisconsin. Is there a written report.

Mr. PLUMB. There is no written report. I will simply state the facts. These persons for various reasons, having made entries and having taken separate steps for taking out patents, one of them by

reason of having been driven off by the Indians, and the others for different reasons, were not able to perfect their entries. The bill only applies to cases of that kind; and only legislation can relieve them and enable them to make entries in place of those which they were not permitted to make by reason of circumstances which they could not control. It applies to but four or five persons of that sort.

The amendment reported from the Committee on Public Lands was read, being, in line 7, after "Minnesota," to insert:

James H. Pinkerton, of Colorado, and Ed. G. Wright, of Kansas.

The amendment was agreed to.

Mr. COCKRELL. Let the bill be reported now as amended.

The Chief Clerk read the bill as amended, as follows:

Be it enacted, &c., That the right to homestead, pre-emption, and timber-culture entry upon public lands subject thereto, is hereby restored to Cyrus B. Bingham, of the Territory of Dakota, Harvey Bryant, and Guilford A. Wood, of Kansas, and Richard Parker, of Minnesota, James H. Pinkerton of Colorado, and Ed. G. Wright, of Kansas, as fully as though they had not heretofore made any one or all of such entries, and had abandoned the same, or for any cause they have been unable to perfect their title thereto: *Provided*, That this act shall not be so construed as to enable any of said parties to procure title to land, either as a homestead, pre-emption, or timber-culture claim, in excess of what is fixed and provided by law.

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

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

The bill was read the third time, and passed.

The title was amended so as to read: "A bill for the relief of Cyrus B. Ingham, of the Territory of Dakota; Harvey Bryant and Guilford A. Wood, of Kansas; Richard Parker, of Minnesota; James H. Pinkerton, of Colorado, and Ed. G. Wright, of Kansas."

BILLS INTRODUCED.

Mr. HARRIS (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1660) for the relief of William P. Chambliss, late major Fourth Regiment United States Cavalry; which was read twice by its title.

Mr. HARRIS. I desire also to present the memorial of Major W. P. Chambliss, asking the passage of an act authorizing the President to reinstate him on the retired list of the Army with the rank of major, with certain documents, which I move be referred with the bill to the Committee on Military Affairs.

The motion was agreed to.

Mr. BALDWIN asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1661) to authorize the construction of a bridge across the Detroit River; which was read twice by its title, and referred to the Committee on Commerce.

JOHN PATTEE.

Mr. KIRKWOOD. Yesterday morning, at a time when I was not in the Chamber, the Senator from Alabama [Mr. PRYOR] reported from the Committee on Claims adversely the petition of John Pattee, praying for pay as lieutenant-colonel of cavalry for certain periods, and asked to be discharged from the further consideration of it. I should like to have the matter in such shape that it can be got upon the Calendar and receive the consideration of the Senate. I am informed that the only mode in which I can do that is to ask to have the petition referred back to the committee, so that I can prepare a bill and send it to the committee, and then when the report comes back the bill can be put on the Calendar. I ask to have the petition recommitted to the Committee on Claims.

Mr. PRYOR. I have no objection to the recommittal, as suggested by the Senator from Iowa.

The VICE-PRESIDENT. The Chair hears no objection, and the petition will be recommitted to the Committee on Claims.

EXCLUSION OF MATTER FROM RECORD.

Mr. MORRILL submitted the following resolution:

Resolved, That the Committee on Public Printing be instructed to take such measures as will exclude from the CONGRESSIONAL RECORD what purports to be a copyrighted argument of a territorial Delegate, which appears in the RECORD of to-day, but which was not, in fact, delivered in the House of Representatives.

The VICE-PRESIDENT. Is there objection to this resolution?

Mr. ALLISON. I should like to hear it read again.

The Chief Clerk read the resolution.

The VICE-PRESIDENT. The Chair hears no objection to the resolution, and it is agreed to.

Mr. DAVIS, of Illinois. I do not know whether it is proper for us to do that. I think such action should come from the House.

Mr. MORRILL. I am very sure that for the credit of the American Congress the Senate ought to take some notice of it, because we shall have to bear a part of the reputation, good or bad, for this poetical production. The resolution only proposes that the Committee on Printing shall take such measures as shall exclude the production from the permanent RECORD. I suppose the committee will confer with the committee of the House.

Mr. HAMLIN. I wish to say simply that we have had a case like this on another occasion, though not so poetical. The case to which I refer was one of abuse and personal slander, and I think in that case what purported to be a speech or an essay, that never was delivered in the House, was stricken from the RECORD in its regular edition, and was not printed in permanent form.

Mr. ALLISON. On the application of the Senate?

Mr. HAMLIN. Yes, sir; on the application of the Senate. I think the case runs on all fours with this.

Mr. SAULSBURY. I understand that the poem to which reference is made was placed in the RECORD by the permission of the House of Representatives. I do not know certainly that that is the fact; but if the House gave the Delegate authority to publish it in the RECORD the question arises as to whether it is competent for us now to have anything to do with it. It is rather a question for the House any way. This gentleman is a member of the House of Representatives, and it seems to me that we ought not to be inquiring in reference to this matter until the House itself takes some action in regard to the conduct of one of its members. Such action on our part would seem to be rather a reflection on the House of Representatives if they have in fact given him permission to publish it, although it was not delivered.

The VICE-PRESIDENT. Is there a motion to reconsider the vote by which the resolution was agreed to?

Mr. DAVIS, of West Virginia. I enter a motion to reconsider for the purpose of having it explained.

Mr. President, I understand, only from the reading of the RECORD, that the Delegate referred to asked permission of the House to publish an argument, and it was granted. It appears to me that what the Senator from Delaware has said is in the right line. It is a matter for the House, and not for the Senate.

I should probably not enter the motion to reconsider except that by the resolution the committee is not requested to inquire into the matter or to confer with the House committee or anything of the kind, but instructed to exclude this argument from the permanent RECORD. It appears to me we are stepping in the dark and too fast. We should not think it very kind in the House to pass such a resolution if the Senate had by any means directed a certain matter to go in the RECORD, and I think we had better go slowly.

Mr. MORRILL. I do not think the Senator from West Virginia, when he fully understands the facts, will have any objection to the resolution. As appears from the RECORD, the gentleman who is the author of this poetical effusion, covering a good many pages of the RECORD, asked permission of the House to present an argument. I think the House was imposed upon. At all events the House cannot authorize the publication of copyrighted articles in the RECORD. This purports to be copyrighted by the author; and certainly, so far as we are concerned, I think it is due to the dignity of this body, as a part of Congress, that we should see to it at once that this should be excluded from the permanent RECORD. We cannot get it out of the copy that is printed to-day, but for the credit of Congress I think it should be excluded from the permanent RECORD.

Mr. DAWES. I quite agree with the Senator from Vermont on the question of taste and propriety; but I must say I can hardly agree with him as to the idea that the Senate shall pass upon the question whether the House has been imposed upon. It seems to me that that is a question for the House; and the notion that the House cannot give consent or order anything to be printed in the RECORD without asking the Senate is also a new idea to me. We direct to be printed in the RECORD every day documents and papers that are not parts of speeches.

I agree with the Senator from Vermont about the impropriety of this matter going into the RECORD; but then that is a matter for the House to judge of, and not for us. They should pass upon it if they desire to do so; and if they are content with it, we cannot set up that the House shall come here and ask us what they shall put into the RECORD.

Mr. MORRILL. By unanimous consent I hope it will be allowed that the resolution as passed instead of reading "instructed" shall read "requested." I think there will be no objection to that.

Mr. HAMLIN. Without stopping to inquire specifically what may be the powers or what ought to be the action of the Senate finally upon this question, I think we should pass the resolution in some form. The Senate will recollect that the Committee on Printing is a joint committee, and when the resolution goes to the committee the House will have a hearing on the subject.

I think there ought to be some method taken to draw the attention of the House not only to this particular case but to a practice that prevails in that body of permitting speeches to be printed that are never delivered. It is wrong in principle in my judgment, and there is a proper method of reaching the House through a committee where the House is represented, and it will bring up the whole of this question.

I doubt very much if under the law such matter can legally go into the RECORD. When an essay or a speech is allowed to be printed without being delivered it may be abusive in its character; nobody hears it and there is no opportunity of replying to it. We had that occasion, as I said, once before, where a speech was published as if delivered in the House grossly personally abusive of a Senator, and according to my recollection, (but I am willing to admit that my memory is somewhat defective,) that was a case which went upon all fours with this, and that speech was omitted in the regular edition.

Of course we shall do nothing in the matter without the concurrence of the House; we should do nothing in any such case without consulting them, and without their joining in the action; but I think something ought to be done to impress upon the House the gross abuse that has grown up in that body, of permitting the publication of what was never delivered. Oh, a man must want to make a speech

awfully who writes it out for a newspaper. I should have some commiseration for him, I grant, but it has grown into an absolute abuse. Here is this exhibition of I know not what to call it; I suppose the author would call it a poem. To say nothing of its rhythm or rhyme, it certainly contains all the measures and meters known to the muses. I suppose he might say that many are poets, perhaps the best, who never penned their inspiration; but here is inspiration penned in fifteen mortal quarto pages. I hardly think it was proper to allow it to be published in our RECORD.

I would say that such productions as a part of legislative proceedings are disgraceful to the legislative bodies of the country.

Mr. DAVIS, of West Virginia. I suggest to the mover of the resolution that it would be well to let the motion to reconsider be pending for a day or two in order to see what the House will do. Let the resolution go over to-day. The House will take action, no doubt.

Mr. MORRILL. Since this discussion has commenced I have learned that the matter is before the House now. I shall be quite willing to have the resolution reconsidered, and I will modify it so as to instruct the committee to inquire into the propriety of excluding the production from the permanent RECORD.

Mr. COCKRELL. I find in the proceedings of Congress of the 13th of April the following entry in the RECORD of the 14th of April:

PAINTINGS ON WALLS OF THE NATIONAL CAPITOL.

Mr. DOWNEY. Mr. Speaker, I have prepared an argument in support of a bill (H. R. No. 5795) providing for certain paintings on the walls of the National Capitol, which I desire printed in the CONGRESSIONAL RECORD.

There was no objection, and leave was granted accordingly.

Mr. WITHERS. I wish to say simply that this is a matter which, in my judgment, concerns the other House entirely. We should regard it as a personal insult on their part if they were to introduce a resolution proposing to exclude from the RECORD anything which the Senate had declared should be printed therein. Whether it be in poetry or in prose, I consider makes no difference. If a gentleman chooses to submit a poetical argument rather than a prosaic one, why may he not do so? I have myself seen a bill in a chancery court, filed in the court and entered, all in poetry. I think this matter is one, as I say, resting entirely with the House, and the Senate has nothing whatever to do with it.

The VICE-PRESIDENT. Shall the vote by which the resolution was agreed to be reconsidered?

The motion to reconsider was agreed to.

Mr. MORRILL. Now, as I understand the House are taking cognizance of this matter, for the present, if I may be allowed to do so, I will withdraw the resolution.

The VICE-PRESIDENT. The resolution is withdrawn.

AMENDMENT TO POST-ROUTE BILL.

Mr. GARLAND submitted an amendment intended to be proposed by him to the bill (H. R. No. 5524) to establish post-routes; which was ordered to lie on the table.

ELIAS C. BOUDINOT.

Mr. BURNSIDE. I ask unanimous consent to have considered the bill (S. No. 1315) making an appropriation for the erection of a light-house and fog-bell on Old Gay Rock at the entrance of Wickford Harbor, Narragansett Bay.

Mr. DAVIS, of West Virginia. I understand that the Senator from Indiana [Mr. VOORHEES] wishes to submit some remarks this morning. I know my friend from Rhode Island will not interfere with him.

Mr. VOORHEES. What is the pleasure of the Senator from Rhode Island?

Mr. BURNSIDE. I yield the floor.

Mr. VOORHEES. I desire to call up the bill (S. No. 120) to permit Elias C. Boudinot, of the Cherokee Nation, to sue in the Court of Claims, for the purpose of submitting some remarks upon it and then letting it go back upon the Calendar and resume its place there.

The Chief Clerk read the bill by its title.

The VICE-PRESIDENT. The Chair hears no objection to the present consideration of the bill for the purpose indicated by the Senator from Indiana.

Mr. VOORHEES. I ask that the amendment which I send to the desk be read.

The CHIEF CLERK. It is proposed to strike out all after the word "treaty," in line 18, page 4, down to the end of line 21, and to insert in lieu thereof the following:

He, the said Elias C. Boudinot, be, and he is hereby, authorized to bring suit in the Court of Claims against the United States Government to recover what may be due to him in justice and equity for the loss inflicted upon him by reason of said seizure, for an alleged violation of the internal-revenue laws, of his property, a tobacco factory, its detention and damage thereto whilst under seizure, the value of the tobacco, material, and other personal property also seized, and the expenses to which he was subjected thereby.

Mr. VOORHEES. Mr. President, on the 24th day of March, 1879, more than one year ago, I had the honor to introduce into this body the bill now under consideration, it being a bill authorizing Elias C. Boudinot to bring suit in the Court of Claims for the alleged wrongful seizure of his property by the revenue officers of this Government. The Judiciary Committee has reported it back with an amendment in the nature of a substitute restricting the right of recovery in such suit to the amount realized to the Government on the sale of said property. The amendment which I have now offered is to the effect that if the claimant shows a right to recover at all, he shall be permitted to recover "what may be due to him in justice and equity for the loss inflicted upon him by reason of said seizure."

Sir, we have heard much of late of the Indian question. It appears in many forms. Generally, however, it arises in connection with the mission of the white man to obtain what belongs to the Indian. I think I will show that it so arises in the matter under discussion.

Elias C. Boudinot is a Cherokee Indian by birth and citizenship. In his veins commingle in equal quantities the blood of the red man, his father, and of the white race, his mother's people. His life and his hopes have been with the people of his father. Advancing himself in education and in all the ways of civilization he has labored for a similar advancement for them. It has been my good fortune to have known him long and well. He is a man of high ability, with rare natural gifts and rich acquirements—a gentleman of culture and of broad, progressive views.

During the war of the rebellion the Cherokee Nation, following the example of its neighboring Commonwealths, was torn by internal dissensions; one party adhering to the Union and the other following the colors of the lost cause. When the war was over both parties appeared here seeking by treaty to place the nation on a favorable footing again with the Government. At the head of the delegation, known as the Southern Cherokees, appeared Colonel Boudinot. I had the honor to introduce him and the entire delegation to the President of the United States, and to hear from his lips a stream of the most touching eloquence as he addressed the Great Father and invoked for the whole Cherokee people a generous and beneficent policy. He said that he spoke for a people who simply aspired to pursue the arts of peaceful industry and wealth, and to educate their children into a higher plane of civilization. It was largely due to his influence that the treaty of July, 1866, between this Government and the Cherokee Nation was concluded. In fact the more liberal features were all his. He was anxious to induce his people to embark in trade and manufacturing. He also desired to secure for them the advantages of all the markets outside of their own territory for everything they had to sell. This was true statesmanship for his nation. He therefore obtained the insertion of article 10 into the treaty, which reads as follows:

Every Cherokee and freed person resident in the Cherokee Nation shall have the right to sell any products of his farm, including his or her live stock, or any merchandise or manufactured products, and to ship and drive the same to market without restraint, paying any tax thereon which is now or may be levied by the United States on the quantity sold outside of the Indian Territory.

By this clause Colonel Boudinot believed, as he had the clear right to believe, that he had secured to the citizens of the Cherokee Nation the great privilege, among others, of manufacturing for their own use any articles they pleased, and further that he had secured for them free access, without restraint, to the markets outside of their nation for all their manufactured goods, subject only to such taxes as this Government levied on similar goods in its own markets. The believers in Indian progress and civilization hailed this provision of the treaty of 1866 as an immense step toward the fulfillment of their hopes and faith. Wise and benevolent people accepted it as a good omen for the future of the Indian and for our own frontier populations. Colonel Boudinot himself acted upon it at once, showing his absolute reliance on the honor of this Government and giving an example of enterprise and industry to his Cherokee countrymen. In 1867, about a year after the treaty went into effect, he erected a tobacco manufactory in the Cherokee Nation and commenced the manufacture of tobacco. Rumors very soon reached him that he was likely to encounter the hostility of tobacco manufacturers in Saint Louis and elsewhere, who had up to that time enjoyed a monopoly of the tobacco trade in the Indian Territory, selling tobacco to the Indians for three or four times as much as the Indians would have to pay for it if manufactured, under the treaty, in their own country. He promptly communicated with the Office of Internal Revenue and he received assurances that allayed his fears. The spirit of hostility, however, to Indian enterprise and advancement did not sleep. An act of Congress was procured, which became a law July 20, 1868, containing the following provision:

That the internal revenue laws imposing taxes on distilled spirits, fermented liquors, tobacco, snuff, and cigars, shall be held and construed to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same shall be within a collection district or not.

If "the exterior boundaries of the United States," the terms used in this act, do embrace, so far as the sovereign title is concerned, all the Indian territories, reservations, and lands set off, or rather spared to the Indians out of what we have step by step taken from them, still I believe it is the first time in our history, or in the history of the world, where one nation has attempted to assess taxes for its own support on the citizens of another nation with which it had peaceful and friendly relations defined by treaty. If in fact, as has been decided by the Supreme Court, this act of Congress operates in the Indian country to levy and collect taxes, then this Government presents the pitiful spectacle of gathering an internal revenue from a small and powerless people, who are not American citizens, have no representation in making the laws by which they are taxed, are denied the ballot as much as if they were citizens of China, and cannot bring suits in our courts to obtain protection. And when this is also done in flagrant and confessed violation of a treaty stipulation, kicking it con-

temptuously out of our way, simply because the other party was too feeble to resent the miserable indignity, the attitude of this Government, on this phase of the Indian question at least, becomes a matter of wonder if not of praise.

Soon after the passage of this act of July, 1868, Colonel Boudinot became aware that the white man who, as usual, wanted to trade with the Indian, and in this instance it was the white manufacturer of tobacco wanting a monopoly of the trade in the Indian country, was at work to have the provisions of the act enforced in the Cherokee Nation. The spectacle of an Indian, the first of his race, engaged in manufacturing articles of use in the Indian country for his own people was not to be endured by the patriotic Indian trader on the outside. Was it not a violent innovation upon the Indian trader's immemorial right to cheat and plunder the Indian? That trader thought so in this instance. He moved without delay, and with all his forces, and with all the evil traditions of centuries clinging to him, upon the official quarters of this Government. He had never before failed to find there all the rich and good things his heart desired. It remains to be seen whether he failed in this raid against treaty obligations and common honesty. When the note of alarm reached Boudinot he addressed the nearest revenue officer on the subject. Here is his manly and frank letter to Major James Marr, then supervisor of internal revenue at Saint Louis, Missouri:

CHEROKEE NATION, *November* 20, 1868.

SIR: I am a citizen by birth of the Cherokee Nation of Indians, and am the owner of a tobacco factory in said nation. The tobacco I have sold in the Indian country is exempt by treaty from taxation. Such quantities as I have sold in the United States I have paid the tax upon, and still intend to do so upon every pound disposed of hereafter. It has been my custom to report all tobacco sent within the States, to the nearest assessor, who marks the same, and collects the tax when sold. I respectfully ask that the assessors for the southern district of Kansas, and those stationed at Carthage and Kansas City, Missouri, be instructed to permit the continuance of the practice until otherwise directed, with such additional regulations to prevent fraud as you may deem expedient.

Very respectfully, your obedient servant,

E. C. BOUDINOT.

Major JAMES MARR,
Supervisor Internal Revenue.

This letter does not sound as if it was written to cover fraud or fraudulent designs. A more upright tone of perfect integrity was never contained in any communication to the authorities of the Government. Major Marr forwarded it to the Commissioner of Internal Revenue in this city, with his indorsement upon it, as follows:

OFFICE SUPERVISOR INTERNAL REVENUE,
Saint Louis, December 3, 1868.

Respectfully referred to the Commissioner of Internal Revenue for decision as to how this tax can be collected. I believe Major Boudinot desires to pay the tax on all tobacco sold in the States, and I would recommend that the assessors and collectors and their deputies in the southwestern portion of the State be instructed to assess and collect this tax upon requiring Major Boudinot to report all tobacco to them that he intends offering for sale in this State. I am not exactly aware how this tax is to be collected, but if this is not contrary to the spirit of the law, I think it would be well to afford him this facility. Major Boudinot desires to pay this tax at Carthage and Kansas City, Missouri.

JAMES MARR, *Supervisor.*

Here the question was plainly presented whether the act of Congress approved July 20, 1868, made any change in Boudinot's right under the treaty to manufacture and sell tobacco in the Indian Territory exempt from taxation. The question was put direct by Boudinot himself to the proper officers having the subject in charge. The following explicit and binding answer was addressed by the Commissioner of Internal Revenue to Major Marr, the supervisor at Saint Louis:

TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE,
Washington, December 26, 1868.

Sir: I have received the letter of E. C. Boudinot, esq., dated Cherokee Nation, November, 20, 1868, addressed to you, and by you referred to this office with the request that instructions be given to the assessor and collector in the southwestern portion of the State of Kansas to assess and collect the tax on all tobacco manufactured by Mr. Boudinot in the Cherokee Nation and sent into the State for sale.

In reply I have to state that under the law now in force all taxes on tobacco must be paid by affixing stamps of such denominations and value as will cover the amount of tax to which the tobacco in question may be liable when sold or offered for sale in any of the States or Territories of the United States where collection districts are established and officers of internal revenue are appointed to collect the tax and see that the law is strictly administered.

No collection district is established over the Cheroke Nation, and no taxes are authorized to be assessed or collected under the internal-revenue law upon goods manufactured and sold in the Cherokee Nation. But tobacco, snuff, and cigars manufactured within the Cherokee Nation and sent into the States for sale will be liable to seizure and forfeiture unless the same shall bear revenue-stamps denoting the payment of the tax.

To secure his tobacco against such liability Mr. Boudinot must purchase and affix the stamps, and there can be no objection, under the circumstances, to the collector or deputy collector nearest to Mr. Boudinot's place of manufacture furnishing him with the amount of stamps he may require upon his paying for the same. Mr. Boudinot can affix to his tobacco labels and he can put upon it his brands showing where and by whom it is manufactured.

This being done, and the stamps affixed, which the Government regards as the most important point, his tobacco will pass current in any of the States where he may desire to ship it, and will be free from any liability to seizure or detention.

If the collector should have any hesitation in furnishing Mr. Boudinot with stamps, upon application of Mr. Boudinot stating of whom he wishes to purchase stamps, instructions will be given.

I presume, however, that this letter, or a copy of it, sent to the collector, will be all that is needed to enable Mr. Boudinot to purchase stamps.

Yours, respectfully,

THOMAS HARLAND,
Acting Commissioner.

Major JAMES MARR,
Supervisor, Saint Louis.

To show that this important ruling of the Commissioner was received and acted on, I submit the reply of Major Marr acknowledging its receipt. It reads as follows:

OFFICE SUPERVISOR INTERNAL REVENUE,
January 4, 1869.

SIR: Your letter of the 26th of December last in relation to the manner in which tobacco manufactured in the Indian Territory can be sold within the limits of collection districts is received, and copies thereof have been sent to collectors in districts adjacent to the Indian Territory for their information. Under the instructions of the Commissioner all trouble in the premises will be surmounted, and Mr. Boudinot can go on with his business without molestation.

Very respectfully, your obedient servant,

JAMES MARR,
Supervisor.

Hon. E. A. ROLLINS,
Commissioner of Internal Revenue, Washington, D. C.

To any ordinary mind this correspondence with the Revenue Office would seem to have clearly and conclusively settled all an Indian manufacturer's rights under the tenth article of the treaty of 1866. This correspondence was placed in Boudinot's possession by Major Marr, and he fondly believed that he had reached an end of all his troubles, and that he could go on with his business unmolested. The resources of the outside manufacturers and traders, however, were not exhausted. They knew that if they could obtain a construction compelling Boudinot or any other Indian manufacturer to pay the tax on manufactured articles at the factory in the Indian Territory the whole business would be broken up, and the right secured by the treaty to ship such articles to market without restraint would become a mockery and a snare. This, therefore, was the next point aimed at. Colonel Boudinot again appealed to the Commissioner of Internal Revenue for a decision.

He again appealed to that Government with which he has always kept honest and scrupulous faith. I can do no better than to lay his letter before the Senate:

WASHINGTON, D. C., *February* 20, 1869.

To the Commissioner of Internal Revenue:

By the terms of the tenth article of the Cherokee treaty of 1866, a citizen of the Cherokee Nation has a right to send any article manufactured in said nation to market without restraint.

No tax is required upon any such article unless it is sold outside of territory of said nation.

I am engaged in the manufacture of tobacco in said nation, being a citizen thereof. There is but little market for it in the nation, and I wish to avail myself of the treaty stipulations to send it into the market of the country "without restraint." It is plain that this stipulation is defeated if I am required to pay the tax upon my tobacco before I start with it from the place of manufacture, or as soon as it crosses the line of the territory of the nation into the States.

No one manufacturing tobacco in the nation can pay the taxes on the same until he gets it into a market where he can anticipate the proceeds of the sale of the same. To require me or any one else to do so defeats at once the provisions of the treaty. Besides, by the terms of said article of the treaty a tax can only be levied upon what is actually sold outside of said nation. How can a proper tax be levied unless a sale is allowed outside of the boundaries of the nation? A proper construction of this article of the treaty would doubtless require means to be provided by which the amount of actual sales should be kept, and upon it the assessment be made; that is the wording and only correct meaning of the treaty if it was literally fulfilled. But I do not ask that this shall be done. I only desire to send my tobacco manufactured in said nation "to market without restraint." For that purpose I respectfully ask that the collectors and revenue officers of the collection district of Kansas—the third collection district of Arkansas—and the sixth district of Missouri, all of which border on the territory of said nation and are contiguous to my place of manufacture, be instructed to receive into their custody such manufactured tobacco as I report to them, and that I have transit without restraint or molestation for the same to Baxter's Spring and Fort Scott, in Kansas; to Fort Smith, Fayetteville, and Bentonville, in Arkansas, and to Kansas City, Carthage, and Neosho, in Missouri. And I further respectfully ask that I be allowed to pay the taxes on said tobacco when I withdraw it from the custody of said revenue officers for the purposes of sale. I submit that in this way I can avail myself of my right under the treaty aforesaid to send my product to market without restraint, and at the same time the Government collect its taxes on such amounts as are sold outside of said nation, and be made entirely secure in the transaction. I am not only willing, but anxious, to pay all taxes that may be levied, and will give bond if required to that end, with sureties to be approved. I will also mark my tobacco to the care of the collector of revenue when I send it from the nation to market at any one of the foregoing places.

Respectfully, &c.,

E. C. BOUDINOT.

In response to the foregoing communication the Commissioner of Internal Revenue, on the 23d of February, 1869, in a letter addressed to Boudinot, made the following decision, again in his favor:

In a former correspondence between this office and yourself upon a similar subject attention was directed only to the provisions of section 107 of the act of July 20, 1868, imposing a tax on manufactured tobacco produced anywhere within the exterior boundaries of the United States, whether the same shall be within any collection district or not. It was then held by this office that, notwithstanding the language of said section, the tax could not be collected upon tobacco manufactured in the Indian country so long as it remains in said country; but upon its being brought within any collection district of the United States it would be liable to seizure and forfeiture unless it should be properly stamped, thus indicating that the tax imposed by law had been paid.

At that time attention was not called to the provision of the treaty above referred to. The construction of the statute then adopted seemed to be in conflict with the provisions of the treaty. Inasmuch as the treaty is the paramount law, the statute when in conflict must give way to it.

Although the treaty provides that every Cherokee and free person resident in the Cherokee Nation shall have the right to sell any product of his farm, including any merchandise or manufactured products, and to ship the same to market without restraint by paying any tax thereon which is or may be levied by the United States, it is nevertheless proper and reasonable that the Government of the United States should adopt necessary precautions to secure the tax imposed upon the quantity sold outside of the territory of the Indian nation.

To this end you will be permitted to ship your manufactured tobacco to the places indicated, to wit, Baxter Springs and Fort Scott, in Kansas; Fort Smith, Fayetteville, and Bentonville, in Arkansas, and to Kansas City, Carthage, and Neosho, in Missouri, provided that the packages indicate by sufficient marks the place

of manufacture, the name of the manufacturer, and be shipped to the care of the collector of the district in which the place of destination is situated, the tobacco upon arrival to go into and remain in the custody of the collector of said district until the tax thereon is paid, and provided further that timely notice is given such collector of the shipment of such tobacco, the notice indicating the quantity and description shipped, where shipped, and when its arrival may be expected, and the same must be shipped by the most direct route.

The observance of these provisions will probably save you annoyance, and secure to the Government its rights.

Here at last every question arising out of the treaty of 1866 and the law of 1868 was passed upon and closed by the authority of this Government. For more than two years and a half Boudinot had in the only possible mode sought to know exactly what his rights were. In a patient and respectful tone he had repeated his inquiries from time to time, as new dangers threatened him, until it was finally and fully determined what he might lawfully do in the premises. Will any one say that his conduct could have been better, or that it ought to have been different? Will any one say that this Government had not concluded itself as to his right to manufacture and sell tobacco in the Indian Territory exempt from tax? Was it not also plainly decided that he had the right to ship manufactured tobacco without restraint to the markets outside of that Territory, and to sell the same, first having paid the Government tax at certain designated points? What more or what else could any man do than to rely on the good faith of this Government under such circumstances? Is there a gentleman on this floor who would not have felt perfectly secure in proceeding with a business thus guaranteed and sheltered under the repeated decisions of the proper Department of his Government? Boudinot, confident that all controversy was over, pushed forward in his enterprise and invested almost everything he had to make it a success. We will see directly what measure of success awaited him.

Sir, the official history of this case was made thus far while Mr. Rollins was Commissioner of Internal Revenue. It is due to that officer to say that he kept his official word with Boudinot and maintained the integrity of his decisions. A change, however, came over this country in March, 1869, and in no branch of the public service was that change more marked than in the administration of the internal-revenue laws. During that month Mr. Rollins was superseded by Columbus Delano, and it soon became apparent that a new era had in fact been inaugurated. Confining myself, however, to the subject immediately under discussion I find that Boudinot was not molested for a period of about five months under the new order of things. During that time he was proceeding with his business strictly in conformity with the rulings and instructions of the Internal Revenue Office, when all of a sudden, on the 13th of August, 1869, and without notice, the following peremptory letter was issued from that office:

TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE,
Washington, August 13 1869.

SIR: I am informed that for the purpose of avoiding the tax imposed upon manufactured tobacco parties have established factories in the Indian territories, in some cases just across the boundary-lines, where tobacco is manufactured on which no tax is paid, and it is further intimated to me that this tobacco is intended to be sold, at least large portions of it, in the States adjoining the Indian territories.

It is my purpose, if possible, to break up this illegal manufacture and sale of tobacco, and as a first step toward this you are authorized and instructed to seize every pound of manufactured tobacco found outside of a factory or bonded warehouse in your district that does not bear the evidence of having paid the tax to which it is liable, and take the proper steps for its confiscation.

You will also present to the United States district attorney for prosecution, for violation of section 71, act of July 20, 1868, all persons in your district who sell, offer for sale, or have in their possession, not in a factory or bonded warehouse, any manufactured tobacco on which the tax has not been paid as required by law. In a few days I shall probably write to you further on this subject.

Very respectfully,

J. W. DOUGLASS,
Acting Commissioner.

R. W. WISHARD, Esq.,
Collector Third District, Dardanelle, Arkansas.

In this remarkable document the treaty right to manufacture tobacco in the Indian Territory is utterly ignored. It is written as if no such treaty existed. The acting Commissioner speaks of parties having established tobacco factories in the Indian country in order to avoid the tax imposed on manufactured tobacco, when in point of fact that is exactly what the treaty provides may be done. He denounces such manufacture as illegal, when by the treaty of 1866 it is expressly legalized. He gravely says that "it is further intimated" to him "that this tobacco is intended to be sold, at least large portions of it, in the States adjoining the Indian Territories." The treaty guaranteed the right to sell such tobacco outside of the Indian Territory in so many words, and the Internal Revenue Office had instructed Boudinot how to proceed under that provision. The acting Commissioner authorized and instructed the collector of the third Arkansas district to seize and confiscate every pound of manufactured tobacco found in his district outside of a factory or bonded warehouse on which the tax had not already been paid. He did this in the face of the records of his own office, which showed him that within less than six months before he issued this outrageous order Boudinot had received official permission to ship his manufactured tobacco without previous payment of the tax to Baxter Springs and Fort Scott, in Kansas; Fort Smith, Fayetteville, and Bentonville, in Arkansas; and to Kansas City, Carthage, and Neosho, in Missouri. The conditions on which such shipments were to be made are contained in the decision of the Commissioner of February 23, 1869, already cited. Every pound of tobacco shipped under this license of the Government was made liable to seizure and confiscation by the order of August 13, 1869, if it was found in the very places where Boudinot was authorized to send it.

And as if to reach a climax of absurdity and outrage, the Commissioner, in closing this order, instructs his collector to see to it that Boudinot is criminally prosecuted for doing precisely what he had the written authority of the Government of the United States to do. Let no one pretend, in defense of this and subsequent proceedings, that Boudinot ever sold, offered for sale, or in any manner tried to dispose of manufactured tobacco outside of the Indian Territory without the payment of the Government tax. No such charge was ever made against him. No such suspicion, or the faintest trace of it, ever attached to him. He paid tax on every ounce he ever offered to sell in the States, and his worst enemy never said or intimated otherwise. It has never been pretended in any quarter that he defrauded the Government or that he ever owed it a dollar which he did not pay. This last blow, therefore, was aimed at him in the mere wanton brutality of power, inspired, I have no doubt, by the corrupt influences which pervaded the revenue service in the States of Missouri, Arkansas, and Kansas. Of course there was nothing left for the poor Indian in this instance except to again turn his troubled face toward Washington, and to again appeal to the Government for justice and security for himself and his property. Weary of the struggle single-handed and alone, he at this time employed distinguished counsel to aid him. In response to their able and conclusive arguments they received the following very important communication:

TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE,
Washington, October 21, 1869.

GENTLEMEN: This office does not propose to apply, within the territories of the Cherokee Nation, the revenue laws relating to tobacco and spirits produced there; but holds that section 107 of the act of July 20, 1868, applies to the articles themselves, and will be enforced when those articles are carried into the States or Territories of the United States for sale. The grounds of this determination, and the instructions given to the revenue officers, are more fully explained by the accompanying memorandum of opinion by Judge James, to whom the question was originally referred.

Very respectfully,

C. DELANO, *Commissioner.*

Messrs. PIKE & JOHNSON,
Counselors at Law.

The memorandum of opinion referred to in the foregoing letter of Commissioner Delano was in these words:

In the matter of taxes on tobacco produced in the Territory of the Cherokee Nation.

SIR: I have examined the argument of Colonel Elias C. Boudinot, a citizen of the Cherokee Nation, against the collection within its territory of taxes upon tobacco manufactured there, and have the honor to make the following reply:

The question, whether section 107 of the act of 20th July, 1869, intended that the revenue laws relating to tobacco and spirits produced in "the Indian country" should be extended into that country and there enforced, was submitted to me by yourself about the 12th day of August last. I had the honor to advise you, that without any reference to existing treaties, it was apparent on the face of the statute itself that Congress did not intend to apply the revenue laws to the Indian country itself, but to the articles produced there, and that the application could be made only to such part of these manufactures as might be carried thence into the States or Territories of the United States. The action of your office was afterward taken in accordance with this advice, and instructions to that effect were sent, as I was informed, to the revenue officers of Kansas, Missouri, and Texas.

Very respectfully,

CHARLES P. JAMES,
Counselor at Law.

Hon. COLUMBUS DELANO,
Commissioner of Internal Revenue.

Sir, it will be seen from this decision that the position of the acting Commissioner of August 13, 1869, was abandoned, and the ground taken by Mr. Rollins was affirmed. The right to manufacture and sell tobacco in the Indian Territory, exempt from taxation, is here clearly and expressly recognized. The right to sell such manufactured tobacco outside of the Indian Territory is also recognized, subject simply to the payment of taxes. So well satisfied on this point was Solicitor James that he declares it "apparent on the face of the statute itself (act of July, 1868) that Congress did not intend to apply the revenue laws to the Indian country itself, but to the articles produced there, and that the application could be made only to such part of these manufactures as might be carried thence into the States or Territories of the United States."

It would seem to be trifling with the time and the intelligence of the Senate to dwell a single moment on the explicit and conclusive character of this language. Boudinot therefore thought himself once more secure and proceeded with his business. He had an unmolested career this time of about sixty days. Sixty days after Commissioner Delano and Solicitor James had joined in the foregoing construction of the statute and the treaty, John McDonald, then a supervisor, and John A. Joyce, then an agent in the internal-revenue service, fell upon Boudinot's entire establishment in the Indian country and upon all his tobacco wherever it was found.

On the 20th day of December, 1869, in what was then thought a sort of natural outbreak of official rascality, these two revenue officers seized, as if subject to the internal-revenue laws, Boudinot's tobacco manufactory, and everything pertaining to it. They did not only this but they arrested him as a criminal charged with violating the revenue laws in the Indian country. This being done in the face of the decision of October 21, 1869, on which the ink was hardly dry, Boudinot and his counsel felt sure that the act would be disavowed by Commissioner Delano the moment his attention was called to it. They

reasoned that as an honest man, or even desiring to be thought one, he could not do otherwise. He had said in so many words that he did "not propose to apply within the Territories of the Cherokee Nation the revenue laws relating to tobacco and spirits produced there;" and there never was a suspicion, much less a charge, verbally or in writing, against Boudinot for selling an ounce of tobacco outside of the Indian Territory on which the tax was unpaid. No notice whatever had been given to Boudinot or his counsel of a change in the ruling of the Commissioner. No order had been made embracing the Indian country in a collection district, but the Commissioner had expressly said he would do nothing of that kind. Boudinot's property could not have been seized for the non-payment of taxes, because none had ever been assessed against him in the Indian country. He was under arrest for violating the United States internal revenue laws in the Indian country when in fact he had carefully complied with these laws as they had, up to this point, been interpreted to him by the Government which enacted them. No wonder, therefore, that Boudinot's counsel, Messrs. Pike & Johnson, called with confidence on the Commissioner for the release of his person and his property. On December 31, 1869, they addressed that officer upon the subject, citing his former ruling, and asking immediate action. Among other things they said:

We therefore most respectfully request that you will direct the immediate release of all manufactured and other tobacco and other material seized at the factory of Elias C. Boudinot, in the Cherokee Nation, and the restoration to him of everything seized, and that explicit directions and instructions be sent to Supervisor McDonald, in accordance with the decision communicated to us on the 21st of October. For, as the seizure was in direct contempt of that decision and of your instructions, we respectfully submit that the wrong and injury inflicted by this act of disobedience ought not to be suffered to continue a day longer than is unavoidable, for in such a case to delay justice is almost to deny it.

We have the honor to be, most respectfully, your obedient servants,

PIKE & JOHNSON,
Counselors, &c.

To this urgent appeal for justice under the law as construed by the Commissioner himself, no answer was made. January 1, 1870, Messrs. Pike & Johnson addressed another communication to the Commissioner on this subject, to which they received no answer. Finally, January 7, 1870, they wrote him as follows:

WASHINGTON, *January* 7, 1870.

SIR: We are advised by a letter from Mr. E. C. Boudinot, dated at Van Buren, Arkansas, on the 28th of December last, that Supervisor McDonald had caused him to be arrested and held in custody for numerous alleged violations of the internal-revenue laws within the Indian country.

Fully aware of his rights and of the illegality of all the proceedings of the supervisor, Mr. Boudinot will not give bail, and, as a citizen of the Cherokee Nation and not of the United States, appeals to the Executive Department of the Government for protection under the solemn guarantees of repeated treaties, against violence that borrows the forms of law, to abuse them for what he believes sinister purposes.

We are quite certain that he cannot have been charged with any violation of the revenue laws outside of the limits of the Indian country. Whether it be so or not, we suppose the supervisor will have informed you.

And, being a Cherokee, Mr. Boudinot is unlawfully and criminally deprived of his liberty, if charged only with violations of those laws within the Indian country.

For, first, the Cherokee treaty is the supreme law, in this respect, of the land, which no act of Congress can annul; and under it he cannot have committed any offense against those laws in the Indian country, in which he has the right to sell any tobacco he may manufacture in the Cherokee country without paying any tax or duty upon it to the United States.

And, second, even if the intention of Congress was to extend the revenue laws over the Indian country, Mr. Boudinot can have committed no criminal offense against them, because no regulation of the Treasury Department, or order of the Executive, or decision of the courts, has warned him of the necessity of conforming to those laws within that country; but, on the contrary, your predecessor directed that he should be required to stamp only such quantities of tobacco as he might actually sell within the States and Territories, and when you changed that, you required him to pay the tax only on so much as he should carry from the Cherokee country into the States and Territories for sale. So that, if he has committed any offense, he has done it by conforming to your own opinion and decision, and relying upon your assurance, implied in law, and as clearly given in fact as if expressed, that he was not required by any law to conform to the requirements of the revenue laws within the Cherokee Nation.

If it is alleged that he has violated your regulations or the law, by doing anything forbidden, or omitting anything required, by the revenue laws or regulations, in respect of tobacco taken or sent by him into a State or Territory, we do not ask that he shall not be held to answer such charge.

We only ask that the supervisor be peremptorily ordered, if the charges against Major Boudinot are wholly of acts and omissions in the Indian country, at once to withdraw the charges and release Mr. Boudinot from arrest.

The property and liberty of this one man, an Indian, too, of a race used to harsh dealing, are of little importance, compared with the great and multiplied interests of this Government; but one act of deliberate injustice and wrong, in violation of the guarantees of a treaty, may be more than any nation, jealous of its honor and proud of its justice, can afford to do; and if done, ought to be swiftly remedied.

We have the honor to be, sir, your very obedient servants,

PIKE & JOHNSON,
Counselors, &c.

Hon. COLUMBUS DELANO,
Commissioner of Internal Revenue.

A verbal response was at last extorted from the Commissioner to these several earnest communications. He barely said that he had reversed his former decision, and that he sustained McDonald and Joyce in their seizure of Boudinot's property, and their arrest of his person. He did not dare to put such an indescribable outrage in writing, and there is now no record of the reasons which led him to overrule his well-considered interpretation of the law, and thus to inflict total pecuniary ruin on an unoffending, law-abiding man. Not a whisper of intimation was given to Boudinot of the impending change. It was made without a note of warning, and as no explanation was possible, none was ever attempted. Nearly a month after he had indorsed the conduct of McDonald and Joyce, on the 25th of January, 1870, he issued an order extending the internal-revenue laws of the United States into the Indian Territory, and provided by certain regulations for the assessment and collection of taxes therein. This was not only the first official notification, but the first notice of any kind that the laws of the United States for the collection of taxes on manufactured goods would be applied and enforced in the Indian country. Sir, we have all heard of ambuscades in war. We have all read of armies destroyed and brave men cut to pieces, misled by treachery. Here, however, was a legal ambuscade, extending over three years in length, into which Boudinot was lured by the solemn assurances of this Government, from time to time made, that there was no danger ahead, that no pitfalls awaited him, and that no enemy lurked in his path. He followed these assurances as implicitly as the traveler in the wilderness ever followed his trusted guide, until, at a given point, without so much warning as a rustling leaf, or "the sound of their light-springing footsteps," McDonald, Joyce, and Delano closed in upon him, robbed him of all he had, and left him, as they thought, dead by the wayside. The question now is whether we shall pass him by, following the example of the priests and Levites on a certain notable occasion, or shall we not rather pour some oil into his wounds which remain unhealed even at this late day?

When Boudinot found that Delano sustained the revenue marauders by whom his property had been seized and himself arrested, his next step was to make his appeal directly to the Secretary of the Treasury. As I intend to make a complete record of this most remarkable case for the use of the historian, and as I know of no better material for the columns of the CONGRESSIONAL RECORD than this appeal of a wronged and plundered ward of the nation, I will ask the Clerk to read it entire in the hearing of the Senate.

The Chief Clerk read as follows:

WASHINGTON, D. C., *January* 26, 1870.

Hon. GEORGE S. BOUTWELL:

As a citizen of the Cherokee Nation, born a Cherokee, and resident in the Cherokee country, and as personally and gravely interested in the question, I appeal to you from the decision and action of the Commissioner of Internal Revenue in respect to the collection within the Cherokee country of the tax upon tobacco manufactured there by me, and respectfully request your consideration of and judgment upon these questions:

First. Whether under the tenth article of the treaty of 19th July, 1866, a Cherokee Indian manufacturing tobacco within the Cherokee country can, under the pretense that section 107 of the act of 1868, imposing taxes on distilled spirits, tobacco, &c., applies to the Indian country, be compelled to pay any tax to the United States on other or more of the tobacco manufactured by him than he may sell beyond the limits of the Indian Territory?

Second. Whether as to such tobacco so manufactured in the Cherokee country by him a Cherokee Indian is punishable for not observing the provisions of the revenue laws when he takes none at all outside of the Indian Territory or when he pays the taxes required on all that he does carry beyond those limits?

Third. Whether a Cherokee Indian, residing in the Cherokee country, is liable to pay the tax on tobacco manufactured by him, which was grown in a State and purchased by him, when manufactured and sold by him in the Cherokee Nation and not elsewhere, and for use and consumption in the Indian Territory?

A more full statement of the case and its circumstances in which these questions arise, and referring to some charges which may seem to you to deserve to be inquired into, accompanies this letter. I most respectfully invite your attention to it, and have the honor to request that the foregoing questions, being of the utmost gravity and importance, may be submitted to the Attorney-General for his decision, with the arguments herewith presented.

With the utmost respect, your obedient servant,

ELIAS C. BOUDINOT.

SIR: The undersigned, Elias C. Boudinot, the son of a Cherokee, born a Cherokee Indian, and not by birth or naturalization a citizen of the United States, but a citizen of and resident in the Cherokee Nation, west of Arkansas, respectfully asks your careful consideration of a matter which affects and concerns the good faith and honor of the United States and the rights guaranteed by them by solemn treaty to a domestic nation under their protection.

It has always been a cherished object of the wise and benevolent statesmen of the United States to foster the advancing civilization of the Cherokees and the neighboring tribes that own and inhabit the country lying between Arkansas and New Mexico, and to encourage them to produce and manufacture the articles of common use which their daily needs require. And they have always sought to protect all the Indian tribes against the rapacity of white traders who have in all time plundered them of their substance.

Nor have the United States ever exercised or stipulated for the right of levying taxes or duties of excise in any part of the Indian country, or sent tax-gatherers among the Indians. Neither has any statesman or officer of the Government until now imagined that any such power could be exercised rightfully, nor has it ever been even proposed in the Congress of the United States that it should be exercised.

In pursuance of which settled, uniform, wise, and just policy, when the United States, on the 19th day of July, 1866, treated with "the Cherokee Nation of Indians" as an independent State and people, reaffirming and declaring in full force the provisions of all former treaties with the same, it was, by article 10 of that treaty, stipulated and solemnly agreed as follows:

"Every Cherokee and freed person resident in the Cherokee Nation shall have the right to sell any products of his farm, including his or her live stock, or any merchandise or manufactured products, and ship and drive the same to market without restraint, paying any tax thereon which is now or may be levied by the United States on the quantity sold outside of the Indian Territory."

Which provision is, as the Supreme Court of the United States has decided, to be construed against the United States if its meaning be in any manner doubtful or ambiguous. So construed, it certainly gives to the Cherokees the right to manufacture for their own use and consumption of other Indians anywhere in the Indian Territory, not their own products only but any other products wherever produced, in the United States or even abroad, and it does clearly stipulate that no tax shall be levied on any such manufactured products except on so much and such quantities of the same as may be sold beyond the limits of the Indian Territory.

If products not of the Indian country are imported into it and manufactured there they will of course pay such tax or duty on the raw product, either directly or indirectly, as consumers of the same in the States and Territories do; and as there is no tax or duty levied on raw tobacco in the leaf they have the same right to purchase and manufacture that without paying a duty or tax as they would have to manufacture cotton or wool of the production of the United States.

The honorable Secretary of the Treasury will not fail to bear it in mind that the

tax or duty on manufactured tobacco is, both in theory and effect, an indirect tax, paid by the manufacturer but advanced by him for and ultimately reimbursed by the consumer, being added to the price which he pays for it. So that to compel the Indian people to use these articles manufactured in the States, on which the Government levies a tax or excise duty, levying none on the unmanufactured article, would be to tax the Indians for the support of the Government of the United States, and to take from them every inducement to manufacture for themselves.

The United States speak by article 10 of the treaty of 1866, and if they intended to limit the "merchandise and manufactured products" mentioned in it, to such merchandise and such products only as may be produced in the Cherokee country, and to exclude those produced elsewhere and manufactured there, it was in their power to express themselves more clearly, and in such words that their intention should be unmistakable; wherefore no such limitation can be added by construction in favor of the United States.

It is a vague and unfounded notion that the revenue laws of the United States are defrauded if the Indians are allowed to purchase tobacco in the adjoining States and manufacture it for their own consumption. For the revenue cannot rightfully be increased by levying a direct or indirect tax on the Indians against their will. It would be quite as sound a notion to imagine that the revenue was defrauded by the non-use of stamps in their business transactions.

The undersigned respectfully represents that in consequence of and relying upon the said article of said treaty, he some time since, in partnership with Stand Watie, also a Cherokee Indian, citizen, and resident of the Cherokee Nation, established a manufactory of tobacco in the Cherokee country, purchasing the raw tobacco brought to him from any quarter and manufacturing it, it being an article extensively used by all Indians; and that he has faithfully paid the tax imposed by the United States on every ounce of such manufactured tobacco that has ever gone from his factory and been sold beyond the limits of the Indian Territory. Which manufacture has been of great benefit to the Indians, enabling them to purchase manufactured tobacco at about one-half the price which they had before been compelled to pay to traders in their country.

The Hon. Mr. Rollins, when Commissioner of Internal Revenue, decided that the undersigned had the right to take into the adjoining States tobacco manufactured by him, without previously stamping the same, paying the tax only on such thereof as he might actually sell.

But the present Commissioner overruled this decision and determined that the tax must be paid on all tobacco taken by him into a State or Territory for the purpose of sale, and the undersigned, upon remonstrating against this as in contravention of the treaty, was told that the Commissioner had resolved to go even further and to appoint assessors and collectors to levy and collect taxes in the Indian country, under section 107 of the act of 1868 in regard to the taxation of spirits, tobacco, &c.

Fearing which the undersigned, on the 7th day of October, 1869, addressed to the honorable Commissioner of Internal Revenue an argument against such threatened action, in which he endeavored to show that it would be contrary to article 10 of the treaty of 1866 and without warrant in the legislation of Congress, as well as utterly inconsistent with the treaty relations between the United States and the Cherokees.

A copy of which argument is presented with his petition, and the undersigned respectfully asks for it your consideration. And in addition to what is there said in regard to the said section 107, he invites your attention to this:

That this section extends the internal-revenue laws, imposing taxes on distilled spirits, fermented liquors, tobacco, snuff, and cigars, to such articles produced anywhere (not such articles manufactured from corn, wheat, rye, malt, and raw tobacco grown or produced anywhere) within the exterior boundaries of the United States. "Such articles" in this law evidently means the manufactured articles, which would be equally taxed although the raw products from which they are manufactured came from Canada and Europe.

But if this section 107 is to be so construed as to levy a tax on such articles, wherever manufactured, then, as it would be in direct violation of article 10 of the treaty to extend it to the Cherokee country, it must be so construed, if possible, as not to do so; and as it is only when sold or removed for consumption and use that tobacco, snuff, &c., are taxable by the act of 1868, it must be held to mean that such articles, manufactured in the Cherokee country, are taxable when sold outside of that country in a State or Territory or removed into such State or Territory for consumption and use.

The undersigned further represents that on the 21st day of October, 1869, in response to the said argument the Commissioner of Internal Revenue declared by letter to the attorneys of the undersigned that the Office of Internal Revenue did not propose to apply, within the territories of the Cherokee Nation, the revenue laws relating to tobacco and spirits produced there; but that it held that section 107 aforesaid applied to the articles themselves, and would be enforced when those articles should be carried into the States or Territories of the United States for sale. And he stated that the grounds of this determination and the instructions given to the revenue officers were more fully explained by an accompanying memorandum of opinion by Judge James, to whom the question was originally referred.

In which opinion Judge James said that the question presented by the undersigned had been submitted to him by the Commissioner about the 12th day of August, 1869; and that he then advised the Commissioner "that without any reference to existing treaties, it was apparent on the face of the statute itself that Congress did not intend to apply the revenue laws to the Indian country itself, but to the articles produced there, and that the application could be made only to such part of these manufactures as might be carried thence into the States or Territories of the United States." And he said that the action of the Office of Internal Revenue was afterward taken in accordance with that advice, and instructions to that effect sent, as he was informed, to the revenue officers of Kansas, Missouri, and Texas.

Copies of which letter and opinion are presented herewith, and the undersigned asks for them your consideration, because what has since occurred gives them peculiar significance.

For, notwithstanding this explicit decision and the instructions, real or pretended, mentioned in the letter of the Commissioner, the supervisor of internal revenue for Arkansas did, on or about the 22d of December, 1869, acting by the counsel and advice of some agent of the said office, enter the Indian country, and in the Cherokee country violently seize the said factory of the undersigned and carry away all the manufactured tobacco found there into the State of Arkansas, and there cause it to be libeled; and did also immediately thereafter cause the undersigned to be arrested upon a charge of violating the revenue laws and to be committed to custody to answer the same, by the United States commissioner for the western district of Arkansas, not upon any allegation or charge as ground of either seizure or arrest that the undersigned had sold any manufactured tobacco outside of the Indian Territory without paying the tax on it, but upon the charge that he had not complied with the provisions of the law within the Cherokee country upon tobacco there manufactured by him.

And he understands also that the stores in the Cherokee and Creek country have been visited by the same authority and all tobacco over the quantity of ten pounds in each seized and carried away, even when the proprietor of such store and the owner of the tobacco was an Indian.

Information of which seizure being given to the Commissioner, he authorized the release of the tobacco and factory of the undersigned upon condition that he should execute bond, which he has not done.

The undersigned also states that when the said seizure was made he exhibited to the supervisor a copy of the said decision of the Commissioner, thinking that it would be respected; but the said supervisor told him that he saw that when he was in Washington in October; that it was sent to the attorneys of the undersigned only to quiet their complaints, and that at the same time the Commissioner was urging him to hasten back and make the seizure; which statements were by the attorneys of the undersigned communicated to the Commissioner, and they were afterward informed by him that the letter in regard to these statements had been referred to the supervisor for his explanation.

And when the supervisor testified, upon the examination of other parties before the commissioner for the western district of Arkansas, he admitted that he made such statements, but said that he had not seen the said decision of Commissioner Delano until it was shown to him by the undersigned, and that his former statement that he had done so was false; but he averred then and avers still that the said seizure was so made in virtue of instructions in writing from the Commissioner of Internal Revenue and from the President.

And the Commissioner now informs the undersigned that he has wholly recalled his said decision, and he has permitted public information to be given that the revenue officers of the adjoining district are to be instructed to enforce the revenue laws in the Indian country, he being of opinion now that even tobacco produced in the Indian country, or in the Cherokee Nation, cannot be manufactured and sold there without payment of the tax upon it, under the act of 1868.

And the said Commissioner has distinctly informed the undersigned that his purpose is to deprive him of any advantage that he may have over dealers in tobacco in Saint Louis and elsewhere, by compelling him to pay the tax on all the tobacco he may manufacture, which satisfies the undersigned of that which he had reason to believe before, to wit, that the proceedings taken against him were prompted by the said dealers, and are in their interest, which is thus preferred to the faith of treaties and to the interest and advantage of the Indians, of whom the United States claim to be the guardian.

The undersigned further represents that although the statements made by the said supervisor, imputing duplicity to the Commissioner of Internal Revenue, were so made as aforesaid, and remain unretracted, he possesses the confidence of the Commissioner, and in the said seizure and arrest is sustained by him, though one is clearly a trespass and the other false imprisonment. And the undersigned respectfully complains that, immediately upon reaching the city of Washington, a few days since, the insertion of paragraphs in the papers of the city was procured by him containing misstatements of facts and law and imputations against the undersigned calculated and intended to prejudice the public mind and the high officers of the Government against the undersigned and his case, to interpose obstacles in the way of his obtaining justice, and to sustain his own lawless trespasses and torts, all which the undersigned respectfully protests against as unworthy of a government engaged in a controversy with an individual, and which contest is, for such citizen, and especially for an Indian, sufficiently unequal without resort to means so unfair and ungenerous. And the undersigned submits it to yourself whether such a practice on the part of Government officers, when they have done acts of doubtful legality, is not like the publication of articles in public journals by an official prosecutor for the purpose of prejudicing the public mind or the jurors against an individual on trial for his life.

The undersigned respectfully submits that it is, or ought to be at least, unusual for the head of a bureau, after making a decision upon legal advice, and after argument, and giving instructions accordingly, either to permit these instructions to be disregarded or to issue others to the contrary and in reversal of his decision, without notice to the parties or their counsel; and that this is still more unusual when the effect is to be the arrest and deprivation of liberty of an individual in whose favor the decision was made, and who had acted from the beginning under and in accordance with the opinion and decision of the officer in question and his predecessor.

And it has been still more unusual to assure a party that particular instructions have been given, if in fact they have never been given at all, as the undersigned understands to be the case in regard to the instructions spoken of in the said letter of 21st of October, 1869.

The undersigned will not insult the Secretary of the Treasury by inquiring whether the treaty with the Cherokees is or is not part of the supreme law of the land, or whether, when two laws conflict, that which is supreme must or must not prevail.

But he respectfully submits that the treaty and section 107 of the law of 1868, are entirely reconcilable with each other; and that the legal adviser of the Commissioner was in the right when he treated the question as one which admitted of no doubt.

Nothing is so odious as the oppression of a citizen by his government, contrary to its own laws, except the oppression of an ally or a ward. The action of the Commissioner's subordinates, now fully sanctioned by him, is an invasion of the rights of the Cherokee people, the wanton and inexcusable violation of a treaty and of the good faith of the Government, and most oppressive, injurious, and unjust in respect to the undersigned, whose property has been seized and carried away, and his personal liberty violated, and he accused as a public criminal, because he has exercised rights guaranteed to him by the plain and unmistakable language of a treaty.

* * * * * * *

The Commissioner of Internal Revenue has to-day published an order appointing officers to enforce the revenue laws, as to distilled liquors and tobacco in the Indian country, which will compel the payment of a tax even upon tobacco *grown* in the Cherokee country and manufactured there, though never taken beyond that country for sale. That is a direct and flagrant violation of the tenth article of the treaty of 1866, by which that article is utterly annihilated, and this upon the naked ground that the language of section 107 of the act of 1866, *seems* to be broad enough to warrant it.

Neither was it the object of that article to give the Cherokees the right of selling articles of produce or manufacture within their own country, without paying any tax to the United States. That right they already possessed, without needing to have it guaranteed by treaty. The United States have no more right to send tax-gatherers into the Cherokee country than into Canada. The Cherokees have the same right to manufacture for their own use *any* thing that they *produce* or that they *purchase* anywhere in the world, as the Canadians have; as much right to buy tobacco and manufacture it for sale in their country as to purchase wool and cotton and manufacture that. Once in their country without violation of any law of the United States, the tobacco, like the wool or cotton, is *theirs*, and beyond the reach of the revenue laws of the United States, which can no more tax it, when manufactured, in their hands, in their own country, than they could tax the coat or the shirt manufactured by them from the wool or cotton.

The undersigned submits that it is an immense exercise of power on the part of the mere head of a bureau or an office, without even taking the opinion of the chief law officer of the Government, and against the opinion of his own legal adviser, to undertake by a simple order to revolutionize all the relations between the Government and the Indian nations under its protection; to assert the power of taxing them, and deliberately to annul the solemn provisions of a treaty and reverse the practice of the Government for eighty years.

The object of the tenth article of the treaty was to secure to Cherokee manufacturers the right to sell their manufactures anywhere, not in the Cherokee country, but in the Indian Territory, without paying any tax. That they desired and needed, and they *paid* the United States for the guarantee. They surely have a right to protest against a course of action resolved upon in the interest of a combination of Saint Louis tobacco dealers, by which they are to be compelled to become tributary to these dealers, paying them, as heretofore, always twice, and often three or four times the price at which they could purchase tobacco manufactured

in their own country. For it is well known that when any article of consumption is taxed with an indirect tax, the consumer pays much more than the tax, in addition to the costs. He pays an additional tax or toll to every one through whose hands it passes, and the tax laid by the Government is always the pretext for private extortion.

The undersigned has ample reason to be satisfied, from the declarations of the Commissioner himself, and otherwise, that the persecution and violent injustice to which he is subjected, and under which he still suffers are for the sole purpose of preventing competition in the Indian country, with those who deal in tobacco outside its limits, and to compel all Indians to pay tax to the Government on all the tobacco they use. How worthy of the Government it will be to become the instrument by which this perpetual extortion upon its wards is to be effected, and to permit its powers to be perverted and abused for the purpose of augmenting the gains of combinations of individuals, the undersigned prays the honorable Secretary of the Treasury to consider.

For all which he appeals from the action and decision of the Commissioner of Internal Revenue; and as he cannot speedily have judicial action and decision, he prays that the opinion of the Attorney-General may be taken upon the questions presented herewith; and that the violation of his rights of property and liberty may be made to cease.

Respectfully submitted.

ELIAS C. BOUDINOT.

Hon. GEORGE S. BOUTWELL,
Secretary of the Treasury of the United States.

Mr. VOORHEES. This powerful and unanswerable appeal was overruled, and the work of confiscation and false imprisonment was left to proceed. Boudinot's factory and all his tobacco were libeled in the United States district court for the western district of Arkansas. They were declared forfeited by the court, and everything was sold. Pending these proceedings, however, Boudinot proposed to the Commissioner, as the record shows, that if he was allowed to resume his business he would thereafter comply in the Indian country with all the regulations respecting the collection of taxes on tobacco in the United States; and further, that he would pay the revenue tax on all the untaxed tobacco he had already sold in the Indian country, whenever the courts should decide that such a tax was due. This offer was rejected in the following letter:

TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE,
Washington, February 9, 1870.

SIR: I have considered the proposition of E. C. Boudinot, presented through you, to compromise his liabilities to the United States for having manufactured and sold tobacco in violation of all the requirements of the act of July 20, 1868, relating thereto, and declined to accept it.

I shall be obliged to you if you will inform Mr. Boudinot of this result of his proposition, or give me his address that I may so advise him.

Very respectfully,

C. DELANO, *Commissioner.*

Hon. A. MCDONALD,
United States Senator.

When it is remembered, as it always will be, that Boudinot had not manufactured or sold a single pound of tobacco except in strict accordance with Delano's own construction of the law, this letter of the Commissioner simply adds an unprovoked insult to former injuries. If Boudinot had violated the requirements of the act of July 20, 1868, he had done so by following the express instructions of the Commissioner, and this fact the Commissioner well knew when he wrote the foregoing false and insincere communication.

From the adverse judgment rendered in the district court for the western district of Arkansas, Boudinot prosecuted his writ of error to the Supreme Court of the United States. He thought that a treaty could not be abrogated by an act of Congress, and he thought, moreover, that the act of July 20, 1868, showed on its face that it did not conflict with the treaty of 1866. In these views he was supported, not only by the repeated decisions of the highest revenue officials, but also by many of the foremost legal minds in the country. The Supreme Court, however, reached a different conclusion, and held that the act of Congress of July 20, 1868, extending the internal-revenue laws to the exterior boundaries of the United States, annulled the tenth article of the treaty of July, 1866, with the Cherokee Nation, "as if the treaty were not an element to be considered." I am not about to assail this surprising decision. It is not at all necessary for me to do so. In fact I have no inclination in that direction, for I doubt not it was reached with conscientious deliberation. It may not be improper, however, to point out some circumstances which impair its weight.

Of the nine judges, there being then a full bench, but six took part in the decision of the case. Chief-Justice Chase and Justices Nelson and Field were absent. Of the six judges who heard the argument, four rendered the opinion of the court, while Justices Bradley and DAVIS joined in a dissenting opinion. It will thus be seen that the decision was in reality made by a minority of the court. These facts all appear from the decision itself, which is found in 11 Wallace, page 616. I am tempted to read from the dissenting opinion to show what powerful reasons Boudinot had for believing that he was in the right. It was delivered by Justice Bradley, with whom concurred Justice DAVIS, now the distinguished and very able Senator from Illinois:

In my judgment—

Says Justice Bradley—

it was not the intention of Congress to extend the internal-revenue law to the Indian Territory. That Territory is an exempt jurisdiction. While the United States has not relinquished its power to make such regulations as it may deem necessary in relation to that Territory, and while Congress has occasionally passed laws affecting it, yet by repeated treaties the Government has in effect stipulated that in all ordinary cases the Indian populations shall be autonomies, invested with the power to make and execute all laws for their domestic government. Such being the case, all laws of a general character passed by Congress will be considered as not applying to the Indian Territory, unless expressly mentioned. An express law, creating certain special rights and privileges, is held never to be repealed by implication by any subsequent law couched in general terms, nor by any express repeal of all laws inconsistent with such general law, unless the language be such as clearly to indicate the intention of the Legislature to effect such repeal.

* * * * * * *

In the case before the court I hold that there is nothing to indicate such a legislative intent. The language used is nothing but general language, imposing a general system of requirements and penalties on the whole country. Had it been the intent of Congress to include the Indian Territory, it would have been very easy to say so. Not having said so, I hold that the presumption is that Congress did not intend to include it.

The case before us is, besides, a peculiar one. The exempt jurisdiction here depends on a solemn treaty entered into between the United States Government and the Cherokee Nation, in which the good faith of the Government is involved and not on a mere municipal law. It is conceded that the law in question cannot be extended to the Indian Territory without an implied abrogation of the treaty *pro tanto*. And the opinion of the court goes upon the principle that Congress has the power to supersede the provisions of a treaty. In such a case there are peculiar reasons for applying with great strictness the rule that the exempt jurisdiction must be expressly mentioned in order to be effected.

To my mind, sir, this reasoning is overwhelming and conclusive. There is a strange and indeed a painful contrast between it and that which sustains the decision of the court. The following strain of argument in the body of the decision on page 621, I confess struck me with amazement. Speaking of the act of Congress of July, 1868, the court says:

As before remarked, it extends the revenue laws over the Indian territories only as to liquors and tobacco. In all other respects the Indians in those territories are exempt. As regards those articles only the same duties are exacted as from our own citizens. The burden must rest somewhere. Revenue is indispensable to meet the public necessities. Is it unreasonable that this small portion of it shall rest upon these Indians?

This is strange language: "The burden must rest somewhere!" That is true, but I think this is the first time in American history where it has been claimed that the burden of taxation should be imposed upon a people without representation, without voice in legislation, denied the ballot, and ostracized from every right of citizenship. The tax-gatherer in the midst of a people who have no right to vote is an emblem of despotism. A free ballot must be given to every people who pay taxes, or they are at once slaves.

But accepting the decision of the Supreme Court as the final law of his case, Boudinot can and does find much even in it to comfort and sustain him. It is not often that the failing party to a suit receives the commendations of the court for his honorable and upright conduct. It is still less frequent that the court goes out of its way to advise such a party where to seek the relief it feels compelled to deny. In rendering the decision in this case, however, the court say:

We are glad to know that there is no ground for any imputation upon the integrity or good faith of the claimants who prosecuted this writ of error. In a case not free from doubt and difficulty they acted under a misapprehension of their legal rights.

And again the court say:

If a wrong has been done, the power of redress is with Congress, not with the judiciary; and that body, upon being applied to, it is to be presumed will promptly give the proper relief.

The fact is, that the absolute good faith and honesty of Boudinot have never been called in question by any respectable person, court, or committee. When this case was under investigation in the Forty-first Congress, with a view to having him relieved from further criminal prosecution, the Judiciary Committee of the House made a unanimous report in his favor. I quote the following extract from that report:

There is no complaint that Boudinot ever sold, or authorized to be sold, a pound of tobacco outside of the Indian Territory, without the payment of the tax required by law. The judge of the district court which decided his case testifies to his good faith in every respect; the Supreme Court, affirming the judgment of the lower court, takes pleasure in testifying to his good faith.

There is not the slightest doubt that Mr. Boudinot is a Cherokee Indian, and a citizen of the Cherokee Nation; he was one of the recognized representatives or delegates from the Cherokee Nation to the United States Government in 1868, and his name appears as such to the treaty of that year made by this Government with the Cherokee Nation. Though an Indian, he claims no leniency on the ground of ignorance; he has shown throughout a disposition to deal honorably and justly with the Government of the United States in this matter, and pursued just such a course as any gentleman of intelligence and education would have pursued under similar circumstances.

Sir, this case forms an almost incredible chapter in American history. On such a state of facts, who could conceive that any man under the protection of American law could be made to lose not only all his worldly possessions, but also be compelled to defend himself against a felon's fate in the penitentiary? Such, however, was exactly Boudinot's experience. Not content with leading him into an ambuscade and plundering him, the revenue pirates of the Southwest under the lead of McDonald and Joyce, actually secured an indictment against him in the United States district court for the western district of Arkansas and seriously demanded his conviction. I am not sure but what at this juncture in his misfortunes the faith of my Indian friend in the Christian's God became somewhat shaken. When he saw the prison gates ajar to receive him and the odious prison garb awaiting him simply because he had believed the words of Christian statesmen in his dealings with a Christian Government, I am afraid he relapsed, at least for the time being, to paganism. I imagine he must have appealed to the great Manitou, the god of his fathers, and the protector of all just Indians. At any rate it was but a short time until nearly all who were striving to put him in the penitentiary reached there as convicts themselves. A few escaped, which

is to be regretted; for has it not been said, "Let no guilty man escape?" Colonel Boudinot is a most amiable man, with as little of the spirit of revenge in his nature as any one I ever knew; yet I have heard—I do not vouch for it, and it may be mere fable—but I have heard that sometimes as the express train was passing through Jefferson City, Missouri, a lone Indian might have been seen on the rear platform of the rear car gazing with a peculiar look on the walls of the State prison within which his unprovoked enemies and persecutors were doing the Government some service.

The spectacle to him was the beginning of even-handed justice, and though long delayed I sincerely hope the present Congress will finish the work by passing the bill now before us. Is it possible for a stronger case to be presented calling for personal relief? What element of aggravation has been omitted? I challenge the entire history of this Government for a more wanton, cruel, and deceptive use of power than this case exhibits. An Indian, Boudinot is a ward, and the Government is his guardian. Under the guise of that sacred relation he has been impoverished, and barely escaped imprisonment, without the slightest fault or short-coming on his part. We made a treaty with him and with his people, and we broke it in just two years without deigning a word to him or his on the subject. We told him over and over again to enter into his stipulated rights under the treaty, and we have ruined him because he did so. We repeatedly construed the treaty and the law of our own making, and he has been destroyed because he implicitly followed our construction. We have broken faith with him as extensively and as odiously in manner and in form as any government ever did with any human being to whom it owed protection. Let this disgrace be wiped out as speedily as possible by an act of liberal justice. There is not a government on earth strong enough to afford to inflict injustice upon the humblest being subject to its laws.

He merely asks to be allowed to enter one of our own courts and there exhibit his wrongs and plead for redress. He simply stands a humble petitioner at the door of justice asking to be allowed to cross its threshold and approach its altar with the burden of his complaints. Who will shut that door in his face? Who dares to say to him, or to any other being on American soil, that those who are subject to the law shall not have the protection of the law? And who will say in advance how much or how little he shall recover in a court of justice? Are we afraid of our own judiciary? Is there danger that the Court of Claims will assess in favor of this claimant more damages than the proof warrants? Not at all, nor can any fair-minded man desire him to recover less. I trust that my amendment will be adopted, and that the bill will speedily become a law.

The VICE-PRESIDENT. The bill will now be returned to its place on the Calendar.

ORDER OF BUSINESS.

Mr. BURNSIDE. I now ask unanimous consent to take from the Calendar Senate bill No. 1315.

Mr. WITHERS. The hour for the consideration of the regular order has arrived.

The VICE-PRESIDENT. The regular order is demanded.

Mr. BURNSIDE. I hope the Senator from Virginia will allow this bill to come up. It will not take more than a moment, and it is very important if the bill is to pass at all this session that it should be passed now.

Mr. WITHERS. It is scarcely so important as the Army appropriation bill.

Mr. BURNSIDE. If it causes any discussion, I shall not press it now.

Mr. INGALLS and others. What is the bill?

Mr. BURNSIDE. It is a bill making an appropriation for the erection of a light-house. Unless the contract is given out very soon the year will be lost.

The VICE-PRESIDENT. Does the Senator from Virginia insist on the regular order?

Mr. WITHERS. Yes, sir.

Mr. BURNSIDE. I hope the Senator from Virginia will understand that I yielded the floor this morning early, the moment I was asked, in order that the Senator from Indiana might go on with his remarks. I think I ought to be allowed to get this bill through now.

Mr. WITHERS. I am acting under the instructions of the Appropriations Committee.

Mr. BURNSIDE. The bill is recommended by the Light-House Board and the Committee on Commerce, and if the light-house is to be erected there at all the contract must be given out very soon, and there is no chance of building the light-house this summer unless the bill is passed soon as it has to go to the House. I certainly hope the Senator from Virginia will allow it to be considered. It will not delay the appropriation bill two minutes, I am sure.

Mr. WITHERS. I will simply state to the Senator from Rhode Island that while my inclinations personally are certainly in the direction of granting the privilege he asks, I know that there are many other Senators who have bills in which they are equally interested.

Mr. BURNSIDE. It is the first time I have asked the Senate to step out of the regular order to consider any bill during this whole session. However, I suppose I must yield.

The VICE-PRESIDENT. The regular order is insisted upon, which is the Army appropriation bill.

ARMY APPROPRIATION BILL.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. No. 5523) making appropriations for the support of the Army for the fiscal year ending June 30, 1881, and for other purposes.

Mr. SAULSBURY. I desire at this time to give notice that immediately on the conclusion of this present bill I shall ask the Senate to take up the question of privilege in reference to the Louisiana election case.

Mr. DAVIS, of West Virginia. I will state to my friend from Delaware that there is a bill pending from the Committee on Appropriations which we wish to follow this bill, which is known as a bill repealing permanent annual appropriations.

Mr. SAULSBURY. The committee of which I am the organ——

Mr. McMILLAN. Regular order, Mr. President.

The VICE-PRESIDENT. The regular order is demanded.

Mr. WITHERS. The Senate can decide between these bills when the pending bill shall have been disposed of.

Mr. DAVIS, of West Virginia. Very well.

Mr. WITHERS. I wish, in presenting this bill, to make one or two general statements. The bill is almost identical in its provisions with the Army bill as it passed last year. I propose to call attention in the progress of the bill to the points of difference which exist.

I wish to state also, that while all the provisions of the bill are not in exact accordance with the views of some of the members of the committee, possibly of all, the late period of the session and the fact that we as yet have disposed finally of but one of the general appropriation bills have prompted the committee to report the House bill without amendment, in order that no further time may be consumed than is absolutely necessary for its consideration.

I now ask that the *pro forma* reading of the bill may be dispensed with, and that we may proceed to consider it by paragraphs.

The VICE-PRESIDENT. The Chair hears no objection to that course.

The Secretary proceeded to read the bill, as follows:

That the following sums be, and the same are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for the support of the Army for the year ending June 30, 1881, as follows:

For expenses of the commanding general's office, $2,500.

Mr. WITHERS. That is the same appropriation as was made last year, and is the sum estimated for.

The Secretary resumed the reading of the bill, as follows:

For expenses of recruiting and transportation of recruits from rendezvous to depot, $75,000.

Mr. WITHERS. That is the same amount of appropriation as was made last year.

The Secretary read as follows:

And no money appropriated by this act shall be paid for recruiting the Army beyond the number of twenty-five thousand enlisted men, including Indian scouts and hospital-stewards; and thereafter there shall be no more than twenty-five thousand enlisted men in the Army at any one time, unless otherwise authorized by law. Nothing, however, in this act shall be construed to prevent enlistments for the Signal Service, which shall hereafter be maintained, as now organized and as provided by law, with a force of enlisted men not exceeding four hundred and fifty.

Mr. WITHERS. That is the provision of last year.

The Secretary read as follows:

For contingent expenses of the Adjutant-General's Department at the headquarters of military divisions and departments, $3,000.

Mr. WITHERS. That is the same amount as was in the bill of last year.

The Secretary read as follows:

For expenses of the Signal Service of the Army, purchase, equipment, and repair of electric field-telegraphs and signal equipments and stores, $10,500.

Mr. WITHERS. That is also identical with the bill of last year.

The Secretary read as follows:

PAY DEPARTMENT.

For pay of the Army:

One General, 1 Lieutenant-General, 3 major-generals, 15 brigadier-generals, 70 colonels, 85 lieutenant-colonels, 243 majors, 312 captains, mounted, 306 captains, not mounted, 34 chaplains, 21 storekeepers, 40 adjutants, 40 regimental quartermasters, 202 first lieutenants, mounted, 360 first lieutenants, not mounted, 146 second lieutenants, mounted, 305 second lieutenants, not mounted; including the additional pay to 35 aids-de-camp, to the adjutant and quartermaster of the Engineer Battalion, to 180 acting assistant commissaries of subsistence, in addition to pay in line, to officers of foot regiments while on duty which requires them to be mounted, to the officer in charge of public buildings and grounds in Washington, and to the examiner of State claims in the office of the Secretary of War; 400 retired officers; enlisted men of all grades not exceeding 25,000 men; 450 enlisted men of the Signal Corps; the allowances for travel, retained pay, and clothing not drawn, payable to enlisted men on discharge; and 1 retired ordnance sergeant, $11,548,601.55.

Mr. WITHERS. I wish simply to state that while that paragraph as just read is different in form, its substance is identical with the bill of last year. We have examined the Army Register and find that the estimates have been made correctly and that the aggregate sums are the amount reported in this bill for the officers of the grades specified.

Mr. BURNSIDE. I submitted an amendment to take the place of this paragraph, which I shall not press now, as it was thrown out by the committee, and I am sure it would only be a loss of time to press it; but I think the clause as it is, although it is not subject to any very serious objection, is objectionable because it is incorrect in statement. There are appropriations made here for fifteen brigadier-gen-

erals in the Army, when in point of fact there are not that many in the Army; and if they should be provided for at all, the officers ought to have their proper designation. But, as I said, I submitted an amendment to the committee covering that point, and it was thrown out, and it would only be a loss of time to present it here now. I content myself with making this statement.

Mr. McMILLAN. If there are not fifteen brigadier-generals in the Army, why appropriate for that number?

Mr. BURNSIDE. There are certain heads of departments who have the rank of brigadier-generals, making up the fifteen, but that is not their proper designation. A person unskilled in matters of this kind would not understand the bill. In other words, it would require some explanation which is not embraced in the text of the bill.

Mr. WITHERS. The statement of the Senator from Rhode Island is correct, that the Senate Committee on Appropriations had under consideration the amendment which he suggested. Their view was that inasmuch as it was rather a criticism upon the phraseology of the bill and did not affect the real merit of the question we would make no alteration, as there are fifteen persons in the Army who hold the rank and receive the pay of brigadier-general, and consequently in estimating for their pay it has been estimated for on that basis. That is all this bill does. We but deal with the pay and make no distinction as to rank.

The Secretary read the bill from line 53 to line 71, as follows:

For mileage of officers of the Army for travel on duty under orders, $200,000.

For miscellaneous expenses, to wit: Hire of 125 contract surgeons and 200 hospital matrons; extra-duty pay to enlisted men for service in hospitals; pay of 54 paymasters' clerks and 14 veterinary surgeons; hire of paymasters' messengers, not to exceed $15,000; cost of telegrams on official business received and sent by officers of the Army; compensation of citizen clerks and witnesses attending upon military courts and commissions; travel expenses of paymasters' clerks; commutation of quarters for officers on duty without troops at places where there are no public quarters; and for the payment of any such officers as may be in service, either upon the active or retired list, during the year ending June 30, 1881, in excess of the numbers for each class provided for in this act, $551,198.45.

Mr. WITHERS. That is in accordance with existing provisions.

The Secretary resumed the reading of the bill, as follows:

Subsistence Department:

For subsistence of 25,000 enlisted men, 120 additional half rations for sergeants and corporals of ordnance, enlisted men of the Signal Service, women to companies, (laundresses,) 1,875 civilian employés, 125 contract surgeons, 200 hospital matrons, 110 military convicts, and 500 prisoners of war, (Indians,) in all 10,755,8:0 rations, at twenty cents each; for difference between cost of rations and commutation thereof for detailed men, and for enlisted men and recruits at recruiting stations, and for cost of hot coffee and cooked rations for troops traveling on cars; for subsistence stores for Indians visiting military posts, and Indians employed without pay as scouts, and guides, $2,250,000; of which amount $300,000 shall be available from and after the passage of this act for the purchase of stores necessary to be transported to distant posts in advance of the 33th of June, 1880: *Provided*, That to the cost of all stores and other articles sold to officers and men, except tobacco, as provided for in section 1149 of the Revised Statutes, 10 per cent. shall be added to cover wastage, transportation, and other incidental charges, save that subsistence supplies may be sold to companies, detachments, and hospitals, at cost prices, not including cost of transportation, upon the certificate of an officer commanding a company or detachment, or in charge of a hospital, that the supplies are necessary for the exclusive use of such company, detachment, or hospital.

Mr. WITHERS. In reference to that paragraph I will state that the amount appropriated by it for subsistence is $2,250,000 as against $2,300,000 appropriated last year. The estimates for subsistence, however, being predicated upon the assumption that the Army consists of twenty-five thousand enlisted men, and the actual fact being that there are in service a little less than twenty-two thousand men, the committee considered that the amount contained in this appropriation would suffice to supply all the subsistence required for the Army.

In addition there is a little new matter in this paragraph. In the seventy-fifth line enlisted men of the Signal Service are introduced for the first time. These men, however, having previously drawn their subsistence from the Department, there will be no change in the practical operation of it; it is simply the introduction of this phraseology. But commencing on the ninety-seventh line and extending to the end of the paragraph, there is other new matter:

Save that subsistence supplies may be sold to companies, detachments, and hospitals at cost prices, not including cost of transportation, upon the certificate of an officer commanding a company or detachment, or in charge of a hospital, that the supplies are necessary for the exclusive use of such company, detachment, or hospital.

This is new matter, but is recommended by the Secretary of War in his communication to Congress, found in Senate document No. 26, and commended itself to the judgment of the House and of the committee of the Senate.

The Secretary resumed the reading of the bill, as follows:

Quartermaster's Department:

For the regular supplies of the Quartermaster's Department, consisting of stoves for heating and cooking; of fuel for officers, enlisted men, guards, hospitals, storehouses, and offices; of forage in kind for the horses, mules, and oxen of the Quartermaster's Department at the several posts and stations, and with the armies in the field; for the horses of the several regiments of cavalry, the batteries of artillery, mounted men of the Signal Service, and such companies of infantry and scouts as may be mounted, and for the authorized number of officers' horses, including bedding for the animals; of straw for soldier's bedding; and of stationery, including blank-books for the Quartermaster's Department, certificates for discharged soldiers, blank forms for the Pay and Quartermaster's Departments, and for printing of division and department orders and reports, $3,600,000.

Mr. WITHERS. That is the same as the existing provision.

The Secretary resumed the reading of the bill, as follows:

For incidental expenses, to wit: For postage and telegrams or dispatches; extra pay to soldiers employed under the direction of the Quartermaster's Department in the erection of barracks, quarters, storehouses, and hospitals, in the construction of roads, and other constant labor, for periods of not less than ten days, including those employed as clerks at division and department headquarters and Signal Service sergeants; expenses of expresses to and from the frontier posts and armies in the field; of escorts to paymasters and other disbursing officers, and to trains where military escorts cannot be furnished; expenses of the interment of officers killed in action, or who die when on duty in the field, or at posts on the frontiers, or when traveling on orders, and of non-commissioned officers and soldiers; authorized office furniture; hire of laborers in the Quartermaster's Department, including the hire of interpreters, spies, and guides for the Army; compensation of clerks to officers of the Quartermaster's Department; compensation of forage and wagon masters authorized by the act of July 5, 1838; for the apprehension, securing, and delivering of deserters, and the expenses incident to their pursuit; and for the following expenditures required for the several regiments of cavalry, the batteries of light artillery, and such companies of infantry and scouts as may be mounted, and for the trains, to wit: hire of veterinary surgeons, medicine for horses and mules, picket-ropes, and for shoeing the horses and mules; also, generally, the proper and authorized expenses for the movement and operations of the Army not expressly assigned to any other department, $1,000,000.

Mr. WITHERS. That is the same as the existing provisions of law.

The Secretary resumed the reading of the bill, as follows:

For purchase of horses for the cavalry and artillery, and for the Indian scouts, and for such infantry as may be mounted, $200,000.

Mr. WITHERS. That is the same appropriation as last year.

The Secretary resumed the reading of the bill, as follows:

For transportation of the Army, including baggage of the troops, when moving either by land or water; of clothing and camp and garrison equipage from the depots of Philadelphia and Jeffersonville to the several posts and Army depots, and from those depots to the troops in the field; of horse equipments and of subsistence stores from the places of purchase and from the places of delivery, under contract, to such places as the circumstances of the service may require them to be sent; of ordnance, ordnance stores, and small-arms from the founderies and armories to the arsenals, fortifications, frontier posts, and Army depots; freights, wharfage, tolls, and ferriages; the purchase and hire of horses, mules, oxen, and harness, and the purchase and repair of wagons, carts, and drays, and of ships and other sea-going vessels and boats required for the transportation of supplies, and for garrison purposes; for drayage and cartage at the several posts; hire of teamsters; transportation of funds for the pay and other disbursing departments; the expenses of sailing public transports on the various rivers, the Gulf of Mexico, and the Atlantic and Pacific; for procuring water at such posts as from their situation require it to be brought from a distance; and for clearing roads and for removing obstructions from roads, harbors, and rivers, to the extent which may be required for the actual operations of the troops in the field, $4,000,000.

Mr. WITHERS. This amount is $200,000 less than the bill of last year. Being for transportation, however, the committee thought that margin would be perfectly allowable, inasmuch as it is entirely an arbitrary estimate as to what the expenses might be.

Mr. PLUMB. I should like to ask the Senator in charge of the bill if in stating this amount of $4,000,000, the committee took into account the fact that what is known as land-grant railroad transportation is not now paid for at all?

Mr. WITHERS. I will state in connection with this matter that the whole of the estimate of the Department amounted only to $200,000 more than the amount appropriated, and as that estimate was predicated simply upon an approximate assumption of what would be required, the committee thought that $4,000,000 would probably suffice to cover the cost of transportation.

Mr. PLUMB. I desire to call the attention of the Senate and the committee to what no doubt the committee were advised of, but I desire to have some public attention called to the fact that a very considerable portion of Army transportation is not now paid for at all. In 1873, I think, the Army appropriation bill contained a prohibition as to the payment of transportation to certain land-grant railway companies, but permitting them to go to the Court of Claims with their claims against the Government for such transportation. Subsequently the Court of Claims, and afterward the Supreme Court of the United States also, decided that these railway companies were entitled to transportation subject to a certain deduction for the use of their track. The Quartermaster-General had before that time been paying for such transportation subject to the deduction of .33⅓ per cent., but the Quartermaster's Department held then as it still holds that it cannot adjust those claims, but that each claim must be made the subject of a suit.

In pursuance of the policy of the Government before that time the Quartermaster-General now, wherever he can do it, sends the Government supplies over one of those land-grant roads. So it happens, I have no doubt, that a very large portion of the service in the way of transportation is rendered to the Government by roads which do not really receive any benefit from this appropriation. Consequently a large annual deficiency is arising, to be paid only as judgments from time to time are rendered.

I speak of this as one of those things which ought to be taken into account in determining which should be paid. I think myself the bill should provide for the payment of this transportation, or that some rule should be established. I have tried on several occasions to get the Senate to adopt such a rule, by a bill which provides for the payment; but if this amount, which I understand aggregates from three to four hundred thousand dollars a year, is not paid, the Senator will see that a deficiency to that amount will be constantly arising to be appropriated for hereafter. I suggest to him whether there should not be either an appropriation here for that transportation or a limitation upon the amount, so that we may know precisely, or as nearly as possible, what we are paying the four millions for.

Mr. DAWES. I wish to inquire what is the necessity of a continuance of the provision of law which requires each one of these roads to go to the Court of Claims and prosecute a suit? I understand very

well why it was necessary for a judicial determination of what portion of the expense of transportation over the land-grant railroads should be credited to the Government for the franchise and what portion for the rolling stock and expense of carrying the freight, under the rule of law that the Government have the right to transport their own freight over the road; but if instead of transporting it themselves they employ the railroad to transport it, some portion of the expense should be apportioned and paid to the railroad. It was necessary to have that judgment of a court to determine what portion that was. That has gone from the Court of Claims to the Supreme Court and a rule has been established there, and still the law requires each one of these roads to go to the Court of Claims, and it may be through to the Supreme Court, before it can get any satisfaction. I would inquire of the Senator whether the committee had their attention called to that?

Mr. WITHERS. Only the general knowledge of the facts which have been cited by both Senators. In view of the fact that all these circumstances which have been mentioned were within the knowledge of the Quartermaster-General, who has charge of the transportation of the Army, and as the committee found the amount appropriated by the bill to approximate nearly to the amount fixed by the Quartermaster-General in the Book of Estimates, I assume that there will be no deficit of any serious extent in the matter of transportation. The total amount would, all must see, become entirely problematical and uncertain.

The Committee on Appropriations did not deem it proper to make any appropriation specifically for the benefit of the class of roads which has been alluded to by the Senator from Kansas, because they thought that the courts were open for the adjudication of these questions, and in cases where the adjudication had been had the Department would conform to the decision of the court.

Mr. PLUMB. But notwithstanding the theory of the Senator from Virginia, which would seem to be all right, the fact is that the Quartermaster's Department holds that notwithstanding that adjudication it cannot pay any sum of money to these land-grant railroads by reason of the prohibition in the appropriation act of 1873 until they can get a judgment, and then that judgment is paid. The judgment of the Court of Claims is made necessary by that act before the payment can be made. The amount that is deficient according to the estimate of the Quartermaster-General of last year was over a million dollars. It is accumulating now at the rate of three or four hundred thousand dollars a year. The fact is, therefore, that we are appropriating for military transportation without knowing the amount that will be actually needed for that purpose.

I think one of two things ought to be done. Either we ought to provide for applying a portion of this money to that transportation, which is as much a legal charge against the Government as any other, or we should diminish this appropriation to correspond with what are the actual necessities of the Army.

Mr. WITHERS. As I understand it, the bill does conform to what are the actual necessities of the Army.

I would call attention to the fact that if any legislation on the subject is necessary it would not probably come from the Committee on Appropriations, but from the Committee on Railroads or the Military Committee. In addition to that, I will state the fact that the Quartermaster-General himself, as well as the heads of the other departments of the Army, knew that this bill was pending and was under consideration before the Appropriations Committee, and while any suggestions that they might desire to make were requested, no suggestion was made that this appropriation was at all inadequate to serve the purposes designed by it.

Mr. PLUMB. The Quartermaster-General has, from time to time, made recommendations for legislation on this subject. I presume he may have wearied of making them year after year without any attention having been paid to them. I will call the attention of the Senator, however, to the fact that last year, in one of the appropriation bills, we did appropriate the sum of $300,000 to meet this deficiency, which only shows the existence of the fact, as I have stated, that a deficiency is constantly being created, and that Congress does not know to-day, and no one can tell except by going to the Quartermaster-General's Office, what we are paying for military transportation, notwithstanding the amount we appropriate, because the Quartermaster-General will still continue to send, as he has heretofore done, a large portion, and much the larger portion, of military supplies, so far as he can have them transported, over these land-grant railroads, which get no pay.

I presume the amendment which I design offering is not in order, but I will offer it at all events for the consideration of the Senate and of the committee.

The VICE-PRESIDENT. The amendment proposed by the Senator from Kansas will be reported.

The CHIEF CLERK. After the word "water," in line 154, it is proposed to insert:

And including 50 per cent. of the pay of such land-grant railroads, as by the decision of the Supreme Court are entitled to payment for transporting troops and supplies, subject to a reasonable deduction for the use of the track of the same.

Mr. WITHERS. I shall have to interpose ——

The VICE-PRESIDENT. The Senator from Virginia will yield while the Chair receives a message from the House of Representatives.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its clerk, announced that the House had concurred in the amendments of the Senate to the following bill and joint resolution:

A bill (H. R. No. 5623) to authorize the Secretary of the Treasury to repair and extend the public building owned by the Government, at Cleveland, Ohio; and

A joint resolution (H. R. No. 189) legalizing the health ordinances and regulations for the District of Columbia.

The message also announced that the House had passed a joint resolution (H. R. No. 290) accepting the gift of the desk used by Thomas Jefferson, in writing the Declaration of Independence; in which it requested the concurrence of the Senate.

ACCEPTANCE OF JEFFERSON'S DESK.

The VICE-PRESIDENT. The Chair lays before the Senate a message from the President of the United States, which will be read.

The message was read, as follows:

To the Senate and House of Representatives:

I have the honor to inform Congress that Mr. J. Randolph Coolidge, Dr. Algernon Coolidge, Mr. Thomas Jefferson Coolidge, and Mrs. Ellen Dwight, of Massachusetts, the heirs of the late Joseph Coolidge, jr., desire to present to the United States the desk on which the Declaration of Independence was written. It bears the following inscription in the handwriting of Thomas Jefferson:

"Thomas Jefferson gives this writing-desk to Joseph Coolidge, jr., as a memorial of his affection. It was made from a drawing of his own, by Ben. Randall, cabinet-maker of Philadelphia, with whom he first lodged on his arrival in that city in May, 1776, and is the identical one on which he wrote the Declaration of Independence.

"Politics as well as religion has its superstitions. These, gaining strength with time, may one day give imaginary value to this relic for its association with the birth of the great charter of our Independence.

"MONTICELLO, November 18, 1825."

The desk was placed in my possession by Hon. Robert C. Winthrop, and is herewith transmitted to Congress, with the letter of Mr. Winthrop, expressing the wish of the donors "to offer it to the United States, that it may hereafter have a place in the Department of State in connection with the immortal instrument which was written upon it in 1776."

I respectfully recommend that such action may be taken by Congress as may be deemed appropriate with reference to a gift to the nation so precious in its history and for the memorable associations which belong to it.

RUTHERFORD B. HAYES.

EXECUTIVE MANSION, *April* 22, 1880.

"WASHINGTON, D. C., *April* 14, 1880.

"MY DEAR SIR: I have been privileged to bring with me from Boston, as a present to the United States, a very precious historical relic. It is the little desk on which Mr. Jefferson wrote the original draught of the Declaration of Independence.

"This desk was given by Mr. Jefferson himself to my friend the late Joseph Coolidge, of Boston, at the time of his marriage to Jefferson's granddaughter, Miss Randolph; and it bears an autograph inscription, of singular interest, written by the illustrious author of the Declaration in the very last year of his life.

"On the recent death of Mr. Coolidge, whose wife had died a year or two previously, the desk became the property of their children—Mr. J. Randolph Coolidge, Dr. Algernon Coolidge, Mr. Thomas Jefferson Coolidge, and Mrs. Ellen Dwight—who now desire to offer it to the United States, so that it may henceforth have a place in the Department of State, in connection with the immortal instrument which was written upon it in 1776.

"They have done me the honor to make me the medium of this distinguished gift, and I ask permission to place it in the hands of the Chief Magistrate of the nation in their name and at their request.

"Believe me, dear Mr. President, with the highest respect, very faithfully, your obedient servant,

"ROBERT C. WINTHROP.

"His Excellency RUTHERFORD B. HAYES,
"*President of the United States.*"

The VICE-PRESIDENT. The Chair lays before the Senate the joint resolution received from the House of Representatives.

The joint resolution (H. R. No. 290) accepting the gift of the desk used by Thomas Jefferson in writing the Declaration of Independence was read the first time by its title.

The joint resolution was read the second time at length, as follows:

Resolved by the Senate and House of Representatives, &c., That the thanks of this Congress be presented to J. Randolph Coolidge, Algernon Coolidge, Thomas Jefferson Coolidge, and Mrs. Ellen Dwight, citizens of Massachusetts, for the patriotic gift of the writing-desk presented by Thomas Jefferson to their father, the late Joseph Coolidge, upon which the Declaration of Independence was written; and

Be it further resolved, That this precious relic is hereby accepted in the name of the nation, and that the same be deposited for safe-keeping in the Department of State of the United States; and

Be it further resolved, That a copy of these resolutions, signed by the President of the Senate and Speaker of the House of Representatives, be transmitted to the donors.

The VICE-PRESIDENT. This joint resolution having been read twice, is before the Senate as in Committee of the Whole.

Mr. DAWES. Mr. President, I cannot think that the Senate will object to an interruption of its ordinary business to consider for a brief moment so interesting a subject as that contained in the resolutions which have just come from the House. The message of the President and the resolutions themselves have already communicated to us so much of the history of the subject to which they allude that little more is necessary to put us in possession of the facts which impart to it an interest and value justifying these proceedings.

This small, plain, unpolished, mahogany writing-desk, was once the property of Thomas Jefferson. Why it has been preserved with scrupulous care, and now arrests the attention of the nation, he himself, after keeping it for half a century, has told us in an inscription placed upon it by his own hand in the last year of his life, in these words:

Thomas Jefferson gives this writing-desk to Joseph Coolidge, jr., as a memorial of his affection. It was made from a drawing of his own by Ben. Randall, cabi-

net-maker, of Philadelphia, with whom he first lodged on his arrival in that city in May, 1776, and the identical one on which he wrote the Declaration of Independence. Politics as well as religion has its superstitions. These, gaining strength with time, may one day give imaginary value to this relic for its association with the birth of the great charter of our Independence.

NOVEMBER 18, 1825.

Mr. Coolidge was the husband of a granddaughter of Mr. Jefferson. He was a resident of Boston and has recently deceased. His children, Mr. J. Randolph Coolidge, Mr. Algernon Coolidge, Mr. Thomas Jefferson Coolidge, and Mrs. Ellen Dwight, through our distinguished fellow-citizen, the Hon. Robert C. Winthrop, now present this most remarkable relic to the United States.

Embellishment or enlargement can add nothing to this simple story. It is, of itself, enough to draw to this plain memorial the homage of mankind, and will be told to listening pilgrims and votaries in all the generations that shall count the years of the Republic and the spread of free institutions in the world. The man, the occasion, and the subject crowd in upon our thoughts and fill us with the admiration and wonder of those who look upon the place where miracles have been wrought.

The youngest and least experienced of all his associates in practical government, none of whom had shared in anything but the affairs of a dependent colony, is called upon to commit to writing, for the judgment of all mankind and for all time, the reasons for the dismemberment of an empire and the creation of a republic among the nations of the earth. And the work thus undertaken was so accomplished, upon this writing-desk, that the test of a century of criticism and trial has only made it more clear that nothing could have been added or excluded. Constitutions based upon it have indeed been altered and amended many times, but it has always been in the endeavor to more and more conform them to the great truths enunciated in this immortal instrument. Mr. Jefferson termed it in the inscription upon this memorial, after fifty years of experience and growth, "the charter of our Independence." It is more. A century of political commotion and upheaval has proven it to be the great title-deed of free institutions throughout the world.

It cannot but be that everything connected with the production of this wonderful instrument will be cherished by the American people with an almost sacred reverence, and by lovers of free institutions everywhere with the regard which draws the devout to a shrine. Let, therefore, this writing-desk, upon which it was written, be gladly accepted by the nation and carefully preserved with the great charter itself in the archives of that mighty Government thus called into being. And there, with the sword of Washington and the staff of Franklin, which the nation has already accepted with reverent gratitude, let these muniments of our title be preserved evermore.

I should, Mr. President, fail altogether in my duty to the people of Massachusetts if I did not give expression at this time to their great gratification for the large share that Commonwealth has had from the beginning in all that makes this occasion proper or worthy of attention. Massachusetts and Virginia had from the outset of the Revolution conspicuously joined hands in the great struggle, sharing the obloquies and perils with which it opened on their soil. Arthur Lee, of Virginia, had, for many years before, as the agent of Massachusetts, pleaded her cause before the British throne. Samuel Adams and Richard Henry Lee kindled together the fires of the Revolution. It was on motion of John Adams, in a most critical period in the temper of the Colonies, that Washington himself was called to the command of the American Armies. Mr. Adams was with Mr. Jefferson upon the committee instructed by the Continental Congress to draft a declaration of independence, and joined in imposing that duty upon one many years his junior, because of his "reputation for a matchless felicity in embodying popular ideas." That matchless felicity of Mr. Jefferson produced the Declaration of Independence, and the peerless eloquence of John Adams carried it through a hesitating Congress. These distinguished patriots having each in turn enjoyed the highest honors of the Republic they had together so conspicuously helped to create, were both permitted by Providence to close their illustrious career on the fiftieth anniversary of the day they had made immortal, and to pass together to their reward amid the shouts of a people applauding their great work.

And now this precious relic, around which so many memories of the great actors of the Revolution cluster, kept by Virginia for fifty years and then committed by its illustrious owner to the care of Massachusetts for another half century, is to-day donated to the United States by those in whose veins commingles the blood of both these ancient Commonwealths. Thus do Massachusetts and Virginia again stand side by side amid the glories which have come down to us from the Revolution.

I hope, Mr. President, that the third reading of the resolution will be unanimously ordered.

Mr. JOHNSTON. Mr. President, as one of the Senators from the State in which Mr. Jefferson was born, it is a duty most agreeable to me to move concurrence in the resolution under consideration. One of Mr. Jefferson's biographers describes the relic now before us as "a little writing-desk only three inches high," which has upon it this inscription placed there by Mr. Jefferson himself:

Thomas Jefferson gives this writing-desk to Joseph Coolidge, jr., as a memorial of his affection. It was made from a drawing of his own by Ben. Randall, cabinet-maker, of Philadelphia, with whom he first lodged on his arrival in that city in May, 1776, and is the identical one on which he wrote the Declaration of Independence. Politics, as well as religion, has its superstitions. These, gaining strength with time, may one day give imaginary value to this relic for its association with the birth of the great charter of our Independence.

MONTICELLO, *November* 18, 1825.

And though he was then nearly eighty-three years old, it is written in the same bold, clear, and strong handwriting in which he penned the Declaration of Independence almost half a century before, when he was a young man, only a little more than thirty. He speaks of the superstitions of politics and of the imaginary value which may one day attach to this relic. But the reverence a free people are ready to accord to the instruments of such events as this little desk chronicles is neither superstition nor an idle and empty imagination; for on that little desk was done a work greater than any battle, loftier than any poem, more enduring than any monument.

When the Declaration of Independence was written this earth was centuries old; many peoples had existed, many battles had been fought, many struggles had been made, and many patriots had lived; revolutions, rebellions, and wars for freedom had been waged, but civil liberty, as we now see, enjoy, and understand it, was still unknown. The struggles of past days had been merely for a change of actual government, and not so much for new and better principles. It was to get rid of the then ruler, but to let the new one put in the place of the old govern on the same platform. When Cæsar was killed the conspirators had no thought of anything but freeing the country from an overshadowing man. In their conception the only thing to be done was to give the reins into new hands. But at last came the author of the Declaration of Independence. What had been cloudy and obscure and seen dimly by others was a clear vision to him. He saw not only what the rights of a citizen were, but how to defend, guard, and protect them; not only what true civil liberty was, but how to acquire and how to preserve it. And thus our Revolution was therefore not a simple change of government for the people of the thirteen colonies; it was not the case of a dependent territory breaking away from the mother country and enforcing the separation by arms, and then conducting its affairs upon the same old plan; nor was it only the birth of a new nation, of one government more added to those already existing; but with the establishment of this new nation came new theories, practices, and principles. Bills of right and written constitutions declared and defined the duties, powers, and limitations of the government and the rights of the citizens. For the divine right of kings was substituted the sacred right of the people. In place of the service of the serf to the baron was established a well-regulated militia and the right of the people to keep and bear arms. Instead of privileged classes and orders of nobility all men were declared equal under the law. The sword was the governing power in many countries, but here it was made the servant of the civil law. Instead of subsidies levied by governments and collected by force and spent without responsibilities, no citizen here is taxed who is not represented, and no tax is levied except by the representatives of the people. Instead of blind obedience, ignorance, and the union of church and state, "Congress can make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

And without undervaluing the great men who lived and acted with Mr. Jefferson, it is no disparagement to them to say that he was the principal actor in the events of that day. His brain originated, his hand executed. The principles he enunciated, so new then, are already old. In less than a single century they are taking root all over the world, and written constitutions and representatives of the people are now the rule in civilized nations.

Mr. President, I move the adoption of the resolution.

The joint resolution was ordered to a third reading, and read the third time.

Mr. BECK. I ask that the resolution be read at length.

The VICE-PRESIDENT. The resolution will be again reported.

The Chief Clerk read the resolution.

Mr. BECK. I desired to have it read for the purpose of asking the Senator from Virginia, when the joint resolution is passed "by the Senate and House of Representatives of the United States of America in Congress assembled," and when the Declaration was a Declaration of Independence of the United States of America, and when the Constitution and all our proceedings run in that line, why it is so carefully said that this desk is accepted "by the nation" instead of "by the United States," whose representatives we are? Why should that change be made I should like to know.

Mr. JOHNSTON. The resolution comes from the House as it was adopted there. It is just in the form it was adopted there. I suppose it is right because it is exactly what the fact is.

Mr. DAWES. Does the Senator from Kentucky object to this desk being accepted?

Mr. BECK. Not at all. I merely asked a question of the Senator from Virginia.

The VICE-PRESIDENT. The resolution having had three several readings, the question is, Shall it pass?

The joint resolution was passed.

REPORT ON FISH AND FISHERIES.

The VICE-PRESIDENT laid before the Senate the amendment of the House of Representatives to the joint resolution (S. R. No. 100)

to print extra copies of the report of the Commissioner of Fish and Fisheries for the year 1879.

The amendment of the House was to strike out all after the word "printing," in line 11, namely:

And 2,500 for sale by the Public Printer, under such regulations as the Joint Committee on Printing may prescribe, at a price equal to the additional cost of publication and 10 per cent. thereto thereon added.

Mr. WHYTE. I move that the Senate concur in the amendment.

The amendment was concurred in.

Mr. EDMUNDS subsequently moved to reconsider the vote by which the amendment was concurred in; and the motion to reconsider was entered.

SMITHSONIAN REPORT.

The VICE-PRESIDENT laid before the Senate the amendments of the House of Representatives to the concurrent resolution of the Senate to print 10,500 copies of the report of the Smithsonian Institution for the year 1879.

The amendments of the House of Representatives were, in line 2, to strike out "ten" and to insert "fifteen;" in lines 4 and 5, to strike out "one thousand" and insert "2,500;" in line 6, to strike out "three" and insert in lieu thereof "eight," and in lines 7 and 8, to strike out "6,500" and insert "5,000."

Mr. WHYTE. I ask to have the resolution read as it stands amended.

The Chief Clerk read as follows:

Resolved by the Senate, (the House of Representatives concurring therein,) That 15,500 copies of the report of the Smithsonian Institution for the year 1879 be printed; 2,500 copies of which shall be for the use of the Senate, 8,000 copies for the use of the House of Representatives, and 5,000 for the use of the Smithsonian Institution.

Mr. WHYTE. The division is not in accordance with the usual rule; but there is such a slight difference that I move that the amendments of the House of Representatives be concurred in.

The motion was agreed to.

EXECUTIVE COMMUNICATIONS.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of War, transmitting a letter of the Chief of Engineers submitting report from Lieutenant-Colonel Q. A. Gillmore, Corps of Engineers, of the result of an examination made in compliance with the requirements of the river and harbor act of June 18, 1878, of the peninsula of Florida with a view to the construction of a ship-canal from Saint Mary's River to the Gulf of Mexico; which was referred to the Committee on Commerce, and ordered to be printed.

He also laid before the Senate a communication from the Secretary of War, transmitting letter from the Chief of Engineers covering copies of reports from Captain Charles J. Allen, Corps of Engineers, upon a survey, made in compliance with the requirements of the river and harbor act of March 3, 1879, of Superior Bay, to determine the best and most economical plan for harbor improvement for the head of Lake Superior; which was referred to the Committee on Commerce, and ordered to be printed.

ARMY APPROPRIATION BILL.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. No. 5523) making appropriations for the support of the Army for the fiscal year ending June 30, 1881, and for other purposes, the pending question being on the amendment submitted by Mr. PLUMB, in line 154, page 7, after the word "water," to insert:

And including 50 per cent. of the pay of such land-grant railroads as by the decision of the Supreme Court are entitled to payment for transporting troops and supplies, subject to a reasonable deduction for the use of the track of the same.

Mr. WITHERS. That amendment has not been reported from any committee, and I shall have to raise the point of order.

The VICE-PRESIDENT. It is clearly not in order, if objected to. The Secretary will proceed with the reading of the bill.

The Secretary resumed the reading of the bill at line 178, and continued to line 183, as follows:

For hire of quarters for troops, of storehouses for the safe-keeping of military stores, of offices, and of grounds for camp and summer cantonments, and for temporary frontier stations; for the construction of temporary huts and stables; and for repairing public buildings at established posts, $880,000.

Mr. WITHERS. That is the same as the appropriation of last year.

The Secretary read lines 184 and 185, as follows:

For construction and repair of hospitals, as reported by the Surgeon-General of the Army, $75,000.

Mr. WITHERS. That is also the same as last year.

The Secretary read from line 186 to line 191, as follows:

For purchase and manufacture of clothing and camp and garrison equipage, and for preserving and repacking the stock of clothing and camp and garrison equipage and materials on hand at the Philadelphia, Jeffersonville, and other depots of the Quartermaster's Department, $1,000,000.

Mr. WITHERS. That is $100,000 greater than the appropriation of last year.

The Secretary read from line 192 to line 195, as follows:

For all contingent expenses of the Army not provided for by other estimates, and embracing all branches of the military service, to be expended under the immediate orders of the Secretary of War, $40,000.

Mr. WITHERS. That is the same as the existing provision.

The Secretary read from line 196 to line 200, as follows:

Medical Department:

For purchase of medical and hospital supplies, medical care and treatment of officers and soldiers on detached duty, expenses of purveying depots, advertising, and other miscellaneous expenses of the Medical Department, $200,000.

Mr. WITHERS. That is the same as the appropriation in the last bill.

The Secretary read from line 201 to line 203, as follows:

For the Army Medical Museum, and for medical and other works for the library of the Surgeon-General's Office, $10,000.

Mr. WITHERS. That is also the same.

The Secretary read from line 204 to line 208, as follows:

Engineer Department:

For engineer depot at Wllet's Point, New York, namely: For purchase of engineering materials to continue the present course of instruction of the engineer battalion in field engineering, $1,000.

Mr. WITHERS. That is the same.

The Secretary read from line 209 to line 214, as follows:

For incidental expenses of the depot, remodeling ponton-trains, repairing instruments, purchasing fuel, forage, stationery, chemicals, extra-duty pay to soldiers engaged in special skilled labor, such as wheelwright work, printing, photographing and lithographing engineer documents, and ordinary repairs, $4,000.

Mr. WITHERS. The only variation in that is the addition in lines 212 and 213 of the words, "such as wheelwright work, printing, photographing and lithographing engineer documents," which are included in the Book of Estimates.

The Secretary read from line 215 to line 225 as follows:

Ordnance Department:

For the ordnance service, required to defray the current expenses at the arsenals; of receiving stores and issuing arms and other ordnance supplies; of police and office duties; of fuel and lights; of stationery and office furniture; of tools and instruments for use; of public animals, forage, and vehicles; incidental expenses of the ordnance service, including compensation of workmen in the armory and museum building connected with the Ordnance Office and those attending practical trials and tests of ordnance, small-arms, and other ordnance supplies, $110,000.

Mr. WITHERS. That is the same as the last bill.

The Secretary read lines 226 and 227, as follows:

For manufacture of metallic ammunition for small-arms, $80,000.

Mr. WITHERS. That is $5,000 more than was appropriated for the same purpose last year.

The Secretary read lines 228 and 229, as follows:

For overhauling, cleaning, and preserving new ordnance stores on hand at the arsenals, $20,000.

Mr. WITHERS. That is $5,000 less than the appropriation last year.

The Secretary read from line 230 to line 237, as follows:

For mounting and dismounting guns and removing the armament from forts being modified or repaired, including heavy carriages returned to arsenals for alteration and repairs, and other necessary expenses of the same character, and for repairing ordnance and ordnance stores in the hands of troops and for issue at the arsenals and depots, and for extra-duty pay for enlisted men detailed for ordnance service, $30,000.

Mr. WITHERS. That is in accordance with the existing provision.

The Secretary read from line 238 to line 240, as follows:

For purchase and manufacture of ordnance stores to fill requisitions of troops, $115,000.

Mr. WITHERS. The same statement applies in regard to that.

The Secretary read from line 241 to line 244, as follows:

For infantry, cavalry, and artillery equipments, consisting of clothing-bags, haversacks, canteens, and great-coat straps, and repairing horse equipments for cavalry troops, $65,000.

Mr. WITHERS. That is a reduction of $10,000 on the amount appropriated by the last bill.

The Secretary read from line 245 to line 251, as follows:

For powder depot: For grading grounds, erecting magazines, and other necessary buildings, and all expenses incident thereto, $50,000: *Provided*, That the Secretary of War may, in his discretion, expend a sum not exceeding $18,500 of this amount in the purchase of additional land adjoining the present site.

Mr. WITHERS. That is the same as last year.

The Secretary read lines 252 and 253, as follows:

For manufacture of arms at national armories, $300,000.

Mr. WITHERS. That is $50,000 more than was appropriated by the last bill.

The Secretary read from line 254 to line 263, as follows:

That upon the application of any college, university, or institution of learning incorporated under the laws of any State within the United States, having capacity at the same time to educate not less than one hundred and fifty male students, the President may detail an officer of the Army on the retired list to act as president, superintendent, or professor thereof; and such officer may receive from the institution to which he may be detailed the difference between his retired and full pay, and shall not receive any additional pay or allowance from the United States.

Mr. WITHERS. That is new matter.

The Secretary read from line 264 to line 267, as follows:

United States testing-machine:

For caring for, preserving, using, and operating the United States testing-machine at the Watertown arsenal, $5,000.

Mr. WITHERS. That also is new matter.

The Secretary read section 2, as follows:

SEC. 2. That no money appropriated in this act is appropriated or shall be paid for the subsistence, equipment, transportation, or compensation of any portion of the Army of the United States to be used as a police force to keep the peace at the polls at any election held within any State: *Provided*, That nothing in this pro-

vision shall be construed to prevent the use of troops to protect against domestic violence in each of the States on application of the Legislature thereof or of the executive when the Legislature cannot be convened.

Mr. BLAINE. I move to amend that section by adding as an additional proviso what I send to the Chair.

The Chief Clerk read as follows:

Provided further, That any person who shall carry a deadly weapon of any kind, openly or concealed, at the polls at an election for Representatives in Congress, shall, upon conviction thereof, be punished with a fine not less than $500 nor more than $5,000, or with imprisonment for a period not less than six months nor more than five years, or with both fine and imprisonment, at the discretion of the court.

Mr. BLAINE. Upon consideration I will move to strike out the section before offering that amendment, but I give notice that I will offer that amendment either as an amendment to this section if it stays in, or as a separate section, if it be in order, in case this section is rejected from the bill. My first amendment is to strike out the second section.

The VICE-PRESIDENT. The Senator from Maine moves to strike out the second section of the bill.

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

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. EDMUNDS, (when Mr. ANTHONY'S name was called.) The Senator from Rhode Island [Mr. ANTHONY] who is necessarily absent is paired on all political questions with the Senator from Texas, [Mr. COKE.] I believe this to be a political question. If the Senator from Rhode Island were present he would vote "yea."

Mr. EDMUNDS, (when Mr. BRUCE'S name was called.) The Senator from Mississippi [Mr. BRUCE] who is necessarily absent is paired on all political questions with the Senator from Indiana, [Mr. VOORHEES.] If the Senator from Mississippi were present, he would vote "yea."

Mr. CAMERON, of Wisconsin, (when his name was called.) I am paired with the Senator from New York, [Mr. KERNAN.] If he were present, I should vote "yea."

Mr. DAWES, (when his name was called.) Upon this question I am paired with the Senator from Tennessee, [Mr. BAILEY.] I should vote "yea" if he were present.

Mr. HARRIS, (when his name was called.) Upon all political questions I am paired with the Senator from Massachusetts, [Mr. HOAR.] I shall therefore decline to vote. I should vote "nay" if the Senator from Massachusetts were present.

Mr. CARPENTER, (when Mr. MCDONALD'S name was called.) I am paired on all political questions with the Senator from Indiana, [Mr. MCDONALD.] If he were here, I should vote "yea."

Mr. PLUMB, (when Mr. MCPHERSON'S name was called.) The Senator from New Jersey [Mr. MCPHERSON] and I are paired.

Mr. PADDOCK, (when his name was called.) On all political questions I am paired with the Senator from Florida, [Mr. JONES,] and so I shall not vote.

Mr. PLATT, (when his name was called.) Upon this question I am paired with the Senator from North Carolina, [Mr. RANSOM.] If he were present, I should vote "yea."

Mr. PLUMB, (when his name was called.) On this question I am paired with the Senator from New Jersey, [Mr. MCPHERSON.] If he were present, I should vote "yea."

Mr. VANCE, (when his name was called.) My colleague, [Mr. RANSOM,] is paired with the Senator from Connecticut, [Mr. PLATT.] If my colleague were here, he would vote "nay." I myself am paired with the Senator from Illinois, [Mr. LOGAN.]

The roll-call having been concluded, the result was announced—yeas 20, nays 28; as follows:

YEAS—20.

Allison,	Cameron of Pa.,	Ingalls,	Morrill,
Blaine,	Conkling,	Jones of Nevada,	Rollins,
Blair,	Edmunds,	Kellogg,	Saunders,
Booth,	Ferry,	Kirkwood,	Teller,
Burnside,	Hamlin,	McMillan,	Windom.

NAYS—28.

Bayard,	Davis of W. Va.,	Johnston,	Saulsbury,
Beck,	Farley,	Lamar,	Slater,
Butler,	Garland,	Maxey,	Vest,
Call,	Gordon,	Morgan,	Wallace,
Cockrell,	Groome,	Pendleton,	Whyte,
Coke,	Hampton,	Pryor,	Williams,
Davis of Illinois,	Hill of Georgia,	Randolph,	Withers.

ABSENT—28.

Anthony,	Eaton,	Jones of Florida,	Plumb,
Bailey,	Grover,	Kernan,	Ransom,
Baldwin,	Harris,	Logan,	Sharon,
Bruce,	Hereford,	McDonald,	Thurman,
Cameron of Wis.,	Hill of Colorado,	McPherson,	Vance,
Carpenter,	Hoar,	Paddock,	Voorhees,
Dawes,	Jonas,	Platt,	Walker.

So the amendment was rejected.

Mr. BLAINE. I now offer the following as an amendment to come in at the end of the second section:

Provided further, That any person who shall carry a deadly weapon of any kind, openly or concealed, at the polls, (except one acting under the authority of the United States,) at any election for Representatives in Congress, shall, on conviction thereof, be punished with a fine of not less than $500 nor more than $5,000, or with imprisonment for a period not less than six months nor more than five years, or with both fine and imprisonment, at the discretion of the court.

Mr. WITHERS. I make the point of order on that amendment that it is not reported by any committee or recommended by the head of any of the Departments.

Mr. BLAINE. It is germane to the bill. It does not appropriate anything. It is a germane amendment to the legislation that is in the bill. I do not think there is anything in that point of order; but I will await the decision of the Chair.

The VICE-PRESIDENT. On what ground does the Senator from Virginia put his objection?

Mr. WITHERS. I have not the rules of order by me; but there is a rule of order which prohibits the introduction of amendments, as I remember it, which have not been recommended by a standing committee nor by a head of a Department.

The VICE-PRESIDENT. The Chair does not think the amendment is in order, but not upon the ground stated by the Senator from Virginia.

Mr. COKE. Will the Senator from Virginia yield to me a moment?

The VICE-PRESIDENT. The Chair thinks it is general legislation.

Mr. BLAINE. No more general than the legislation in the bill, and it is a germane amendment, and was ruled in order last year on precisely the same section and under precisely the same circumstances, in precisely the same language, and by precisely the same presiding officer.

The VICE-PRESIDENT. Not by the present occupant of the Chair.

Mr. BLAINE. Before the Chair announces his decision I beg to say this——

The VICE-PRESIDENT. The Chair will withhold his decision to hear the Senator.

Mr. BLAINE. If it were an independent piece of legislation which I rose as a member of the Senate to propose on an appropriation bill, then the decision of the honorable Vice-President would be strictly in order; but here comes to us in the bill a piece of independent legislation in no wise connected with the appropriations for the Army, a piece of legislation that has no appropriation in it; a general law prescribing what is right and prohibiting what is wrong. Now to that, in exactly the same line, further modifying and enlarging the precise provision which the House has sent to us, I offer the amendment.

I beg the attention of the honorable Vice-President to this result of the ruling, if it be the ruling: it will not only take from the Senate the right to move independent legislation, which our rules now forbid, but it will take from the Senate the right to modify in the least degree any independent legislation sent us by the House. We shall have to take it just as the House sends it, without condition or limitation or change or subtraction, or not take it at all.

I was for a good many years a member of a board of overseers in a New England college, and it had a board of trustees, and the honorable function which the board of overseers had was to say yea or nay to whatever proposition the trustees sent us; we could not amend it; we could not send a substitute; we could simply agree to it or not agree to it; and I submit to the honorable Vice-President that if he rules this amendment out of order it is making the Senate of the United States a board of overseers to the trustees who sit at the other end of the Capitol, and that we shall have the privilege on independent legislation on appropriation bills of simply saying yes or saying no, but we cannot modify it nor in any way adapt it to any exigency which in the judgment of the Senate might well arise. I submit to the Vice-President that the decision will go a great ways.

The VICE-PRESIDENT. The Chair must administer the rules of the Senate as he finds them. The first paragraph of the twenty-ninth rule provides that—

No amendment which proposes general legislation shall be received to any general appropriation bill.

This amendment prescribes a new offense, a new punishment, and so the Chair rules that it is general legislation.

Mr. BLAINE. One moment. Before the Chair decides, I should like to have the section read, the section that comes from the House in the words there written.

The Chief Clerk read section 2 of the bill, as follows:

SEC. 2. That no money appropriated in this act is appropriated or shall be paid for the subsistence, equipment, transportation, or compensation of any portion of the Army of the United States to be used as a police force to keep the peace at the polls at any election held within any State: *Provided*, That nothing in this provision shall be construed to prevent the use of troops to protect against domestic violence in each of the States on application of the Legislature thereof or of the executive when the Legislature cannot be convened.

Mr. BLAINE. That piece of legislation came from the House last year and is I believe *in totidem verbis* in the appropriation bill of last year. This amendment was then offered to it. I had the impression—with all respect, and I desire to stand corrected if I was wrong—that the Vice-President presided. I moved—and the amendment when I moved it was the subject of long discussion in the Senate—I moved the precise amendment which is now before the Senate. But I beg to say to the Vice-President with all due respect for his ruling, from which I shall not appeal and of which I shall not complain more than to differ from it, that the attitude in which he leaves the Senate is that whatever the House may send us in the shape of an independent proposition must be accepted and swallowed or else refused to be swallowed. We cannot coat it with sugar, we cannot in any degree

alter it, we cannot make it any more palatable, we cannot in any way dull the edge or sharpen it; we must take it just as the House gives it—that is what the honorable Vice-President says to us—or not take it at all.

I have steadily protested that the subject of legislation upon appropriation bills ought to be a matter of joint rule, ought to be a matter of joint and honorable understanding, that the powers of the two Houses should be restricted by precisely the same limitations; otherwise the two Houses are unequal in their power of legislation; but they have never yet been so unequal as the decision of the Vice-President would make them, for it has never yet been ruled that if a piece of legislation came upon an appropriation bill from the House it was not amendable by another piece of legislation, germane and appertaining thereto, in the Senate.

Mr. WITHERS. I dislike to interpose any difficulty in the way of the——

Mr. COKE. Will the Senator give way a moment that I may make an explanation personal to myself?

The VICE-PRESIDENT. The Chair wishes simply to remark that he leaves the Senate in the attitude in which its rules place it in his judgment.

Mr. COKE. I desire, Mr. President, to withdraw the vote cast by me a few minutes ago. I did not remember, at the time, that I was paired with the Senator from Rhode Island [Mr. ANTHONY] on all political questions. I came in after the roll was called and was asked to vote, and I entered my vote without reflecting.

The VICE-PRESIDENT. The Chair hears no objection to the withdrawal of the vote of the Senator from Texas, he having voted under a misapprehension. The bill is open to amendment.

Mr. EDMUNDS. Mr. President, assuming that the Chair was right (and I think it was) in its present decision, in conformity with it I offer this amendment which is simply restrictive of the present legislation that is in the bill, merely to narrow and prevent a certain construction of the clause that already stands in the bill. It is to strike out the period after the word "convened" at the end of line 10, of section 2, and insert a semicolon and the words—

Nor shall this section be held to apply to any case in which the employment of the military power of the United States is authorized by the Constitution and the laws made in pursuance thereof.

This amendment, I feel quite sure no point of order can be made against, as it is simply restrictive of and limiting the legislation that is already in the bill. Instead therefore of being general legislation added to an appropriation bill, it is to diminish the amount of legislation that is already in it.

The VICE-PRESIDENT. The Chair hears no objection to this amendment.

Mr. WITHERS. I object to the amendment.

The VICE-PRESIDENT. Upon what ground?

Mr. WITHERS. I do not object to the consideration of it; I do not raise a point of order.

The VICE-PRESIDENT. The question is on agreeing to the amendment.

Mr. EDMUNDS. I ask for the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. EDMUNDS, (when Mr. ANTHONY'S name was called.) I will state again, and probably it will not be necessary to repeat it, that the Senator from Rhode Island [Mr. ANTHONY] is paired on political questions with the Senator from Texas, [Mr. COKE.] If the Senator from Rhode Island were present he would vote in the affirmative.

Mr. CAMERON, of Wisconsin, (when his name was called.) I am paired on all political questions with the Senator from New York, [Mr. KERNAN.] If he were present, I should vote "yea."

Mr. CARPENTER, (when his name was called.) I am paired with the Senator from Indiana, [Mr. MCDONALD.] If he were present, I should vote "yea."

Mr. CONKLING, (when his name was called.) The Senator from Connecticut [Mr. EATON] was compelled to leave the Chamber a short time ago, and requested me to pair with him, and I suggested to him that nothing which his party would vote for was so bad that he would not vote with them, and that seemed to be his opinion. Therefore I infer that he would vote with his party even upon this. So as I should vote for the amendment, I will not vote at all.

Mr. HARRIS, (when his name was called.) Upon all political questions I am paired with the Senator from Massachusetts, [Mr. HOAR.] If the Senator from Massachusetts were present, I should vote "nay."

Mr. PADDOCK, (when his name was called.) On all political questions I am paired with the Senator from Florida, [Mr. JONES.] If he were present, I should vote "yea."

Mr. PLATT, (when his name was called.) Upon this question I am paired with the Senator from North Carolina, [Mr. RANSOM.] If he were present, I should vote "yea."

Mr. PLUMB, (when his name was called.) On this question I am paired with the Senator from New Jersey, [Mr. MCPHERSON.] If he were present, I should vote "yea."

Mr. EDMUNDS, (when Mr. THURMAN'S name was called.) Through the agency of the colleague of the Senator from Ohio [Mr. PENDLETON] I am paired with the Senator from Ohio [Mr. THURMAN] on this question. If he were present, he would vote "nay," and I beg to withdraw my vote, I having already voted. I have a general understanding with the Senator from Ohio, which was out of my mind at the moment, and after consultation with his colleague I withdraw my vote.

The VICE-PRESIDENT. The vote is withdrawn.

Mr. VANCE, (when his name was called.) On all political questions I am paired with the Senator from Illinois, [Mr. LOGAN.]

The roll-call was concluded.

Mr. COKE. I am paired on all political questions with the Senator from Rhode Island, [Mr. ANTHONY.] If he were here, he would vote "yea" and I should vote "nay."

Mr. EDMUNDS. I will announce once more, which will answer for all the votes on this bill, that the Senator from Mississippi, [Mr. BRUCE,] who is necessarily absent, is paired on all these political questions with the Senator from Indiana, [Mr. VOORHEES.] The Senator from Mississippi if here would vote in favor of this amendment.

Mr. DAWES. I wish to state that my colleague [Mr. HOAR] is paired on all political questions with the Senator from Tennessee, [Mr. HARRIS.] My colleague, if here, would vote "yea."

The result was announced—yeas 19, nays 27; as follows:

YEAS—19.

Allison,	Burnside,	Ingalls,	Rollins,
Baldwin,	Cameron of Pa.,	Kellogg,	Saunders,
Blaine,	Dawes,	Kirkwood,	Teller,
Blair,	Ferry,	McMillan,	Windom.
Booth,	Hamlin,	Morrill,	

NAYS—27.

Bailey,	Farley,	Johnston,	Saulsbury,
Bayard,	Garland,	Lamar,	Slater,
Beck,	Gordon,	Maxey,	Wallace,
Butler,	Groome,	Morgan,	Whyte,
Call,	Hampton,	Pendleton,	Williams,
Cockrell,	Hereford,	Pryor,	Withers.
Davis of W. Va.,	Hill of Georgia,	Randolph,	

NOT VOTING—30.

Anthony,	Edmunds,	Kernan,	Sharon,
Bruce,	Grover,	Logan,	Thurman,
Cameron of Wis.,	Harris,	McDonald,	Vance,
Carpenter,	Hill of Colorado,	McPherson,	Vest,
Coke,	Hoar,	Paddock,	Voorhees,
Conkling,	Jonas,	Platt,	Walker.
Davis of Illinois,	Jones of Florida,	Plumb,	
Eaton,	Jones of Nevada,	Ransom,	

So the amendment was rejected.

Mr. CONKLING. I ask permission to withdraw my vote from the previous roll-call. It had entirely escaped my memory that the Senator from Connecticut [Mr EATON] had asked me to pair with him, and therefore I voted.

The VICE-PRESIDENT. The Chair hears no objection; and the Senator's vote will be withdrawn from the vote on the previous amendment.

Mr. KIRKWOOD. I offer the following amendment, to be added to section 2:

And provided further, That nothing in this provision contained shall be so construed as to prevent the use of troops when necessary to enforce the lawful execution of any law of the United States by the Executive thereof, in any State or Territory, against forcible and violent resistance thereto, or to prevent the use of troops when necessary to protect any civil officer of the United States, while engaged in the lawful performance of his official duty, against forcible and violent attack or resistance, although applications for such use of troops shall not be made by the Legislature or executive of the State.

The VICE-PRESIDENT. The question is on agreeing to the amendment of the Senator from Iowa.

Mr. WITHERS. Does not the point of order apply to the amendment? I ask for a ruling upon it.

The VICE-PRESIDENT. Will the Senator state his objection to the amendment?

Mr. WITHERS. It is in the character of general legislation on an appropriation bill.

The VICE-PRESIDENT. It is simply explanatory; it is a limitation of the force of section 2. The Chair does not think the point of order lies against it.

Mr. KIRKWOOD. Mr. President, I beg the indulgence of the Senate for a very few moments upon this subject. I had an opportunity during the last session to express my opinion upon the questions involved herein, and do not propose to afflict the Senate with a repetition of them now. I wish to state, however, as briefly and as clearly as I can, the reasons which have led me to offer this amendment and the purposes I have in view in offering it. I do not know whether it expresses clearly the views of other Senators upon this question or not, but I have intended to express mine by it.

Section 2, as it comes to us from the other House, contains two provisions, one that which was attached to the Army bill passed at the last session, which reads thus:

That no money appropriated in this act is appropriated or shall be paid for the subsistence, equipment, transportation, or compensation of any portion of the Army of the United States to be used as a police force to keep the peace at the polls at any election held within any State.

That, if I am correct, was attached to the Army bill passed at the last session and comes back to us attached to the Army bill at this session.

Mr. WITHERS. That is the existing law.

Mr. KIRKWOOD. At the time the Army appropriation bill passed at the last session differences of opinion prevailed in this body as to what the meaning of that clause was. It was held by some to mean that it merely prevented the President of the United States from converting the troops into police officers, placing them at the polls to

do the ordinary duties of sheriffs, constables, or marshals, making, if I may use the term, thief-catchers of them for the time being. Other Senators claimed that that could not be the meaning of it, because that had never been proposed by anybody, and there must be some other meaning different from that. It was urged upon the Senate that it scarcely became the Senate of the United States to pass a law as to the true meaning of which differences of opinion existed among members of the Senate when by a change in its phraseology its meaning might be made clear. But it passed notwithstanding, and since that time, elsewhere than here, the people of the country have differed as to the meaning of that clause just as we differed here. I has been argued in some sections of the country that it meant just what some of us said it ought to mean, that it merely prevented the Army of the United States from being used as police officers; and others contended that it was intended to cover much more than that.

We have now an opportunity again of saying what is the true intent and meaning of this language, and it seems to me it is due to the dignity of the body that we should improve that opportunity and make clear what certainly is not now clear.

In addition to that there comes from the House the proviso attached to the second section, which reads:

> That nothing in this provision shall be construed to prevent the use of troops to protect against domestic violence in each of the States on application of the Legislature thereof or of the executive when the Legislature cannot be convened.

We all know that in the Constitution of the United States there is a provision that, among other things, declares that the Legislature of a State may, or when it is not in session the governor of a State may, call upon the President of the United States for troops to preserve the peace of the State against domestic violence. Everybody is content, I suppose, to have that power exercised upon all proper occasions; but that proviso being attached to this section carries with it the implication, it strikes me, that troops can be used in a State to protect against violence only when called into the State by the request of the Legislature, if the Legislature be in session, or by the request of the executive when the Legislature may not be in session.

Mr. EDMUNDS. That is clearly so.

Mr. KIRKWOOD. I understand the constitutional view held by the democratic side of this Chamber to be that troops cannot be carried into a State when violence prevails in that State, it makes no matter what the cause may be, what the effect of the violence may be, what its purpose may be, the troops of the United States cannot be called there to put down the violence unless the Legislature or the governor of the State shall ask that it be done.

Not speaking for any one else than for myself, but speaking very decidedly for myself, I do not believe that to be the meaning of the Constitution; and therefore, in order that the implication that I have suggested may not arise from this proviso, I move the amendment that I have offered, which covers three points, and when I have named them I shall relieve the Senate. My amendment reads:

> *And provided further*, That nothing in this provision contained shall be so construed as to prevent the use of troops when necessary to enforce the lawful execution of any law of the United States by the Executive thereof in any State or Territory against forcible and violent resistance thereto.

That is intended to cover this point: If in any State or Territory of the United States the execution of any law of the United States shall be forcibly and violently resisted, the President of the United States shall not be compelled to wait until the governor of the State chooses to ask, if he at all chooses to ask, for the troops of the United States to put down that violence and see to it that the law be executed. My understanding of the Constitution is that it is the duty, the constitutional duty, the sworn duty, of the President of the United States to see to it that the laws of the United States shall be faithfully executed, and that he is commander-in-chief of the Army and Navy of the United States. I deduce from these clauses that when in any State or Territory of the United States violent resistance is made to the execution of a law of the United States, and the civil officers of the United States have not power sufficient to put down that resistance, they, and not the governor of the State, the civil officers charged by law with the execution of the law, have the right to call upon the President of the United States for force sufficient to overcome the resistance to the law, and it is his duty to furnish it and see to it that the law is respected throughout every inch of our land.

Again, my amendment provides further that this clause shall not be so construed as to prevent the use of troops when necessary to protect the property of the United States in any State or Territory. Unfortunately we have had in the history of our country experience enough to show that sometimes the property of the United States has not been safe within the States of the Union, and the governors of States would not call upon the President of the United States to furnish troops to protect that property. I do not wish this clause to be so construed in the future that the President will feel himself bound to stand by and see the property of the United States pass into the hands of those who are unfriendly to the United States without offering any resistance to that result.

The amendment provides further that this section shall not be so construed as to prevent the use of the troops when necessary to protect any civil officer of the United States, while engaged in the lawful performance of his official duty, against forcible and violent attack or resistance, although application for such use of troops shall not be made by the Legislature or executive of the State in either of these cases.

Now, what say you, my democratic friends? Shall the execution of the laws of the United States within a State of this Union, when resisted by force and violence, depend upon the will and pleasure of the governor or the Legislature of that State as to whether the laws shall or shall not be executed? When property of the United States is threatened with seizure shall the question whether or not the President of the United States shall use force to preserve it to the United States depend upon the will and pleasure of the governor of the State in which it is located? When a civil officer of the United States, charged with the execution of the laws of the United States, sworn to execute them, is in the lawful performance of that duty resisted and attacked, shall the question whether or not he is to be protected in the lawful discharge of his duty depend upon the will and pleasure of the governor of the State where the violence and resistance may be? What say you? The people of this country desire to know. The democratic party of this country seeks to get possession of the entire Government, as it has to-day possession of both branches of Congress. In the better days of the democratic party, my friends, the democratic party never was afraid to say what it meant. It ought not to be now. If you mean to-day that the question whether or not the laws of the United States shall be executed in the States shall depend upon the will of the governor when violence resists the execution of the laws, if you mean that the protection of the property of the United States in a State shall depend upon the will of the governor of that State when violence threatens it, and if you mean that the safety of officers of the United States in the performance of their lawful duties shall depend upon the will and pleasure of the governor of a State when violence is offered to them, then you ought to have courage to say so; and if you do not mean it you also should have courage enough to say so.

The PRESIDING OFFICER, (Mr. FERRY in the chair.) The question is on the amendment of the Senator from Iowa.

Mr. KIRKWOOD. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. CONKLING. Mr. President, I shall vote for the amendment heartily, and wish that my vote could establish it in the bill. Sympathizing entirely with all said by its mover, I take this occasion to say that I have no sympathy whatever for those who voted for or signed the provision of which this is a repetition. If they fell into error as to its meaning, it comes very near, I fear, one of the instances of which it is said that "none are so blind as those who will not see." I believe there was no republican member of this body misled as to the meaning of this language when it came here originally. I believe the dust which was cast fell short of the eyes of republican Senators, and that no man here indicated by his vote that he was deceived for one moment by the word "police," or that he supposed that soldiers or officers of the United States, civil or military, could ever be lawfully employed to execute and enforce civil law except as part of the police power of the United States.

A memorandum which my friend from Iowa [Mr. ALLISON] lays before me informs me that I must be specific in stating that to which my remarks allude. They do not allude to this little addendum or codicil which follows the word "provided" in the pending bill, but they allude to this, in my judgment, most vicious provision which stands now on the statute-book, put there in the first instance by a democratic majority and afterward receiving the sanction of the residue of the law-making power:

> That no money appropriated in this act is appropriated or shall be paid for the subsistence, equipment, transportation, or compensation of any portion of the Army of the United States to be used as a police force to keep the peace at the polls at any election held within any State.

It is that to which I refer when I disclaim all sympathy with any man, lawyer or layman, who was misled or fooled by the word "police." If such deception, if it occurred, could be laid to the blame of any democrat it could not be laid at the door of the honorable Senator from Connecticut, [Mr. EATON,] now in my eye, for I remember that he had the courage and the candor—he usually has to state his convictions—to speak in the Senate with impatience and with derision, I think, of the idea that because the word "police" had been imported into this section, therefore it was harmless, and therefore it meant that in case of emergency armed men wearing the national uniform might uphold law and order and maintain peace on election day although they could not do it as a police force.

I ventured then to argue, citing many authorities among which there was no conflict whatever, I remember that the Senator from Wisconsin [Mr. CARPENTER] also argued, that the police function, the faculty of government which finds expression in the word "police," was and is the only faculty which could be exerted to maintain peace in time of peace by the execution and enforcement of civil law. But, although not here, elsewhere were minds intelligent enough, microscopic enough, gifted with the foresight and inspiration of statesmanship enough to conclude that because the word "police" had been introduced it did not mean that the Army should not be employed on election day to preserve order, but that it meant some harmless thing different and falling short of it.

The honorable Senator from Iowa [Mr. KIRKWOOD] is roused somewhat, very naturally, by an addition of four lines, which, if there was any tattered remnant of disguise too thin to be respectable, has torn

off that disguise and reveals the true meaning at the time of this language to have been and now to be that the Government of the United States cannot interpose at all in any conceivable case unless by reason of invasion or by reason of insurrection, something rising to the dignity of insurrection with which State authority cannot cope, the Legislature of the State, or the Legislature not being in session, then the governor of the State, shall call upon the Executive of the nation by a cry for help. That is the case and the only one. That is the meaning of this postscript which we find here now and which makes that so plain that I suppose it will be difficult for anybody any longer to deny it. That seems to have created some righteous indignation and some enthusiasm and emphasis of speech with my honorable friend from Iowa, and although I cannot utter it myself as emphatically or as well as he did, I wish the Senate would consider that I have uttered what the Senator from Iowa did, feeling about it as near as I know how, as he seemed to feel when he uttered it.

The occasion of that feeling with the Senator from Iowa, in which I share, is this: Here is a provision based upon the idea, and intended to enforce it, that although on three hundred and sixty-four other days including Sundays, holidays, and sacred days—my friend from Connecticut, who smiles, may not understand the nature of those latter days——

Mr. EATON. I am giving attention; I want to know.

Mr. CONKLING. The Senator says he hopes he will learn some time or other what they mean, and I hope he will.

Mr. EATON. From you.

Mr. CONKLING. I will teach him with great pleasure whenever I have nothing else to do. Here is a provision based on the idea that although on those days it is lawful for the United States to execute its laws, to maintain order for that purpose, to cope with and quell resistance for that purpose, yet on a national day, on that day when all the people assemble to record themselves in order that fresh illustration may be given of the cardinal principle that the majority shall rule, the occasion may become a prey to riot, disorder, fraud, defiance; and because of a provision written in the statutes by a democratic majority in the two Houses of Congress, the hand of national authority is helpless, paralyzed, or tied, acquiescence being given to the intended meaning of this enactment. That is the reason why the Senator from Iowa does not like it. I dislike it for the same reason. The Senator from Connecticut, if he were not a democrat, would dislike it for the same reason. But the thing which we condemn most emphatically when it is adverse to us finds a certain toleration when in our favor. Therefore the honorable Senator from Connecticut sits here as complacently as that distinguished democrat of Rome whose name was Nero is said to have sat on a memorable occasion.

Mr. EATON. I think he was a republican.

Mr. CONKLING. I am not surprised at that. The honorable Senator from Connecticut now practically confesses that he thought Nero was a republican.

Mr. EATON. He acted like one.

Mr. CONKLING. I can understand that a man under the other aberrations and hallucinations touching the political history and the political condition of the world should fall even into that error. I should not be at all surprised if the democrats of Connecticut in general held that belief.

Mr. EATON. Nero was certainly for a third term. He was an imperial man.

Mr. CONKLING. My friend grows more certain as he goes on. I presume he believes that too, whereas the history is that Nero was indefatigably and only a one-term man. But then when the Senator is wrong only three to one, the ratio of error is unusually small for him. If he comes within three, certainly there should be no fault found with his efforts as a guesser.

But, Mr. President, anything the Senator from Iowa can say upon this topic will go into history as one of the ornaments of discourse, as was quaintly said on another occasion, because he cannot by arguing confute the multiplication table; and here sit ten or twelve more than half of the Senate to put this provision into the bill and to keep it there for what it is good for in the next election, and I do not deny that in connection with some bills now on the Calendar, which will doubtless pass by exactly the same vote and majority, it will be worth a great deal, not in ascertaining truly the judgment and will of a majority of the American people, not in insuring a stainless, truthful election, not in obtaining an honest return from that election, for in my belief it stands in derogation of all these things, but it will be useful in that grapple for the mastery in which the political organization engaged in it is headed by these distinguished men. Therefore, it is to be adopted, and for that reason, as well as because I believe it is wrong and vicious, I shall vote against it, and I shall vote against the bill which contains it, and I should vote against it if in addition to the appropriations for the Army it contained also appropriations for other branches of the public service.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Iowa, [Mr. KIRKWOOD,] on which the yeas and nays have been ordered.

The Secretary proceeded to call the roll.

Mr. CAMERON, of Wisconsin, (when his name was called.) I am paired on all political questions with the Senator from New York, [Mr. KERNAN.] If he were present, I should vote "yea."

Mr. EDMUNDS, (when his name was called.) I am paired with the Senator from Ohio, [Mr. THURMAN.] Otherwise, I should vote "yea."

Mr. HARRIS, (when his name was called.) I am paired with the Senator from Massachusetts, [Mr. HOAR.] If he were present, I should vote "nay."

Mr. CARPENTER, (when Mr. MCDONALD'S name was called.) The Senator from Indiana [Mr. MCDONALD] and myself are paired on this question. If he were here, I should vote "yea."

Mr. PADDOCK, (when his name was called.) On all political questions I am paired with the Senator from Florida, [Mr. JONES.] If he were here, I should vote "yea."

Mr. PLATT, (when his name was called.) I am paired with the Senator from North Carolina, [Mr. RANSOM.] If he were present, I should vote "yea."

Mr. INGALLS, (when Mr. PLUMB'S name was called.) My colleague [Mr. PLUMB] left the Chamber a few moments ago on business of the Senate, and requested me to say, if a vote were taken in his absence, that he is paired with the Senator from New Jersey, [Mr. MCPHERSON.]

Mr. TELLER, (when his name was called.) On this subject I am paired with the Senator from Georgia, [Mr. GORDON.] If he were present, I should vote "yea," and I suppose he would vote "nay."

Mr. VANCE, (when his name was called.) I wish to state, as I have before announced, that I am paired with the Senator from Illinois, [Mr. LOGAN.]

The roll-call was concluded.

Mr. COKE. I desire to state that I am paired on all political questions with the Senator from Rhode Island, [Mr. ANTHONY.] If he were here, he would vote "yea" and I should vote "nay."

The result was announced—yeas 18, nays 29; as follows:

YEAS—18.

Allison,	Burnside,	Ingalls,	Rollins,
Baldwin,	Cameron of Pa.,	Jones of Nevada,	Saunders,
Blaine,	Conkling,	Kirkwood,	Windom.
Blair,	Ferry,	McMillan,	
Booth,	Hamlin,	Morrill,	

NAYS—29.

Bailey,	Farley,	Lamar,	Vest,
Bayard,	Garland,	Maxey,	Wallace,
Beck,	Groome,	Morgan,	Whyte,
Butler,	Hampton,	Pendleton,	Williams,
Call,	Hereford,	Pryor,	Withers.
Cockrell,	Hill of Georgia,	Randolph,	
Davis of W. Va.,	Johnston,	Saulsbury,	
Eaton,	Jonas,	Slater,	

ABSENT—29.

Anthony,	Gordon,	Logan,	Teller,
Bruce,	Grover,	McDonald,	Thurman,
Cameron of Wis.,	Harris,	McPherson,	Vance,
Carpenter,	Hill of Colorado,	Paddock,	Voorhees,
Coke,	Hoar,	Platt,	Walker.
Davis of Illinois,	Jones of Florida,	Plumb,	
Dawes,	Kellogg,	Ransom,	
Edmunds,	Kernan,	Sharon,	

So the amendment was rejected.

Mr. EDMUNDS. I move to add after the word "convened" in line 10 of section 2:

Nor shall this section be held to apply to any case in which the military power of the United States may be employed pursuant to sections 1989, 5298, and 5299 of the Revised Statutes of the United States, or either of said sections.

I think the scope of the amendment that I have already offered and which has been voted down, and that offered by the Senator from Iowa and rejected, covers the whole principle of the possible action of the Senate and its evidently determined action to break down the laws of the United States that are intended to secure the rights of people of the United States in elections and in civil pursuits, and in the judicial administration of justice under the Constitution. At the same time I do not intend, if I can help it, that the Senate of the United States shall escape from that responsibility upon any suggestion, which it is true has not yet been made, that the amendments already offered were too vague or too general, and, therefore, I have offered this amendment. These sections are:

It shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as may be necessary to aid in the execution of judicial process issued under any of the preceding provisions, or as shall be necessary to prevent the violation and enforce the due execution of the provisions of this title.

SEC. 5298. Whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the Government of the United States, it shall become impracticable, in the judgment of the President, to enforce, by the ordinary course of judicial proceedings, the laws of the United States within any State or Territory, it shall be lawful for the President to call forth the militia of any or all the States, and to employ such parts of the land and naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws of the United States, or to suppress such rebellion, in whatever State or Territory thereof the laws of the United States may be forcibly opposed, or the execution thereof forcibly obstructed.

SEC. 5299. Whenever insurrection, domestic violence, unlawful combinations, or conspiracies in any State so obstructs or hinders the execution of the laws thereof, and of the United States, as to deprive any portion or class of the people of such State of any of the rights, privileges, or immunities, or protection, named in the Constitution and secured by the laws for the protection of such rights, privileges, or immunities, and the constituted authorities of such State are unable to protect, or, from any cause, fail in or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws to which they are entitled under the Constitution of the United States; and in all

such cases, or whenever any such insurrection, violence, unlawful combination, or conspiracy, opposes or obstructs the laws of the United States, or the due execution thereof, or impedes or obstructs the due course of justice under the same, it shall be lawful for the President, and it shall be his duty, to take such measures, by the employment of the militia or the land and naval forces of the United States, or of either, or by other means, as he may deem necessary, for the suppression of such insurrection, domestic violence, or combinations.

The title is "Title XXIV, of Civil Rights," and a part of that title is directed against violations not only of the private and civil constitutional rights of citizens of the United States, but of their rights to vote for members of Congress, protecting them in those rights which the Constitution in express terms says Congress may regulate and protect, and denouncing punishments for those who violate them.

Section 1989, to which I have referred, provides that it shall be lawful for the President of the United States to exert its military power in aid of the judicial process of the United States for the violation of the elective rights of citizens in voting for members of Congress in the way pointed out. The Senate is evidently determined to break that down; and not content with the doubtful phraseology of the practical inhibition of the last Army bill has now added to it what the Senator from New York and the Senator from Iowa have so clearly pointed out, an additional provision that relieves the former provision from whatever difference of opinion might have existed as to its scope. As to what its scope was without this addition, I express no opinion at this time. It is sufficient that the section as it stands, reasonably construed and taken altogether, as we are always bound to take such things to get at their meaning, is not merely a section which says that a certain amount of money shall not be paid on a particular occasion, and, which would thus be merely in one sense of the term a failure to appropriate for that occasion, but it is a section which amounts in my judgment in legal effect to an utter destruction of the power of the President of the United States through the channels and in the ways already provided by law from exerting the military power of the United States on an election day to enforce the judicial process of the United States anywhere in the neighborhood of the election or in respect of any crime, great or small, that is committed in connection with elections. It carefully provides for carrying out the same doctrine that led to what was called secession by one set of people in the United States, and by what is called, if we still have a right to express it in the old-fashioned way, rebellion by another part of the people of the United States, who succeeded in overthrowing it, and that doctrine is that it is the right of the State and of no other power in this country to take possession of all its relations with the National Government; and the most vital and interesting of those relations is the election of the national House of Representatives as well as of Senators.

This section, therefore, provides in substance that it shall not be lawful for the President of the United States to exert the military power of the country in executing his duty under the Constitution to take care that the laws shall be faithfully executed, which laws now endeavor to protect the election of members of Congress in the ways provided. That shall be entirely taken away, and the only occasion on which on an election day the President of the United States in executing the laws of the United States under the Constitution can exert the power of the United States to enforce the law in the regular way, as the fathers provided it should be done, shall be when some governor of a State (I leave out the Legislature because it is never in session anywhere, I believe, on election day except for Senators) chooses to call for his interposition. And when the governor of a State calls, if he chooses to do so, for the interposition of the power of the General Government, for what purpose is it to be? I do not know but that our friends on the other side are as little posted in the Constitution as they appear to have been according to the Senator from New York, in certain other historic questions. But this is it:

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them—

That is the State in its political and separate character—

against invasion, and on application of the Legislature, or of the executive (when the Legislature cannot be convened) against domestic violence.

This clause, you will see, Mr. President, has no reference to the execution of any law of the United States; it only has reference, as its clear language explicitly states, to domestic violence against the authority of the State. Now this act says if, on an election day, there is domestic violence against the authority, which is the law, of the State, the governor may call, but if it be violence against the laws of the United States or its Constitution the President shall be disarmed. That is what it is, and it is nothing else, and that is what is intended. If it were not these amendments would be gladly adopted.

Now I ask for the yeas and nays on the amendment I have offered.

The yeas and nays were ordered.

Mr. ALLISON. Let the amendment be read again.

The VICE-PRESIDENT. It will be read again.

The CHIEF CLERK. After the word "convened," in line 10 of section 2, it is proposed to add:

Nor shall this section be held to apply to any case in which the military power of the United States may be employed pursuant to sections 1989, 5298, and 5299 of the Revised Statutes of the United States, or either of said sections.

The Secretary proceeded to call the roll.

Mr. CARPENTER, (when his name was called.) If I were not paired on this question with the Senator from Indiana [Mr. MCDONALD] I should vote "yea."

Mr. COKE, (when his name was called.) I am paired on this question with the Senator from Rhode Island, [Mr. ANTHONY.]

Mr. EDMUNDS, (when his name was called.) I should vote "yea" but for the fact that I am paired with the Senator from Ohio, [Mr. THURMAN.]

Mr. HARRIS, (when his name was called.) If I were not paired, as I stated before, with the Senator from Massachusetts, [Mr. HOAR,] I should vote "nay."

Mr. RANDOLPH, (when Mr. MCPHERSON'S name was called.) My colleague, [Mr. MCPHERSON,] as has been announced, is paired with the Senator from Kansas, [Mr. PLUMB.]

Mr. PADDOCK, (when his name was called.) I am paired on all political questions with the Senator from Florida, [Mr. JONES.]

Mr. PLATT, (when his name was called.) I should vote "yea" if I were not paired with the Senator from North Carolina, [Mr. RANSOM.]

The roll-call was concluded.

Mr. BURNSIDE. The Senator from Colorado [Mr. HILL] is paired on all political questions with the Senator from Arkansas, [Mr. WALKER.] My colleague [Mr. ANTHONY] is paired with the Senator from Texas, [Mr. COKE.] If he were here, my colleague would vote "yea" and so would the Senator from Colorado.

Mr. PLUMB. On this question I am paired with the Senator from New Jersey, [Mr. MCPHERSON.] If he were present, I should vote "yea."

Mr. DAWES. I desire to state, as I have already stated on another vote, that my colleague [Mr. HOAR] is paired with the Senator from Tennessee, [Mr. HARRIS.]

Mr. CAMERON, of Pennsylvania, (after having voted in the affirmative.) I desire to withdraw my vote. I voted inadvertently. I am paired with the Senator from Delaware, [Mr. BAYARD.]

The VICE-PRESIDENT. The vote will be withdrawn.

Mr. VANCE. I am paired with the honorable Senator from Illinois, [Mr. LOGAN.]

Mr. SAULSBURY. My colleague [Mr. BAYARD] is paired with the Senator from Pennsylvania, [Mr. CAMERON.]

Mr. CAMERON, of Wisconsin. I desire to announce again that I am paired with the Senator from New York, [Mr. KERNAN.]

Mr. KIRKWOOD. The Senator from Colorado [Mr. TELLER] has been called out. He informed me that he was paired on this question with the Senator from Georgia, [Mr. GORDON.]

Mr. BURNSIDE. I should have announced previous to the vote on the amendment last acted on that the Senator from Colorado [Mr. HILL] is paired on all political questions with the Senator from Arkansas, [Mr. WALKER.]

The result was announced—yeas 19, nays 27; as follows:

YEAS—19.

Allison,	Burnside,	Ingalls,	Morrill,
Baldwin,	Conkling,	Jones of Nevada,	Rollins,
Blaine,	Dawes,	Kellogg,	Saunders,
Blair,	Ferry,	Kirkwood,	Windom.
Booth,	Hamlin,	McMillan,	

NAYS—27.

Bailey,	Farley,	Jonas,	Saulsbury,
Beck,	Garland,	Lamar,	Slater,
Butler,	Groome,	Maxey,	Vest,
Call,	Hampton,	Morgan,	Whyte,
Cockrell,	Hereford,	Pendleton,	Williams,
Davis of W. Va.,	Hill of Georgia,	Pryor,	Withers.
Eaton,	Johnston,	Randolph,	

ABSENT—30.

Anthony,	Edmunds,	Logan,	Teller,
Bayard,	Gordon,	McDonald,	Thurman,
Bruce,	Grover,	McPherson,	Vance,
Cameron of Pa.,	Harris,	Paddock,	Voorhees,
Cameron of Wis.,	Hill of Colorado,	Platt,	Walker,
Carpenter,	Hoar,	Plumb,	Wallace.
Coke,	Jones of Florida,	Ransom,	
Davis of Illinois,	Kernan,	Sharon,	

So the amendment was rejected.

Mr. EDMUNDS. In order to carry out the purpose that I stated of leaving no possible hook for criticism or evasion about this business, I offer this amendment: after the word "convened" in line 10 of section 2 I move to insert:

Nor shall this section be held to apply to any case in which the President of the United States has, under the Constitution and existing laws made in pursuance thereof, the power to employ military force in the faithful execution thereof.

On that I ask for the yeas and nays.

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

Mr. CARPENTER, (when his name was called.) If I were not paired with the Senator from Indiana [Mr. MCDONALD] I should vote "yea" very loud.

Mr. HARRIS, (when his name was called.) I am paired with the Senator from Massachusetts, [Mr. HOAR.] I should vote "nay" if I were not paired.

Mr. PLATT, (when his name was called.) If I were not paired with the Senator from North Carolina [Mr. RANSOM] I should vote "yea."

Mr. PLUMB, (when his name was called.) On this question I am paired with the Senator from New Jersey, [Mr. MCPHERSON.] If he were present, I should vote "yea."

Mr. TELLER, (when his name was called.) On this subject I am

paired with the Senator from Georgia, [Mr. GORDON.] If he were here I should vote "yea."

Mr. VANCE. I am paired with the Senator from Illinois, [Mr. LOGAN.] If he were present I should vote "nay."

The roll-call was concluded.

Mr. COKE. I am paired on this question with the Senator from Rhode Island, [Mr. ANTHONY;] otherwise I should vote "nay."

Mr. CAMERON, of Wisconsin. As I have already stated, I am paired with the Senator from New York, [Mr. KERNAN.] If he were present I should vote "yea."

Mr. CAMERON, of Pennsylvania. On this question I am paired with the Senator from Delaware, [Mr. BAYARD.]

Mr. PADDOCK. I am paired with the Senator from Florida, [Mr. JONES.]

The result was announced—yeas 19, nays 29; as follows:

YEAS—19.

Allison,	Burnside,	Ingalls,	Morrill,
Baldwin,	Conkling,	Jones of Nevada,	Rollins,
Blaine,	Edmunds,	Kellogg,	Saunders,
Blair,	Ferry,	Kirkwood,	Windom.
Booth,	Hamlin,	McMillan,	

NAYS—29.

Bailey,	Garland,	Maxey,	Vest,
Beck,	Groome,	Morgan,	Wallace,
Butler,	Hampton,	Pendleton,	Whyte,
Call,	Hereford,	Pryor,	Williams,
Cockrell,	Hill of Georgia,	Randolph,	Withers.
Davis of W. Va.,	Johnston,	Saulsbury,	
Eaton,	Jonas,	Slater,	
Farley,	Lamar,	Thurman,	

ABSENT—28.

Anthony,	Davis of Illinois,	Jones of Florida,	Plumb,
Bayard,	Dawes,	Kernan,	Ransom,
Bruce,	Gordon,	Logan,	Sharon,
Cameron of Pa.,	Grover,	McDonald,	Teller,
Cameron of Wis.,	Harris,	McPherson,	Vance,
Carpenter,	Hill of Colorado,	Paddock,	Voorhees,
Coke,	Hoar,	Platt,	Walker.

So the amendment was rejected.

Mr. EDMUNDS. I have one more amendment for the same purpose, and then I shall have offered all that I care to offer, and I think this being rejected will leave the matter, when the prisoner is indicted at the bar of public opinion, where no demurrer will allow him to escape.

The VICE-PRESIDENT. The amendment will be read.

The CHIEF CLERK. After the word "convened," in line 10, section 2, it is proposed to add:

Nor shall this section be held to apply to any case in which, under the Constitution of the United States, the President may employ the military power of the Government in the faithful execution of the laws.

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

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

Mr. CAMERON, of Pennsylvania, (when his name was called.) On this question I am paired with the Senator from Delaware, [Mr. BAYARD.]

Mr. CAMERON, of Wisconsin, (when his name was called.) I am paired, as already stated, with the Senator from New York, [Mr. KERNAN.]

Mr. CARPENTER, (when his name was called.) I am paired with the Senator from Indiana, [Mr. MCDONALD.]

Mr. EDMUNDS, (when his name was called.) I am sorry that my friend from Ohio [Mr. THURMAN] has been obliged to leave the Senate Chamber. I am paired with him on this question. If I were not, I should vote in favor of the amendment.

Mr. PLATT, (when his name was called.) I am paired with the Senator from North Carolina, [Mr. RANSOM.]

Mr. PLUMB, (when his name was called.) I am paired with the Senator from New Jersey, [Mr. MCPHERSON.]

The result was announced—yeas 20, nays 29; as follows:

YEAS—20.

Allison,	Burnside,	Ingalls,	Morrill,
Baldwin,	Conkling,	Jones of Nevada,	Rollins,
Blaine,	Dawes,	Kellogg,	Saunders,
Blair,	Ferry,	Kirkwood,	Teller,
Booth,	Hamlin,	McMillan,	Windom.

NAYS—29.

Bailey,	Garland,	Lamar,	Vest,
Beck,	Gordon,	Maxey,	Wallace,
Butler,	Groome,	Morgan,	Whyte,
Call,	Hampton,	Pendleton,	Williams,
Cockrell,	Hereford,	Pryor,	Withers.
Davis of W. Va.,	Hill of Georgia,	Randolph,	
Eaton,	Johnston,	Saulsbury,	
Farley,	Jonas,	Slater,	

ABSENT—27.

Anthony,	Davis of Illinois,	Kernan,	Ransom,
Bayard,	Edmunds,	Logan,	Sharon,
Bruce,	Grover,	McDonald,	Thurman,
Cameron of Pa.,	Harris,	McPherson,	Vance,
Cameron of Wis.,	Hill of Colorado,	Paddock,	Voorhees,
Carpenter,	Hoar,	Platt,	Walker.
Coke,	Jones of Florida,	Plumb,	

So the amendment was rejected.

Mr. BLAINE. I offer the following amendment:

And provided further, That during the existence and operation of the foregoing restrictions upon any United States soldier appearing at the polls to keep the peace, it shall not be lawful for any other person to carry a deadly weapon, open or concealed, at the polls at any election for Representatives in Congress, under penalty of a fine not less than $500 nor more than $5,000, or imprisonment for a period not less than six months nor more than five years, or both fine and imprisonment, at the discretion of the court.

Mr. WITHERS. I raise the point of order on that as being obnoxious to the same objection as the first amendment of the Senator from Maine was.

The VICE-PRESIDENT. The Chair will hear the Senator from Maine, if he desires to speak on the point of order.

Mr. BLAINE. I have changed the amendment as originally offered, so that, instead of its being general, it runs *pari passu* with the section to which it is a restriction, a further proviso. It lasts just as long as the section and goes just with it. It is intended to convey as far as I can—if I can get it in under the parliamentary ruling of the honorable Vice-President—the idea that so long as the troops of the United States under the authority of the President can under no circumstances be allowed to be present at the polls to preserve the peace, there shall not be permitted an utterly unlawful arming of men to break the peace; and that while we are warning off the soldiers of the United States, who never in the history of the Republic deprived a legal voter of his suffrage, we shall not throw the door wide open for the entrance of those who trample upon law and who entirely disregard the rights of those to whom they are opposed in suffrage.

There is no use, Mr. President, in affecting any disguise about it. The trouble and all the trouble about the whole question of elections in the South comes down to the one point of violence at the polls, of there not being a peaceable, lawful, protected ballot. That is the whole of it. The republican party in its administration has attempted to protect that ballot by the use of the authority of the United States when members of the Congress of the United States were being elected. Now this section of the bill says that the President of the United States shall not do that, and that under no circumstances shall there be any use of Federal authority to preserve order and peace and secure protection when members of Congress are being elected.

I hope the same Congress that makes that declaration will also say that when no United States weapon, carried openly in pursuance of law, under all the restrictions of military discipline, shall be anywhere around when a member of Congress is being elected, mobs shall not be there armed; that they will also say that under no circumstances shall a man with a concealed weapon be present; that they will on that day make it an offense that any citizen of the United States shall go to the polls prepared to intimidate, to threaten, to wound, or to kill any other citizen of the United States who has an equal right with himself.

I think the amendment as it now is worded, running exactly in point of time with the restriction in the section, is not subject to the point of order which was raised before. I think it has no application to the amendment in its present form.

The VICE-PRESIDENT. Before ruling upon this point of order, the Chair desires to correct the Senator from Maine in a statement made by him upon the offering of his first amendment. He said that it was offered last year while the present incumbent occupied the chair, and that when it was so offered a point of order was made upon it and it was admitted. Upon an inspection of the Journal, it appears that the Army bill was considered on the 20th of June last. The Chair had been absent from the city almost two months at that time, and the amendment seems to have been admitted without any point of order being raised.

Mr. BLAINE. The honorable Vice-President has not quite exhausted the record. This amendment was first offered by me on the 14th day of April, 1879, as the Vice-President will find by referring to volume 9, part 1 of the RECORD, and the Vice-President being in the chair then said:

Does the Senator from Maine regard his amendment as pending to the sixth section?

The amendment which I offered then was not in exactly the same words, because I subsequently, before the 20th of June, changed it to conform to some objections which were made by Senators on this side of the Chamber, and I will state the difference. My first amendment was—

And any military, naval, or civil officer, or any other person, who shall, except for the purposes herein named, appear armed with a deadly weapon of any description, either concealed or displayed, within a mile of any polling place where a general or special election for Representative to Congress is being held, shall, on conviction, be punished with a fine not less than five hundred nor more than five thousand dollars, or with imprisonment for a period not less than six months nor more than five years, or with both fine and imprisonment, at the discretion of the court.

The only essential difference between the two amendments is that some Senators on this side of the Chamber, for whose legal opinion I had respect, thought that it was exceeding the power of Congress to say that a citizen of the United States should not carry a weapon within a mile of the polls, that it might interfere with the guaranteed right of the people to bear arms, and therefore I changed it. But even with that provision in, the honorable Vice-President admitted the amendment without question.

The VICE-PRESIDENT. Was the Army appropriation bill then under consideration?

Mr. BLAINE. The Army appropriation bill was then under consideration, and this was moved as an amendment. I will give the history of it. That was the first Army bill. Then subsequently, when the Vice-President took his leave of the Senate, and the Senator from Ohio [Mr. THURMAN] became the presiding officer, the same amendment was offered by myself, exactly, and the Senator from Ohio, then acting as presiding officer of the Senate, admitted it also.

Then in the form in which it was offered to-day—for it was copied by my secretary this morning before I came to the Senate Chamber from that bill to which the Vice-President has referred—it was offered to the second Army bill of last summer.

Thus it appears that the amendment was offered in three distinct forms last year and never excepted to. But I have been willing to conform to, and desire not to have any controversy with the presiding officer, and, therefore, I have changed the scope of the amendment, and instead of making it a permanent law I am content to get an order for one year if I cannot get it for all time. And, as my friend from Connecticut, [Mr. EATON,] who smiles approvingly upon this effort of mine, has been instrumental in merely warning off the Army for a year, we will claim quits and call it a fair and square game by ruling off the others for a year.

Mr. EATON. You might have a great deal of power in regard to what should be done at elections in the State of Maine in future years. You had better go to your own State of Maine for legislation on such a subject.

Mr. BLAINE. The State of Maine is a loyal State and it recognizes the right of the Congress of the United States to prescribe the time, place, and manner of holding elections for Representatives in Congress; and that is what my amendment alludes to; and the Supreme Court has recognized this right in the Federal Government.

I am quite aware of the extent of the amendment I am offering, I will inform my friend from Connecticut, and I know that his State recognizes the same right, and I know that every loyal State in this Union—and I do not use that term in the old sense; I mean every State that intends to be loyal to the Constitution of the United States—is well aware that here in these two bodies rests the right to order the time, and the place, and the manner of holding elections for Representatives in Congress. My amendment prescribes the manner and restricts any violence or outrage being exercised at the polls.

The VICE-PRESIDENT. The Chair sustains the point of order for the reason stated by him before, that the second section of this bill respects simply the use of the Army of the United States at the polls, and the amendment of the Senator from Maine creates a new offense and a new punishment on the part of citizens. He thinks that is general legislation.

Mr. WITHERS. Then I understand the Chair to sustain the point of order.

The VICE-PRESIDENT. The Chair sustains the point of order.

Mr. BLAINE. Then the honorable Vice-President will do me the credit to say that he did not take this view a year ago.

The VICE-PRESIDENT. The Chair, on inspection of the Journal, has no recollection whatever of the circumstance alluded to by the Senator from Maine. It appears from the Journal before the Chair that the Army bill came from the House on the 12th day of June.

Mr. BLAINE. That was the second Army bill, after the President had vetoed the one on which the honorable Vice-President ruled in my amendment. I read to him from the RECORD——

The VICE-PRESIDENT. Will the Senator from Maine point the Chair to the RECORD that shows when any point of order was made upon the amendment?

Mr. BLAINE. Nor was the point of order made to-day, except by the Chair, on which my proposition was ruled out.

The VICE-PRESIDENT. The point of order was made by the Senator from Virginia, [Mr. WITHERS.]

Mr. BLAINE. No; not at all. I have the Reporter's manuscript here. The Vice-President asked:

On what ground does the Senator from Virginia put his objection?

Then:

Mr. WITHERS. I have not the rules of order by me; but there is a rule of order which prohibits the introduction of amendments, as I remember it, which have not been recommended by a standing committee nor by a head of a Department.

The VICE-PRESIDENT. The Chair does not think the amendment is in order, but not upon the ground stated by the Senator from Virginia.

And then the Chair for himself states the ground.

The VICE-PRESIDENT. The Chair holds it to be his duty when a point of order is made to enforce the rules as far as they should be applicable to the point of order, whether the Senator alleges the particular ground or not.

Mr. BLAINE. There was some dispute the other day when a point was up where I differed from a former occupant of the chair as to the propriety of the Chair suggesting such matters. Evidently the Vice-President sides with me that it was not his duty to suggest the objection last year, as he might have done if he deemed the amendment out of order.

I can only express my regret that on a matter of so great significance, and on a matter involving, as I think, so much that is important in the history of the legislation of the country on this point, the Senate should be deprived of the opportunity of expressing its views by a new ruling of the Vice-President upon a point that has hitherto gone three times into the record as being in order.

Mr. WITHERS. I have this to say: my first objection when I first raised the point of order was, in general terms, that the amendment was out of order, and when called upon by the presiding officer to state what rule of order was violated, I stated that I had not the rules by me, but quoted from memory a rule which in my opinion excluded it.

The VICE-PRESIDENT. That was the fact. Are there further amendments?

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

The VICE-PRESIDENT. The bill having had three readings, the question is shall it pass?

Mr. ALLISON, Mr. CONKLING, and Mr. EDMUNDS called for the yeas and nays; and they were ordered.

The Secretary proceeded to call the roll.

Mr. BURNSIDE, (when Mr. ANTHONY'S name was called.) My colleague [Mr. ANTHONY] is paired with the Senator from Texas, [Mr. COKE.] If my colleague were here, he would vote "nay."

Mr. CAMERON, of Pennsylvania, (when his name was called.) I am paired with the Senator from Delaware, [Mr. BAYARD.]

Mr. CAMERON, of Wisconsin, (when his name was called.) I am paired with the Senator from New York, [Mr. KERNAN.] If he were present, I would vote "nay."

Mr. CARPENTER, (when his name was called.) I am paired with the Senator from Indiana, [Mr. MCDONALD.] If he were present, I would vote "nay."

Mr. COKE, (when his name was called.) I am paired with the Senator from Rhode Island, [Mr. ANTHONY.] If he were present, I would vote "yea."

Mr. EDMUNDS, (when his name was called.) On this question I am paired with the Senator from Ohio, [Mr. THURMAN.] If he were present I should vote "nay." I will state now, to save the time of the Senate, that the Senator from Mississippi [Mr. BRUCE] is paired with the Senator from Indiana, [Mr. VOORHEES.] The Senator from Mississippi would vote against the passage of the bill if he were present. The Senator from Rhode Island [Mr. ANTHONY] is paired with the Senator from Texas, [Mr. COKE.]

Mr. HARRIS, (when his name was called.) I announce again that I am paired with the Senator from Massachusetts, [Mr. HOAR.] If he were present, I should vote "yea."

Mr. BURNSIDE, (when the name of Mr. HILL, of Colorado, was called.) The Senator from Colorado [Mr. HILL] is paired with the Senator from Arkansas, [Mr. WALKER.] If they were present, the Senator from Arkansas would vote "yea," and the Senator from Colorado "nay."

Mr. PADDOCK, (when his name was called.) I am paired with the Senator from Florida, [Mr. JONES.] If he were here, I should vote "nay."

Mr. PLATT, (when his name was called.) I am paired with the Senator from North Carolina, [Mr. RANSOM.] If he were here, I should vote "nay."

Mr. PLUMB, (when his name was called.) On this question I am paired with the Senator from New Jersey, [Mr. MCPHERSON.] If he were present, I should vote "nay."

Mr. VANCE, (when his name was called.) On all political questions I am paired with the Senator from Illinois, [Mr. LOGAN.]

The roll-call was concluded.

Mr. ALLISON, (after having voted in the negative.) For the moment I am paired with the Senator from Maryland, [Mr. WHYTE.] I therefore desire to withdraw my vote, as he would vote in favor of this bill.

The VICE-PRESIDENT. The vote will be withdrawn.

The result was announced—yeas 28, nays 17; as follows:

YEAS—28.

Bailey,	Farley,	Johnston,	Randolph,
Beck,	Garland,	Jonas,	Saulsbury,
Butler,	Gordon,	Lamar,	Slater,
Call,	Groome,	Maxey,	Vest,
Cockrell,	Hampton,	Morgan,	Wallace,
Davis of W. Va.,	Hereford,	Pendleton,	Williams,
Eaton,	Hill of Georgia,	Pryor,	Withers.

NAYS—17.

Baldwin,	Dawes,	Kirkwood,	Teller,
Blaine,	Ferry,	McMillan,	Windom.
Blair,	Hamlin,	Morrill,	
Burnside,	Ingalls,	Rollins,	
Conkling,	Jones of Nevada,	Saunders,	

ABSENT—31.

Allison,	Coke,	Kellogg,	Ransom,
Anthony,	Davis of Illinois,	Kernan,	Sharon,
Bayard,	Edmunds,	Logan,	Thurman,
Booth,	Grover,	McDonald,	Vance,
Bruce,	Harris,	McPherson,	Voorhees,
Cameron of Pa.,	Hill of Colorado,	Paddock,	Walker,
Cameron of Wis.,	Hoar,	Platt,	Whyte.
Carpenter,	Jones of Florida,	Plumb,	

So the bill was passed.

SENATOR FROM LOUISIANA.

Mr. EDMUNDS. I move that the Senate——

Mr. SAULSBURY. The Senator will allow me to say that I gave notice that immediately upon the passage of the Army appropriation bill I should ask the Senate to take up the resolutions reported from

the Committee on Privileges and Elections, that being a privileged question, in reference to the Senatorship from Louisiana.

Mr. EDMUNDS. I had risen to move to proceed to the consideration of the bill to settle private land claims, but I admit the propriety of disposing of these questions of privilege, and I yield the floor to my friend from Delaware for the purpose of making the motion he indicates.

Mr. SAULSBURY. I move that we now take up the resolutions of which I gave notice.

Mr. CAMERON, of Wisconsin. As this is a privileged question I do not suppose that the Senator from Delaware desires to go on with the consideration of it this evening. Therefore I see no necessity for bringing it up to-night in order that it may have the right of way to-morrow morning. Being privileged the motion can be made to-morrow morning, and if the Senate desires to take it up it can do so at that time.

Mr. SAULSBURY. I do not desire to detain the Senate this evening at all. I simply wish to get the resolutions before the Senate so that they may be the unfinished business for to-morrow.

The VICE-PRESIDENT. The resolutions will be reported.

The Chief Clerk read the resolutions reported from the Committee on Privileges and Elections March 22, 1880, as follows:

1. *Resolved*, That, according to the evidence now known to the Senate, WILLIAM P. KELLOGG was not chosen by the Legislature of Louisiana to the seat in the Senate for the term beginning on the 4th day of March, 1877, and is not entitled to sit in the same.

2. *Resolved*, That Henry M. Spofford was chosen by the Legislature of Louisiana to the seat in the Senate for the term beginning on the 4th of March, 1877, and that he be admitted to the same on taking the oath prescribed by law.

Mr. HARRIS. If the Senator from Delaware will consent, I propose to move that the Senate proceed to the consideration of executive business.

Mr. EDMUNDS. Oh, no, let us take the resolutions up first.

Mr. HARRIS. I thought they were before the Senate.

The VICE-PRESIDENT. The question is on the motion of the Senator from Delaware [Mr. SAULSBURY] to proceed to the consideration of the resolutions just read.

The motion was agreed to.

The VICE-PRESIDENT. The resolutions are before the Senate.

Mr. BAILEY. Mr. President——

Mr. HARRIS. If my colleague will yield to me, I will now make the motion that I suggested a moment since.

Mr. BAILEY. I yield for that purpose, reserving the right to the floor to-morrow.

The VICE-PRESIDENT. The question is on the motion of the Senator from Tennessee, [Mr. HARRIS,] that the Senate proceed to the consideration of executive business.

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

HOUSE OF REPRESENTATIVES.

THURSDAY, *April* 22, 1880.

The House met at twelve o'clock m. Prayer by Rev. HENRY LANGFORD, of Weston, West Virginia.

The Journal of yesterday was read and approved.

POETICAL ADDRESS OF HON. S. W. DOWNEY.

Mr. GARFIELD. I rise to a question which I presume should be regarded as a question of privilege. I call the attention of the House to the RECORD of this morning, and I move that it be referred to the Committee on Rules with instructions to report whether the first fifteen pages of to-day's publication shall go into the permanent CONGRESSIONAL RECORD. I make this motion with the utmost respect for the gentleman [Mr. DOWNEY] who has published in the RECORD the poem to which my motion refers. I suppose that members of the House are entirely at liberty to speak in verse or in prose, as they may choose; but I raise the question whether a gentleman has the right to file, under the privilege of printing a speech in the RECORD, a copyrighted book, which as appears from the heading here this is. It appears to be a poetical work which has been copyrighted, "all rights reserved;" and whether under the privilege granted by the House to print a speech on any given subject a man may file a manuscript copyrighted book and print it as a part of the permanent records of the House is a question worthy of consideration. Upon this question I doubt somewhat; and I move that the first fifteen pages of the RECORD of this morning be referred to the Committee on Rules with instructions to report to the House whether the poem there published shall become a part of the permanent RECORD.

Mr. HOUSE. Has the gentleman read it?

Mr. GARFIELD. I have not. [Laughter.] I make no reflection upon it either in the way of praise or blame.

Mr. HOUSE. I have not either. I have not seen anybody who has. [Laughter.]

Mr. REED. Both of the gentlemen ought to read it.

Mr. STEELE. I have read about two-thirds of it.

Mr. DOWNEY. Mr. Speaker, with all due respect to the gentleman from Ohio, [Mr. GARFIELD,] I will state that what I have done has been done after mature consideration. In relation to the point suggested by the gentleman as to the copyright, I will say that I have consulted the best authority perhaps in this country upon that question—the Librarian of Congress, Mr. Spofford; and he told me there was no question under the law that I had the right to copyright an argument which would appear in the CONGRESSIONAL RECORD.

I will add that I have no objection to the motion made by the gentleman from Ohio. Indeed I would be glad to see this question referred to a committee if there is any doubt whatever on the mind of any of the Representatives who are here to-day and who listen to what I say.

Mr. GARFIELD. Mr. Speaker, I have not the honor of the acquaintance of the gentleman from Wyoming, [Mr. DOWNEY;] and I want to say to him and the House that I cast no reflection whatever upon him. I do not doubt his good faith in this matter at all. His performance may be, for anything I know, of a very high character of merit. I have not read it. But I think it important for us to know how far the privilege granted a Member or a Delegate to print remarks in the CONGRESSIONAL RECORD extends. I recollect that some years ago there came very near being printed, under this privilege to print, a British volume on some economical question, which it was proposed to publish entire in the records of this House so as to give it circulation. Of course it is possible that the privilege of the House may be abused by persons getting leave to print and publishing volumes which the House might have no desire to see printed.

The SPEAKER. The Chair wishes to state that he was not consulted by the Government Printer as to this publication. The gentleman from Ohio moves to refer to the Committee on Rules the first fifteen pages of to-day's RECORD, with instructions to report as to their admissibility into the permanent RECORD.

Mr. CONGER. I desire to make a remark on the motion of the gentleman from Ohio. Unless it is charged that this is some English book or some other book copied by the Delegate from Wyoming and inserted improperly in the RECORD, it seems to me the motion of the gentleman from Ohio should not be adopted. Although the literary character of the speeches published, pages long, in the RECORD is, as we all know, very high—although the whole of the CONGRESSIONAL RECORD and the Congressional Globe since the speeches of members of either House have been reported must show to the man of literary taste that there has hardly ever been anything thus published except of that high, sublime character which commands the admiration of the world; yet unless there is some charge here that these remarks of the gentleman from Wyoming are unworthy of a place among the class of literature which the rest of us have published in the RECORD heretofore, there is no reason for singling out this publication and sending it to a committee. I had the pleasure of looking over it for five or ten minutes this morning—the little time I had to devote to it; and I saw nothing in it [laughter] that would not compare very favorably with many other speeches published in the RECORD, in its application to the bill which the gentleman from Wyoming has presented. If in this House of poets there is a rivalry—if "wrath can dwell in celestial minds" when a rival exceeds them all in the brilliancy of the poetical effusions which he presents here, let those who feel aggrieved make the objection; it certainly cannot come from the gentleman from Ohio. [Laughter.]

Why should these remarks be singled out among all the thousand speeches that have been published including poetry and prose—prose of the highest order, and poetry approaching it as closely as poetry can? [Laughter.] And that, too, when this production comes from my young friend from Wyoming, a gentleman who, so far as I know, has never heretofore occupied a page of the CONGRESSIONAL RECORD either in poetry or in prose.

Let us wait, Mr. Speaker, until the press of this country, until the literary minds of the country have given an indication of their appreciation of this effort, before we forestall their judgment and condemn it. Sir, I venture to say (it is wandering a little from the subject) that the Christian people of the United States, when they read the bill introduced by the gentleman requiring us to throw aside the old pagan divinities, the heroes and the myths that occupied the imaginations of people of the olden time, will wonder why in a Christian nation, among a Christian people, there should not be in this Capitol some recognition of the grand Biblical scenes which are fresh in our recollection from the readings of our youth [laughter] even if we have neglected to refer to them in these modern days of political warfare in this House. Find me a Scotch Presbyterian in the United States who will not hail with delight this returning sense of justice and of propriety in the minds of a Christian people, suggested by the gentleman's bill, as he introduced it the other day and supported as he has supported it, in the glimpse I have had of his argument, in this beautiful argumentative poem presented to members here in the columns of the RECORD.

Mr. Speaker, let these gentlemen lay aside their envy for a day, [laughter;] let them lay aside their jealousy of this rising poet for an hour, [renewed laughter;] let them give him fair play, which both Englishmen and Americans demand even from their fellows and their rivals. Let this go over for a few days. Let gentlemen read this poem before we are called upon to act in reference to it. I shall ask, sir, that it shall be read to this House. [Long-continued laughter and applause.]