LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted as follows:
To Mr. BAILEY, for ten days;
To Mr. BAYNE, indefinitely;
To Mr. WILSON, for two days; and
To Mr. COWGILL, for ten days after Monday, the 7th, on account of important business.

LEAVE TO PRINT.

Mr. PRESCOTT, by unanimous consent, obtained leave to have printed in the RECORD, as part of the debates, some remarks he had prepared on the funding bill. [See Appendix.]

BANK INVESTIGATION EXPENSES.

The SPEAKER, by unanimous consent, laid before the House a statement of disbursements by John G. Thompson, Sergeant-at-Arms, House of Representatives, on account of sub-committee of the Committee on Banking and Currency investigating Ocean National Bank of New York and German National Bank of Chicago, under resolution of June 4, 1879, with accompanying vouchers; which was referred to the Committee on Accounts.

CAPTAIN J. SCOTT PAYNE.

The SPEAKER also laid before the House a letter from the Secretary of War, relative to the promotion of J. Scott Payne, Fifth Cavalry; which was referred to the Committee on Military Affairs.

ORDER OF BUSINESS.

The question being taken on the motion to adjourn, there were—ayes 65, noes 57.

Mr. TUCKER. I call for tellers.

Tellers were ordered; and Mr. TUCKER and Mr. HOUSE were appointed.

The House again divided; and the tellers reported—ayes 56, noes 56.

The SPEAKER. The Chair votes "ay," and the motion is agreed to.

And accordingly (at three o'clock and forty-five 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 Emanuel Cole, for the extension of a patent for cleaning, hulling, and grinding grain—to the Committee on Patents.

By Mr. CHITTENDEN: The petition of Arnold Gray, for legislation regulating immigration—to the Committee on Foreign Affairs.

By Mr. DICKEY: The petition of James H. Barker and 120 others, citizens and ex-soldiers, for the passage of a law removing the charge of desertion from Thomas H. Newton, late private Company C, Forty-eighth Regiment Ohio Volunteers—to the Committee on Military Affairs.

By Mr. DUNNELL: A paper relating to the establishment of post-routes from Fairmont, via May and North Star, to Saint James, Minnesota, and from Fairmont, Minnesota, to Estherville, Iowa—to the Committee on the Post-Office and Post-Roads.

By Mr. ELLIS: The petition of citizens of Texas, Mississippi, and Louisiana, for the abolition of the duty on salt—to the Committee on Ways and Means.

By Mr. GOODE: The petition of B. W. Baker, for a change of name of the steam-tug Edwin Ludlow—to the Committee on Commerce.

By Mr. HALL: The petition of Wingate & Shaw, publishers of the Gazette, Exeter, New Hampshire, for the abolition of the duty on type—to the Committee on Ways and Means.

By Mr. HUBBELL: The petition of William Porter and 20 others, Union soldiers in the late war of the rebellion, against the passage of the sixty-surgeon pension bill—to the Committee on Invalid Pensions.

Also, the petition of T. K. Palmer and 49 others, of Ludington, Michigan, of similar import—to the same committee.

Also, the petition of Thomas R. Lyon and others, manufacturers of lumber, salt, and shingles, of Ludington, Michigan, for the passage of the Eaton tariff bill—to the Committee on Ways and Means.

By Mr. SCALES: The petition of citizens of New York, that titles to lands be granted to Indians in severalty—to the Committee on Indian Affairs.

IN SENATE.

SATURDAY, *June* 5, 1880.

The Senate met at eleven o'clock a. m. Prayer by the Chaplain, Rev. J. J. BULLOCK, D. D.

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

PETITIONS AND MEMORIALS.

Mr. KERNAN presented the petition of Willy Wallach, president, and other members of the Stationers' Board of Trade of the city of New York, embracing within its membership paper manufacturers and houses engaged in the book, stationery, wall-paper, blank-book, and other trades, praying the passage of a national bankrupt act; which was referred to the Committee on the Judiciary.

Mr. WALLACE presented a memorial of citizens of Pennsylvania, who were soldiers in the late war, remonstrating against the passage of the bill (S. No. 496) providing for the examination and adjudication of pension claims, and in favor of the passage of the bill for the creation of a court of pensions; which was ordered to lie on the table.

He also presented additional papers to accompany the bill (S. No. 1791) to increase the pension of James Fleming, a wounded soldier of the war of 1812; which were referred to the Committee on Pensions.

REPORTS OF COMMITTEES.

Mr. PLATT. The Committee on Pensions, to whom was referred the bill (S. No. 1776) granting a pension to Margaret S. Heintzelman, have directed me to report it back favorably. The bill gives a pension of $50 a month to the widow of General Heintzelman. I think there will be no objection to its present consideration, and I ask that it may be considered at the present time.

The PRESIDING OFFICER, (Mr. FERRY in the chair.) Is there objection to the present consideration of the bill?

Mr. COCKRELL. Is there not quite a large number of pension cases upon the Calendar that have not been acted upon?

Mr. PLATT. I have been absent for a few days, but I think they have all been acted upon.

Mr. INGALLS. There are some on the Calendar that have not yet been acted on.

Mr. PLATT. Very few, I understand.

Mr. COCKRELL. And they have been reported favorably?

Mr. INGALLS. Yes, sir.

Mr. COCKRELL. Then I must object to one being considered until they are all considered. I will second a motion to take them up at any time.

The PRESIDING OFFICER. The Senator from Missouri objects, and the bill will be placed on the Calendar.

Mr. GROOME, from the Committee on Pensions, to whom was referred the bill (S. No. 1038) to increase the pension of Edward Howard, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 972) granting a pension to Mrs. Anna I. Guest, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

He also, from the same committee, to whom was referred the bill (S. No. 1676) granting an increase of pension to Saint Clair A. Mulholland, reported it with an amendment, and submitted a report thereon; which was ordered to be printed.

ADDITIONAL POST-ROUTE BILL.

Mr. MAXEY. The Committee on Post-Offices and Post-Roads, to whom was referred the bill (S. No. 1771) to establish a post-route in Missouri, have directed me to report it with an amendment as a substitute. It is simply a bill to establish post-routes, in which we are all interested. The bill is very short, it is a merely formal matter, and I ask that it may be considered and put on its passage.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill (S. No. 1771) to establish a post-route in Missouri.

The bill was reported from the Committee on Post-Offices and Post-Roads with an amendment, to strike out all after the enacting clause and to insert:

That the following post-roads be, and the same are hereby, established:

FLORIDA.

From Hawthorne Post-office, via Mrs. McNabb's, to Palatka.
From Newnansville to Fort White.

LOUISIANA.

From Jennings, via Point-au-Loup Springs, to Germantown.
From Welsh's, via Hickory Flat, to The Bay.
From Rayne's, via Plaquemines, Brusle, to Prudhomme City.
From Brownssardsville, via Rayville and Liddons Ferry, to Abbeville.

INDIAN TERRITORY.

From Fishomingo, via Timber Hill and R. S. Bell's, to Little Mineral, Texas.

MISSOURI.

From West Plains to Dixon Springs.

TEXAS.

From Clarksville to Albion.

The amendment was agreed to.

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

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

The title was amended so as to read: "A bill to establish post-roads."

ENOCH DAVIS.

Mr. BURNSIDE. I am instructed by the Committee on Military Affairs, to whom was referred the bill (H. R. No. 5043) to remove the charge of desertion against Enoch Davis, to report it favorably, and I ask for its present consideration. It is simply to remove a charge of desertion.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill. It removes the charge of desertion now standing against Enoch Davis, late a private of Company G, Sixth Iowa Volunteer Infantry on the rolls filed in the office of the

Adjutant-General, and directs the Adjutant-General to grant him an honorable discharge.

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

BILL INTRODUCED.

Mr. MAXEY asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1818) for the relief of D. W. Hatch, of Texas; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Claims.

WITHDRAWAL OF PAPERS.

On motion of Mr. HARRIS, it was

Ordered, That Mrs. Eliza H. Powers have leave to withdraw from the files of the Senate the papers in respect to her claim against the United States, upon which there has been an adverse report.

COMMITTEE ON CONTINGENT EXPENSES.

Mr. HILL, of Georgia. I offer a resolution, which is the formal and usual resolution in such cases, and I ask for its present consideration.

The resolution was read, as follows:

Resolved, That the Committee to Audit and Control the Contingent Expenses of the Senate be authorized to sit during the recess of Congress and that the necessary expenses thereof be paid out of the "miscellaneous items" of the contingent fund of the Senate.

The Senate, by unanimous consent, proceeded to consider the resolution.

Mr. SAULSBURY. I do not know anything about the necessity for that committee to sit during the recess, and I do not know whether it is usual or not.

Mr. HILL, of Georgia. I will say that it is the universal practice. A similar resolution is passed at every session of Congress.

Mr. SAULSBURY. I have no objection if it is necessary.

Mr. HILL, of Georgia. It is simply to authorize the Committee to Audit and Control the Contingent Expenses of the Senate to approve accounts in vacation. That is all. They have no authority to do that unless they are authorized to sit during the recess.

Mr. SAULSBURY. I merely wanted to know whether it has been usual to do this.

Mr. HILL, of Georgia. It is not only usual, but a similar resolution has always passed at every session of Congress.

The resolution was agreed to.

DISTRICT MUNICIPAL CODE.

Mr. HARRIS. I offer the following resolution:

Resolved, That the Committee on the District of Columbia be, and hereby is, authorized to sit during the recess of the Senate for the purpose of considering the bill to establish a municipal code for the District of Columbia; and that the necessary expenses be paid out of the "miscellaneous items" of the contingent fund of the Senate.

I will state that the only reason why I want the resolution passed is that we have a municipal code that has passed the House and been referred to the Committee on the District of Columbia. That committee propose to appoint a sub-committee to consider that code during the recess so as to be prepared to report to the full committee immediately on the meeting of the next session of Congress. I therefore desire the passage of the resolution.

The resolution was considered by unanimous consent, and agreed to.

ORDER OF BUSINESS.

Several Senators addressed the Chair.

The PRESIDING OFFICER, (Mr. FERRY.) If there be no other concurrent or other resolutions, the routine business of the morning hour is at an end.

Mr. BALDWIN. I ask the postponement of all prior orders for the purpose of taking up for consideration the bill (S. No. 1804) to provide for the reappraisement and sale of the buildings and grounds known as the Detroit arsenal, in the State of Michigan.

Mr. COCKRELL. I am not opposed to the consideration of the bill at all, but I simply rise to ask that we this morning proceed to the consideration of the unobjected cases upon the Calendar. We have witnessed a spectacle which is not very pleasing for some time past—six, eight, or a dozen Senators upon the floor, all trying to catch the eye of the President and get the floor. Time is consumed, time is wasted, and no business is done. I have been here for five years, and I have never seen the Calendar of business or the Senate in the condition it is in now. There is not a Senator upon this floor who can point back within the last five years to a condition similar to that which now exists in regard to the cases reported by the committees of the Senate.

We have over six hundred cases upon the Calendar. We have only passed to the three hundredth case, and we have not disposed of much over one-third of the cases on the Calendar. Now, if we would go to the Calendar and take up these cases in their order we could dispose of all the unobjected cases in one or two of the morning hours without any trouble. There would be no difficulty in it at all. Each Senator when the Calendar was being called would know whether he intended to object to a case or not.

I am making this statement because I want to bring to the attention of the Senate certain things. Each Senator has certain cases that he feels a personal interest in, and there are other cases that are of a general character. Here is a bill for the payment of the claims reported allowed by the southern claims commission, in which there are five hundred and seventy-five people of the late insurrectionary States interested. I say to my friends that I cannot as chairman of the committee which reported that bill indulge in a continual wrangle here upon the floor of the Senate in order to have that bill passed. Then there is a bill reported from the Committee on Claims in regard to quartermasters' claims allowed under the act of July 4, 1864, in which Maryland, West Virginia, Kentucky, Missouri, Tennessee, Indiana, Ohio, and Pennsylvania are interested. There are some six or seven hundred cases there. That bill is reported favorably. I have some few constituents interested in it, as other Senators have. That bill ought to pass. I do not feel that it is my place simply to get up every morning and join in the wrangle with a dozen Senators upon the floor to have these bills called up.

There are other bills of a public nature besides these individual bills. I am sure if Senators will permit us to go to the Calendar this morning and remain at it two hours we shall pass four times as many bills as we shall by taking them up out of order.

Mr. HEREFORD. Allow me to say to the Senator that we could have passed about four bills during his lecture.

Mr. COCKRELL. I have not consumed five minutes. I have not consumed half as much time as other Senators who are criticising the remarks that I have made on this question. I simply ask this as a matter of business, and I say to the democrats here that they are responsible before the country for the management of the business of the Senate, and they have permitted it to get into a condition that it never has been in before.

Mr. CAMERON, of Wisconsin. I think the Senator from Missouri is mistaken when he says that the spectacle we have witnessed has never been witnessed here before.

Mr. HILL, of Georgia. It is the case at the close of every session.

Mr. CAMERON, of Wisconsin. I came into the Senate at the same time the Senator from Missouri did, and according to my recollection we have witnessed at the close of every session a spectacle similar to the spectacle which we have witnessed here during the last eight or ten days. I disagree with the Senator when he says that we can pass more bills if we go to the Calendar than we can by taking them up at the request of Senators.

Mr. BALDWIN. I am quite in accord with what has been said by the Senator from Missouri as to the importance of taking up the Calendar in its regular order, and for one I should be very glad to consent to that course. I believe that it would conduce to the best interests of the business before the Senate. I know nothing of what has been the experience of the Senate heretofore; but certainly during the present session it has been otherwise. Therefore I ask that all prior orders be postponed that the Senate may take up for present consideration Senate bill No. 1804. The bill is a very short one, is of no local interest, it is of public interest, and will not occupy, in my judgment, the time of the Senate two minutes. I therefore ask that all prior orders be postponed for the purpose of taking up Senate bill No. 1804.

Mr. MORGAN. I concur in much that has been said by the Senator from Missouri on this occasion. I am very much disposed to proceed to the regular consideration of the Calendar. I believe by devoting our attention to it we can very soon get through with the most important part of it, to say the least.

There is a bill on the Calendar partly disposed of, which has been discussed before the Senate, which relates to an act of courtesy toward a foreign government, the government of Sweden and Norway. That government has been before Congress here through letters from the Secretary of State for two or three sessions, asking the adjustment of a matter of controversy between the United States Government and one of the citizens of Sweden and Norway. The bill is nearly disposed of. The Senator from Vermont [Mr. EDMUNDS] made a few objections to it, which I propose to answer in a few moments, as far as I am able to answer at all, and I should like very much to have the Senate extend to the Committee on Foreign Relations and also extend to the government of Sweden and Norway the courtesy of having the subject disposed of. If the Senator from Michigan succeeds in his motion to set aside the prior orders of the Senate, I shall ask that that bill be taken up. It is one that stands now virtually at the head of the Calendar, is the first case really on the Calendar, because there is but one case which has precedence of it, and the Senator in charge of that is not here, so that we would not take up that case. This is really the first case on the Calendar.

The PRESIDING OFFICER. The Secretary will report for information the bill asked for by the Senator from Michigan.

The CHIEF CLERK. A bill (S. No. 1804) to provide for the reappraisement and sale of the buildings and grounds known as the Detroit arsenal, in the State of Michigan.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. MORGAN. I hope the Senate will allow me to have the bill considered which is at the head of the Calendar, and then we can get along I think pretty smoothly with all the work that is before us on the Calendar.

Mr. JONAS. The objection to the consideration of the Calendar at the present time is that it puts it in the power of a single Senator to defeat any bill that is reached. If we take up the Calendar a single objection suffices to send any bill to the end of the Calendar and to prevent its consideration at this session.

Mr. MORGAN. I do not understand the rule in that way.

Mr. JONAS. That is the rule under which we act. There is scarcely a bill on which there is not some minority, no matter how small, perhaps a single member of the committee reporting the bill, who would carry his objection into the Senate and by a single objection defeat the bill, no matter how meritorious.

Mr. INGALLS. The Senator is mistaken in regard to the rule. Any bill is under the control of a majority, whether it is objected to or not.

Mr. JONAS. The rule does not say so.

Mr. MORGAN. That is distinctly the rule.

Mr. JONAS. The rule says:

And bills that are not objected to shall be taken up in their order, and each Senator shall be entitled to speak once and for five minutes only, unless upon motion the Senate shall at any time otherwise order; and the objection may be interposed at any stage of the proceedings.

Mr. INGALLS. Certainly; and a Senator may ask a vote of the Senate upon proceeding to the consideration of a bill so objected to, and if a majority so determine the consideration of the bill will be continued.

Mr. JONAS. It has been construed that a single objection suffices to carry a bill over.

The PRESIDING OFFICER. The Senator from Louisiana will bear in mind that this rule has been adopted by a majority of the Senate and can be overruled by a majority. It is a simple order of the Senate, which is controlled by a majority of the Senate.

Mr. JONES, of Florida. I do not wish to speak particularly about the bill the Senator from Michigan moves, but I want to say that I do not concur in what was said by the Senator from Wisconsin [Mr. CAMERON] awhile ago. Although I came into the Senate at the same time he did, I have no recollection of any such scenes as we have had here in struggling to get the floor within the last few days.

Mr. HILL, of Georgia. I have seen them.

Mr. JONES, of Florida. For one I wish to see the Senate conduct its business in regular order and go to the Calendar, and then there will not be this scramble, and each Senator will have then all the opportunity that others have. The objection of the Senator from Louisiana I do not think is wholly tenable in view of what has been said. The matter is altogether in the control of the Senate.

Mr. EATON. I dislike very much to object to taking up the bill which my friend from Michigan has suggested, but I agree entirely with the Senator from Missouri. I stood here yesterday and the day before addressing the Chair time and time again, as my friend from Tennessee [Mr. BAILEY] did, and we could get no recognition. I shall not do it any more. I am through with it. There are certain matters here, not private matters but public matters, reported by the committee of which I have the honor to be chairman, and unless the Calendar is taken up and reached in order those cases will not be reached by my asking for their consideration, for I have got through with that business.

Mr. MCMILLAN. Did I understand the Senator from Connecticut to interpose an objection to the bill which the Senator from Michigan asks to have considered?

Mr. EATON. I did not. I said I disliked very much to object to it.

Mr. MCMILLAN. I was going to say that I think the Senator from Michigan should have this bill disposed of.

Mr. DAVIS, of Illinois. I have no objection to the thing going on as it did yesterday if the Senate is so disposed; but we cannot let the Senator from Michigan have his bill considered unless everybody else has an equal chance. I am very anxious to have a measure taken up. I have no objection, if it is to be the rule, to have a scramble go on.

Mr. BALDWIN. I have heard the same objection from day to day, and yet persistently the Senate has laid aside the prior orders and taken up particular bills out of their order. The bill I move is very short; it could have passed a dozen times during the little debate that has occurred here on this question. It is a matter, as I observed before, of no local interest, of public interest entirely, and I presume there will not be a word of objection to it on the part of any Senator.

But I have occupied more time in saying this than it would have taken to have considered and passed the bill.

The PRESIDING OFFICER. Is there objection to postponing all prior orders and proceeding to the consideration of Senate bill No. 1804?

DETROIT ARSENAL.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill (S. No. 1804) to provide for the reappraisement and sale of the buildings and grounds known as the Detroit arsenal, in the State of Michigan.

The bill was reported from the Committee on Public Lands with an amendment, in line 8, after the word "bidder," to insert "but not to be sold at less than the appraised value thereof;" so as to make the bill read:

Be it enacted, &c., That the Secretary of the Interior be, and he is hereby, authorized to cause to be made a new appraisement of the lots and blocks remaining unsold, said appraisement to be at their present cash value; after such appraisal the tracts, lots, and blocks now remaining unsold to be offered at public sale to the highest bidder, but not to be sold at less than the appraised value thereof; and in case any subdivision or subdivisions shall remain unsold the sale shall be postponed from time to time until the entire tract shall be disposed of as hereinbefore provided.

The amendment was agreed to.

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

Mr. COCKRELL. At the end of the bill I move to add the following proviso:

Provided, That such subdivision or subdivisions as may remain unsold, after having been twice offered at public sale under this act, may be sold at private sale for not less than the appraised value.

Mr. BALDWIN. I have no objection to that.

Mr. MCDONALD. I am not exactly satisfied with the amendment offered by the Senator from Missouri. I do not think we should provide that this property may be sold at private sale at any time.

Mr. COCKRELL. I will state to the Senator the object of the amendment. This land was offered to be sold a long time ago; it was appraised and offered for sale. There has been expense connected with it and it has not been sold. The bill provides for a reappraisement and then for a public sale.

Mr. MCDONALD. I understand that.

Mr. COCKRELL. If, after it has been offered at public sale twice, nobody bids the appraised value—and it cannot be sold for less—the amendment provides that after that time it shall be sold at private sale at not less than the appraised value.

Mr. MCDONALD. I understand this bill. It was before the Committee on Public Lands, of which I am chairman, and the committee reported it back with an amendment, to which the Senate has agreed; that is, requiring that the land shall not be sold at less than the appraised value. The concluding part of the bill, as agreed to by the committee, gives sufficient authority to sell this property without offering it at any time at private sale:

And in case any subdivision or subdivisions shall remain unsold, the sale shall be postponed from time to time until the entire tract shall be disposed of as hereinbefore provided.

That is, at public sale at not less than its appraised value. I think that if we go further than that, and after two offers permit the property to be sold at private sale, it opens up some door for combinations by which it may be sold for less than it would be sold for at public sale.

Mr. COCKRELL. It cannot be sold under the amendment for less than the appraised value.

Mr. MCDONALD. I understand that, but the question of appraisement may not always determine the accurate value of the property. If it cannot be sold for less than the appraised value and must be offered at public sale, there is no danger of these combinations; but if at any time it goes into private sale and the Government loses its control over the sale, it may be subject to combinations and will bring probably less than its value.

I trust the amendment will not be agreed to, for it certainly is not necessary in order that this property shall be disposed of.

Mr. BALDWIN. When the amendment was offered by the Senator from Missouri I said at once that there was no objection to the amendment. I still think there is no real objection to it. This property is called the Detroit arsenal, but it is probably known by perhaps every member of the Senate that it is not in the city of Detroit. It is in a small village of two or three or possibly four hundred inhabitants, ten miles from the city of Detroit. It has been unoccupied as an arsenal, unoccupied for any purpose whatever, for six, eight, or ten years; I do not exactly remember how long. It has been advertised and offered at public sale, how many times I cannot say, but time and again—three or four, possibly ten or a dozen, times. I think ten or a dozen of the village lots that were laid out, the most desirable ones, have been sold, but the property has been subsequently advertised and advertised again at public sale. Expense has been incurred by the Government not only for these advertisements, but for procuring auctioneers, and requiring the receiver of the land-office to attend, and he receives a fee each time for his attendance, &c. Therefore it does seem to me that there should be no valid objection to the amendment offered by the Senator from Missouri.

So far as I am concerned I care nothing about it either one way or the other. I think it is for the interest of the Government that the property should be sold, and if under this bill it should be advertised and offered at public sale twice, and then not be sold, I cannot well understand any very good objection that can be raised to allowing it to be disposed of according to the amendment offered by the Senator from Missouri. The object is solely that the property shall be disposed of, as it is of no earthly use for the Government. Of course it is for the Senate to decide whether the amendment shall be agreed to.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Missouri, [Mr. COCKRELL.]

The amendment was agreed to.

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

Mr. COCKRELL. I move to amend the preamble by striking out the concluding words "at not less than the appraised value;" so as to read:

Whereas Congress, by an act approved March 3, 1875, authorized the Secretary of War to transfer to the custody of the Secretary of the Interior for sale, after appraisement, the buildings and grounds known as the Detroit arsenal, in the State of Michigan, and provided that the Secretary of the Interior should cause the property to be subdivided into tracts of not more than forty acres each, or into town lots, with proper streets to render the same accessible, and then that said lots and buildings should be sold at public sale to the highest bidder; and.

The amendment to the preamble was agreed to.

The preamble, as amended, was agreed to.

MESSAGE FROM THE HOUSE.

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

A bill (H. R. No. 1958) for the relief of Henry C. Groomes;

A bill (H. R. No. 2123) granting a pension to Albert L. Jack; and

A bill (H. R. No. 3558) for the relief of Charlotte M. Coward, widow of Captain Joel M. Coward.

The message also announced that the House further insisted upon its amendments to certain amendments of the Senate to the bill (H. R. No. 6185) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1881, and for other purposes, further insisted upon its disagreement to the amendments of the Senate insisted upon by the Senate, asked a further conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. J. D. C. ATKINS of Tennessee, Mr. HIESTER CLYMER of Pennsylvania, and Mr. J. H. BAKER of Indiana, managers of the further conference on the part of the House.

The message further announced that the House had passed the joint resolution (S. R. No. 64) extending the provisions of the first section of an act entitled "An act fixing the rate of interest upon arrearages of general taxes and assessments for special improvements now due to the District of Columbia, and for a revision of assessments for special improvements, and for other purposes," approved June 27, 1879, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had passed the following bills:

A bill (S. No. 1249) to amend an act entitled "An act granting a pension to Sophia Brooke Taylor, widow of the late Major Francis Taylor;" and

A bill (S. No. 1225) to remove the political disabilities of Jonathan H. Carter, of South Carolina.

DRS. OWENS AND MARTIN.

Mr. JONAS. I ask to lay aside all prior orders temporarily for the purpose of taking up the bill (H. R. No. 4606) authorizing the President of the United States to nominate Drs. Thomas Owens and William Martin assistant surgeons United States Navy.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. EATON. I think I shall be compelled to object. Let us go to the Calendar.

Mr. MAXEY. I appeal to the Senator from Connecticut not to make that objection. This is a very meritorious case.

Mr. EATON. All these cases are meritorious except those in which I am interested, and therefore I withdraw the objection.

Mr. McPHERSON. I should like to state to the honorable Senator from Texas that this bill is likely to provoke a great deal of discussion. The Naval Committee are not agreed upon this report, and for one I shall not consent to the passage of the bill in its present form. With this information if it is desired to take up the bill and spend as much time as is necessary for its consideration, well and good.

Mr. JONES, of Florida. I had the honor of reporting this bill from the Committee on Naval Affairs, and it does seem to me, with all due respect to the chairman of the committee, that there is nothing in it which justifies a long debate, unless somebody wants to speak against time, and I do not think gentlemen desire to do that here. It is a very small bill, and whatever merit there is in it can be presented in a few minutes. The bill has already passed the House of Representatives, having received the indorsement of the Committee on Naval Affairs of that body, has passed the Naval Committee of the Senate, and is now here. I say at this late day a bill of that kind ought to be acted upon in preference to one that has not been considered at the other end of the Capitol at all. Bills that have passed the House of Representatives, and which have been sent over here and reported on, ought to have some preference. I am in favor of proceeding to the consideration of this bill.

Mr. KIRKWOOD. I wish I could get some test vote to settle this question among us about the Calendar. Every morning we consume more time in discussing what we shall take up than it would take to pass a dozen bills. Will some older Senator suggest some way by which we can test the question and settle the matter?

Mr. WALLACE. I suppose the Senator can move to lay the motion on the table for the purpose of going on with the Calendar.

Mr. KIRKWOOD. Would a motion to go to the Calendar be in order?

The PRESIDING OFFICER. It would be in order, objection having been made by the Senator from Connecticut, [Mr. EATON.]

Mr. KIRKWOOD. I move, then, in order to settle this thing, if possible, that we proceed to the Calendar in order.

The PRESIDING OFFICER. The Chair rules that motion is in order unless the Senator from Louisiana makes a motion.

Mr. INGALLS. A motion is not necessary to bring up the Calendar.

The PRESIDING OFFICER. It is not necessary.

Mr. JONAS. I ask for a vote on my motion, which was to lay aside all prior orders for the purpose of considering House bill No. 4606.

The PRESIDING OFFICER. The Senator, not having made that motion before, makes the motion now to postpone all prior orders. The question is on the motion of the Senator from Louisiana, [Mr. JONAS.]

Mr. KIRKWOOD. I hope the Senate will consider this a test question; and this motion having been carried, if it shall be carried, every man then is notified that he must scramble in order to get a chance to have his particular case disposed of.

Mr. MAXEY. I think the Senator from Iowa, who I know to be a very just man, as the Senator from Michigan has already had his bill passed, should not give that notice, but should let this bill be disposed of, giving notice now that after it is disposed of he will ask that the order in regard to the Calendar shall be enforced.

Mr. KIRKWOOD. What will become of the next bill, then?

The PRESIDING OFFICER. The question is on the motion of the Senator from Louisiana, to postpone the present and all prior orders, the object being to consider the bill which he has indicated.

The motion was agreed to.

The Senate proceeded to consider the bill (H. R. No. 4606) authorizing the President of the United States to nominate Drs. Thomas Owens and William Martin assistant surgeons United States Navy.

Mr. COCKRELL. Let the report be read.

The Chief Clerk read the following report, submitted by Mr. JONES, of Florida, March 9, 1880:

The Committee on Naval Affairs, to whom was referred the bill (H. R. No. 4606) authorizing the President to appoint Drs. Thomas Owens and William Martin assistant surgeons in the United States Navy, not in the line of promotion, have had the same under consideration, and submit the following report, namely:

The committee, upon the examination of the papers and records furnished by the Navy Department, find that Dr. Owens was ordered before a medical examining board for examination, under the act of Congress approved February 15, 1879, to abolish the volunteer navy, and that the said board found him unable to proceed with his examination on account of sickness, which originated in the line of duty in the Navy. The provision of said act provided "that in the event of physical disqualification which occurred in the line of duty such officer may, upon the recommendation of a retiring board, be placed upon the retired list." In compliance with this provision he was ordered to appear before the retiring board, which board found him unfit for active service then, from causes originating in the line of duty, but, acting under the advice of the medical officers attached thereto, declined at that time to place him upon the retired list. After reappearing before the medical examining board, and proceeding with his professional examination, under the disadvantageous circumstances of his sickness, he was compelled to withdraw therefrom, by advice of his then attending physician, Medical Inspector Philip S. Wales, United States Navy, who recommended a change of climate as being necessary for his health.

The medical examining board, in their report to the honorable Secretary of the Navy, recommended Dr. Owens to be placed on the active list as an assistant surgeon not in the line of promotion, stating that he was compelled to withdraw from his examination on account of sickness which originated in the line of duty in the Navy. The honorable Secretary of the Navy approves the recommendation of the board and recommends favorable action by Congress.

The committee also report that the medical examining board made same recommendation in the case of Dr. William Martin, which is also approved by the honorable Secretary of the Navy; and the committee recommend the passage of the House bill.

Mr. ANTHONY. I have an amendment to offer at the end of the bill. I move to add:

Provided, That they shall pass all the customary examinations into their medical, professional, and physical fitness for the appointment: *And provided further*, That in the judgment of the Secretary of the Navy such addition to the medical corps of the Navy is desirable.

Mr. McPHERSON. I desire to say only a word upon this amendment. It seems to me this bill proposes the most unprecedented thing that ever has been attempted to be done by any department of any government upon this earth. Think of the idea of appointing two men said to be physicians as assistant surgeons in the Navy when they have already been before a board of examination and failed to pass an examination before that board! Even the report itself shows that when they were before the board both pleaded physical inability to go on with the examination. All that the amendment of the honorable Senator from Rhode Island proposes to do is, if these two parties here named are appointed assistant surgeons in the Navy, that they shall come to that place in the same form and manner and with the same qualifications that every other appointee in the Navy must possess. In other words, the idea of appointing a surgeon in the Navy and sending him out on a vessel to some foreign station without a knowledge on the part of the Navy Department that that surgeon is capable of performing any duty that he may be called upon to perform is to my mind a most outrageous thing.

I am perfectly willing that the President should appoint both Drs. Martin and Owens or one hundred other surgeons if their appointment be necessary for the performance of the duties required by the naval service; but I am not willing, and I do not think there is a Senator on this floor who will be willing, to permit an appointment of that kind to be made unless the applicants pass through a physical and a professional examination as to their fitness to perform all the duties required.

I hope that the amendment will be agreed to, and under no circumstances should the bill be permitted to pass without the guard that the amendment proposes to impose.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Rhode Island, [Mr. ANTHONY.]

The amendment was agreed to.

The bill was reported to the Senate as amended.

Mr. JONES, of Florida. This bill came from the House with all the facts of this case open; there was no concealment about it at

all. Dr. Owens, from the record, appears to have been in the volunteer service for fourteen years. The better part of his life up to this time has been spent in the service of the United States as a naval surgeon. Dr. Martin was also in the naval service. I do not know how many years he was there, but I have reason to know he was there for some length of time, and I am informed that Dr. Owens was in the naval service as a physician fourteen years or nearly that time, and that during that time he contracted disease which rendered him physically incapable of undergoing the examination which he was called upon to undergo when the board met to examine him, and they so reported. The recommendation of the board was that in consideration of the facts in his case he be not required to undergo this examination, and recommended that Congress should put him upon the roll of surgeons not in the line of promotion. The Secretary of the Navy, understanding the whole case, indorsed that recommendation. The House of Representatives considered it and passed the bill and sent it to us. I am informed that this gentleman is an educated physician, a graduate of a medical institution of high character in the country, and that while in the service as a surgeon he bore a high character. But belonging to that volunteer force which was swept away a year or so ago by act of Congress, he went out, and it is conceived that his case is a little more meritorious than others, and a disposition has been manifested to retain him. He was suffering, it seems, from infirmity when he was called upon to appear before the board, and the board itself in its official communication recognized that fact. When a man has been in the trying situation in which this officer has been placed while in the public service, when he lost his health, when he passed through a period of fourteen years of service with nothing said against his professional character, when he is admitted on all hands to have done his duties properly, surely there is raised at least some presumption in his favor. It is not like the case of a man coming forward for the first time asking to have an examination dispensed with and seeking to obtrude himself into the public service who never was connected with it a single day. This is not that case, but it is the case of a man whose best years up to the present time have been devoted to the public service honorably and creditably, and in view of the peculiar facts of the case the board made this recommendation and we acted upon its suggestion, made in a spirit of equity, and which had the sanction of the head of the Navy Department. That is the whole case as to Dr. Owens.

With respect to Dr. Martin, whom I happen to know personally, the facts of his case are somewhat different. In the great epidemic which prevailed a few years ago in the city in which my friend from Louisiana [Mr. JONAS] resides he distinguished himself for heroism and devotion such as has not often been exhibited by physicians in a crisis like that. It is a well-known public fact in the city of New Orleans that Dr. Martin rendered the most efficient service there in the midst of that terrible epidemic of any man whose name has been professionally connected with it.

Mr. MAXEY. And he has the gratitude of that whole people.

Mr. JONES, of Florida. Mr. President, there are occasions and there are times when learning and skill supersede and override everything else, and there are times when a small proportion of them mixed with a high degree of moral courage go further toward alleviating the sufferings of humanity than anything else. This man may not be as learned as some of the distinguished doctors in the Navy, but I can say from my own personal knowledge of him that in a crisis such as he has passed through he is worth fifty of them that might be named. I happened on one occasion to see this thing tested. I saw learned physicians summoned from the North to my own town in the midst of a terrible epidemic, flushed with all the health and blood of a northern climate; I saw them tremble like little children on the eve of the duty that was imposed upon them, and utterly inefficient in the midst of the crisis that they were called upon to meet. I saw them lie down and die, surrounded by the terrors of that terrible calamity, because they were not acclimated or at all prepared to meet the emergency which they were called upon to face. This man has been through that ordeal and he has commended himself by his efficiency, his courage, and his devotion to the recognition of the Navy Department, and to-day I think in that climate he could be made one of the most useful and efficient physicians in the public service when called upon to meet with this terrible monster which holds the whole country nearly annually in dread.

Mr. McPHERSON. Mr. President, I agree with the honorable Senator from Florida that if there were no other diseases liable to afflict an officer of the Navy or any seaman in the Navy than the yellow fever perhaps Dr. Martin might be a most competent surgeon to deal with it. I have a very high respect for Dr. Martin, as much so as the honorable Senator from Florida can have, on account of the very extraordinary service that he has rendered to the yellow-fever sufferers; but is that any reason why Dr. Martin should be sent out on a naval vessel to some foreign station upon which hundreds of officers and seamen are placed? In case it should become necessary to amputate a limb or perform some surgical operation upon somebody on board that ship, how do we know that he can perform it? Here we appoint Dr. Martin a surgeon in the Navy without ever having passed a surgical examination, without ever having passed the examination that the statute requires that every man shall pass before he can be appointed in the Medical Corps. If the result should prove disastrous to the officer operated upon, there is no doubt in my mind that that officer would have a claim for redress upon the Government for sending a quack on board ship to perform that service. I do not say it is so; but I declare that for anything the Navy Department knows about him it is. The Navy Department have made no examination; they do not know the man's qualifications; and yet the bill declares that they shall give him a certificate as assistant surgeon.

Mr. JONES, of Florida. May I ask the Senator a question?

Mr. McPHERSON. Yes, sir.

Mr. JONES, of Florida. It cannot be denied that these gentlemen have both been in the public service for years. Will they be called upon, if this bill passes, to discharge any more responsible duty now than they were called upon to discharge when they were in the public service before?

Mr. McPHERSON. I have only to say now that we are placing them in the naval service; we are making them assistant surgeons in the Navy as the bill says "not in the line of promotion." Whoever heard of such a case in the Navy of the United States, appointing an officer in the Navy not in the line of promotion? It raises a presumption and a reasonable one that both these surgeons do not think themselves that they can pass the necessary examination to qualify them to be promoted.

I never will consent to appoint anybody in the Navy not in the line of promotion; more especially will I never consent to appoint a surgeon in the Navy who deals with hundreds of his fellow-officers until that surgeon passes all the examinations that it is requisite under the statute that he shall pass and shows his fitness to perform his duty everywhere and in every emergency.

These two officers have been before a board of examination. Their names have been before the Naval Committee of the Senate, at least one of them, for the past two years asking first to be appointed assistant surgeon. That is the case of Dr. Martin. His case was not acted on further than this: A board of examination, such a board of examination as every surgeon in the Navy is required to pass, was organized. Drs. Martin and Owens went before that board, and, strange as it may seem, neither of them, on account of temporary illness, as it was said, was able to pass the examination. The president of that board wrote a very flattering letter, no doubt sympathizing with them, in which he stated the fact to the Secretary of the Navy, not as a report of the board, remember, but as simply an individual opinion, that he thought by time and attention to their health perhaps it might be possible for them to prosecute their studies in order to fit them to pass the examination creditably.

Now, all that the amendment of the honorable Senator from Rhode Island requires is that before they are placed in the Navy as assistant surgeons they shall have passed the examination required by the statute. I say that to do less than that would be a very gross act of impropriety on the part of the Senate.

Mr. JONAS. Mr. President, I can add but very little to what the honorable Senator from Florida has said in relation to this matter. Dr. Owens was in the United States Navy for fourteen years in the capacity of an assistant surgeon. Necessarily he had to pass through an examination before he was appointed to that service, and it appears from all that there is before the committee and from all the information we have that Dr. Owens performed his service well and to the satisfaction of the Department, and was amply able and competent to fulfill the duties of the position. Dr. Martin also served in the Navy. I do not know the exact length of time, but for some four or five years after his graduation in his profession.

Both these gentlemen are educated physicians and surgeons. Dr. Martin is a graduate of the University of Louisiana. In the city where I reside he holds a most respectable position in the medical fraternity.

Mr. McPHERSON. May I ask a question?

Mr. JONAS. Certainly.

Mr. McPHERSON. If he is all that the Senator claims for him, why try to prevent the medical examining board of the Navy from examining him?

Mr. JONAS. I do not try to prevent it; but, as the honorable Senator well knows, this amendment will subject these gentlemen to a long delay before they can obtain this appointment which has been recommended by the Secretary of the Navy, and, as I am informed, by the Surgeon-General of the Navy, and, as I am informed also, by the officers of the very medical board who were summoned to examine them. They were unable from circumstances which were satisfactorily explained to the board to attend the examination; Dr. Owens from illness, which is said to have been removed; Dr Martin, from the fact that he was actively engaged in the duties of his profession and actively engaged as a sanitarian at his distant home. The reasons for their not being examined were satisfactory to the board which was appointed to examine them, and the officers of that board themselves recommend this appointment, and the Surgeon-General of the Navy, who knows the need of medical officers, recommends this appointment, and the Secretary of the Navy recommends this appointment.

Mr. VOORHEES. I understand the examination which the Senator from New Jersey speaks of, and in which he alleges these gentlemen failed, was suspended by the examining board for reasons satisfactory to it, and that that board recommends this action in their behalf.

Mr. JONAS. Yes, sir.

Mr. VOORHEES. And the Secretary of the Navy?

Mr. JONAS. Yes, sir; and it is to be presumed, and I assert it as a fact, that the very examination which these medical officers would have to undergo now, and which the amendment provides that they shall undergo in order to qualify themselves for the position of assistant surgeon, they had to undergo at the time they were originally appointed as assistant-surgeons in the volunteer navy. They have had the benefit of years of experience since. They are not applicants for promotion, they are not required to appear before a medical board for examination for promotion; it is for examination, according to the amendment, for an appointment as assistant surgeons in the Navy, the very lowest grade and position in the medical service of the Navy. That examination they had years ago, Dr. Owens sixteen years ago, after which he performed fourteen years' service in the Federal Navy, and Dr. Martin several years ago, after which he performed service in the Federal Navy until the act was passed disbanding the volunteer surgeons.

Mr. ANTHONY. Allow me to ask a question. If these men are so well qualified for the position in which it is attempted to place them, why are they deprived of the right of promotion?

Mr. JONAS. Mr. President, I take it for granted that men who for a long term of years fulfill their duties gallantly and well in the United States Navy as assistant surgeons are competent now to fill the position of assistant surgeons. They were not dismissed from that service; no fault was found with them; they remained in honorable service until the act was passed doing away with the volunteer service in the Medical Department of the Navy; and since then each of them has had active experience in the medical profession. I know personally the standing of Dr. Martin. Dr. Martin is now employed by the National Board of Health; he has charge of one of their quarantine ships. He is intrusted with the duty of visiting and inspecting vessels arriving from foreign ports and ascertaining whether or not they are in a condition to enter ports of the United States with safety. He is intrusted with a position of greater trust and confidence and more importance to the health of a large portion of the people of the United States than he will ever be called upon to occupy if admitted into the medical service of the Navy.

The honorable Senator from New Jersey asks if one of these gentlemen understands the yellow fever and has distinguished himself by its treatment, is that any reason why he should be appointed in the Navy? The Senator asks, does he understand other diseases; is he capable of attending the officers and seamen in the service of the United States? Why, Mr. President, Dr. Martin did so for a term of years, certainly not less than four and perhaps six or eight. He performed those services satisfactorily. He has passed all the necessary examinations. He has nothing to do under the law to become an assistant surgeon. If the amendment of the Senator from Rhode Island prevails, then he will have to undergo what he underwent years ago. I did not introduce this bill. It came here from the House of Representatives, where it passed almost by acclamation, because it was felt that when the Secretary of the Navy said he had need of two such officers, when the Surgeon-General of the Navy said he had need of two such officers, when the medical board who were appointed to examine these officers as to their qualifications recommended them for appointment, Congress could well dispense for this occasion at least with the usual routine which prevails in the appointment of assistant surgeons in the Navy. And because the bill provides that they shall be appointed not in the line of promotion, is the Senator from New Jersey to assume that it is because they are unfit for promotion or are unfit to practice their profession? That was probably put in there in committee or in the House in order to prevent jealousy in the regular line, in order that the large number of assistant surgeons either appointed or preparing to be appointed should not consider that this interfered with their legitimate chances of promotion. It is an exceptional bill, and therefore this exception was placed in the bill. From my personal knowledge of both these gentlemen I am satisfied that the bill ought to pass. My knowledge is of but little account, except so far as Dr. Martin is concerned. I know the general estimation in which he is held by the community in which he lives. In the opinion of the Surgeon-General and of the medical officers of the Navy these gentlemen are amply qualified to fill the position which they filled honorably and successfully for a long term of years. I sincerely trust the amendment will not be adopted.

Mr. JONES, of Florida. I would call the attention of the Senator from New Jersey to the case of Robert Platt, who without any examination whatever, by a special act of Congress, as he is aware, was promoted from service in the Light-House Board to the position of master in the Navy, not in the line of promotion. I think the bill for his relief was introduced by my friend from Delaware [Mr. BAYARD] and acted upon by the Naval Committees of both Houses, and passed the two Houses without objection. Under the ordinary rule of law that man would have been called upon to go through a professional examination, such as all naval officers are required to do when commissioned.

Mr. WITHERS. Mr. President, I have listened, I must confess with some surprise, to the character of the discussion on the bill under consideration. Two qualifications are essential to the appointment of a medical officer in the United States Navy. One is professional skill or knowledge, and the other is physical soundness. Those are the requirements of the law. A man deficient in either cannot under the law become a medical officer in the Navy.

It is too late to discuss now the wisdom or the folly which marked the enactment of these two requirements; and yet we find here in the bill under consideration a proposition which proposes to set aside both these essential requisites, one in the case of the first and the other in the case of the second. It is known to the Senate that where an officer of the highest skill, and of the longest service, and who may have attained the highest rank in the Navy, becomes physically disabled in that service, under the operation of law a medical board of examiners is called to sit upon and examine his condition, and if they find him physically disqualified he is placed upon the retired list. It is proposed by this bill to take a man who is now admitted to be physically disqualified and put him in the service in despite of this law.

I am not raising the question of professional qualification. I am taking the argument as made by the friends of this bill in the case of the first gentleman under consideration. It is claimed that he possesses professional qualifications of the highest order, but owing to disability incurred in the line of service his physical condition is such as will not enable him to pass the examination. I say that if that be true there is no reason that can be stated which would justify us in overriding the provisions of the law in his case that would not apply with equal force to a repeal of the whole law which renders physical soundness an essential prerequisite to admission into the Navy.

With regard to the second applicant under this bill, the argument used by the friends of the bill is that he is physically competent, he is mentally and morally so, but not professionally; and the argument made by the Senator from Florida is that professional qualifications are as nothing.

Mr. JONAS. The Senator is mistaken. No one has said that he was not professionally qualified. On the contrary, I contend that he is professionally qualified to fill the position of assistant surgeon in the Navy.

Mr. WITHERS. I understood the Senator from Florida—and I have his words taken down—to maintain the position that while he was not as learned as some other surgeons in the Navy, yet his moral courage and his devotion to duty made him worth fifty of them.

Mr. President, I cannot consent to admit that the arguments of the gentlemen are sound as to the possession of professional knowledge by those persons when they are unwilling to submit them to the test of the examinations as to their proficiency in professional knowledge, which is required by law and which the amendment offered by the Senator from Rhode Island requires.

It seems to me that this proposition overrides and ignores entirely those provisions which the wisdom of our forefathers deemed requisite to protect the lives and the health of the officers and seamen of the Navy, in that it renders inoperative those tests which were designed to secure that physical soundness and professional knowledge which were deemed indispensable for the performance of the duties of a medical officer in the Navy.

The philosophy which prompted the requirement of these two essential things seems to me to be perfectly sound. A man without physical health and strength cannot perform properly the professional duties required of a medical officer in the Navy, and it is manifest that one who is deficient in professional knowledge would be incompetent.

Mr. JONES, of Florida. Now, I wish to ask the Senator from Virginia, if all that he says is well taken, why is it that the medical board having charge of the interests of the Government have recommended this action? I beg, with great respect, to say that they were as well capable from their knowledge of these men as my honorable friend from Virginia, and still they recommended this legislation, and the Secretary of the Navy says the action now proposed to be taken is proper.

Mr. McPHERSON. The honorable Senator from Florida does not insist upon it that there has been an examination by a board of the Navy Department and that it recommended the promotion of these gentlemen.

Mr. JONES, of Florida. No; but I say that members constituting the board recommended this action.

Mr. McPHERSON. But the bill says they shall be placed on the active list "in accordance with the recommendation of the medical examining board now on file in the Navy Department." They were before the board, and the board refused to recommend their appointment.

Mr. JONES, of Florida. There is a recommendation.

Mr. McPHERSON. There is the letter of the president of the board which simply says that, in his opinion, with a little delay to enable them to go to the mountains and get their health restored and return again and pursue their studies for a short time, they might be able perhaps to pass a medical examination. That is all there is.

Mr. WITHERS. I have seen the recommendation of the board referred to; I have not seen the letter referred to. My position is, that if this medical examining board, which failed to examine these gentlemen according to the admissions of their friends, were of opinion that under certain possible conditions which might hereafter arise they ought to be permitted to go into the Navy, unless those conditions have been complied with there is no reason why we should put

them into the Navy in despite of the want of those qualifications. If they are professionally skilled and physically sound what objection can there be to the amendment of the Senator from Rhode Island? It must result from the want of either one of two conditions: these gentlemen are either not able to stand the medical examination or the physical examination, or their friends are unwilling to believe they can do it, and consequently they resist the amendment offered by the Senator from Rhode Island, which has for its object only that requirement.

I think that it is unfair for Congress to step in and by its action, influenced by whatever motive it may be, to remove that protection which the laws now cast around the lives and health of the officers and seamen of the Navy by breaking down the restrictions which are designed simply and solely to secure professional knowledge and physical capacity needed for the discharge of the duties of these positions.

That is all I see in the case. That is what this bill proposes to do, and that is what I propose to oppose by my vote.

Mr. KIRKWOOD. I should like to ask the Senator from Virginia who has just taken his seat whether the law does not also fix an age after which persons cannot be examined?

Mr. WITHERS. Certainly.

Mr. KIRKWOOD. I do not know how the case may be here.

Mr. WITHERS. Twenty-six years, I think.

Mr. KIRKWOOD. I do not know whether these gentlemen have reached that age or not.

Mr. McPHERSON. If the Senator will yield, I will read the statute:

SEC. 1370. No person shall be appointed assistant surgeon until he has been examined and approved by a board of naval surgeons, designated by the Secretary of the Navy; nor who is under twenty-one or over twenty-six years of age.

And both of these gentlemen are vastly over that age.

Mr. KIRKWOOD. I had my attention called to that matter in regard to an application for examination as surgeon in the Army by a friend of mine in Iowa last summer. He had served very acceptably during the war, and been promoted materially, and had acquitted himself very creditably. Last summer, after some years' practice in civil life, he desired to be examined for admission into the Army as surgeon, and application was made to me for that purpose, but it was found upon application here that he was too old, and could not be examined at all.

Mr. JONES, of Florida. Had he ever been in the Army?

Mr. KIRKWOOD. Not in the regular Army, but in the volunteer army, and had served four or five years very acceptably. The objection in his case was that he was beyond the age fixed by law, and he could not even have an examination, although he applied for one.

Mr. JONES, of Florida. Since I have been in this body I have had occasion to discuss the principle which is contended for by the Senators from Virginia and New Jersey in other cases, not with respect to medical officers alone. I take it that those officers who are intrusted with the lives of seamen in general command are just as important as medical officers, and still I think it must be admitted that the judgment of these boards with respect to the qualifications of those officers has never been regarded as conclusive. I think Congress time and again with respect to gentlemen of the Navy who were put aside by authority of examining boards, sometimes upon one ground and sometimes upon another, has lifted them up by its authority over the heads of these professional boards and restored them to the service of the country. I think it has been done and it will be done again, and I say here for one that I have not got the great admiration for these boards that has been set forth here. I pay due respect to them, but I think many cases create exceptions. There is no rule so unbending that it cannot be departed from. I have in my mind's eye a case in which a promotion was made to a high position in the Navy by the authority of this body over medical boards and reports. I am not here to justify anything, but I am speaking to a question of power, and I say this is not any very extraordinary action. Captain Platt, who never graduated at Annapolis, who was taken out of the volunteer navy——

Mr. McPHERSON. Let me ask was he appointed to a position where he was permitted to perform surgical operations on sufferers?

Mr. JONES, of Florida. I am not going into that question. The gentleman talks about the practice. I cite this as an example of an exception to the rule applicable to the naval service. Captain Platt was in the volunteer navy of the United States. He performed meritorious services. He had never been inside of Annapolis as a cadet; but the Government thought proper to retain him, and Congress by an act which went through, I think, without any opposition made him a master in the Navy not in the line of promotion. I supported the bill very willingly, a bill introduced by my friend from Delaware. Still, according to the ordinary rules, that man would have been compelled to stand an examination, the most critical and exacting, before he could have reached that position in the ordinary course. Congress by its omnipotent power dispensed with it all, recognized his merits, and gave him the position without any examination.

I am not quoting this as a binding precedent, because every case of this kind ought to stand on its own merits. If these gentlemen had never been in the public service, if they had never been recognized as physicians, if they had never been intrusted with the lives of seamen or any of the trusts growing out of their professional position, I would be the last man in this body to recommend the passage of such a bill as this; but I do say that after they have performed this service, after the medical board have recommended this course, after the Secretary of the Navy has indorsed it, these facts can well be brought to the notice of the Senate and take this case out of the general class where no such facts exist.

Mr. WITHERS. Will the Senator permit me to interrupt him for a moment to ask if he has the recommendation of the board to which he refers?

Mr. JONES, of Florida. It was among the papers here. I asked for it a while ago.

Mr. WITHERS. I should like to hear it read. I did not hear the report read.

Mr. JONES, of Florida. I have not been able to put my hand on it now.

Mr. WITHERS. I ask the Secretary whether the recommendation referred to is on file with the papers? If so, let it be reported.

The PRESIDING OFFICER. The Chair understands the papers have not been sent over from the House.

Mr. WITHERS. There is such a decided difference of opinion between the Senator from New Jersey and the Senator from Florida that I should be glad to have the recommendation of the board read.

Mr. JONES, of Florida. I should be glad to have that recommendation read. It was among the papers filed in the case. I confess it made a decided impression on my mind. I made the report; and the action of the House was in conformity with the conclusion at which I arrived.

I know Dr. Martin personally. He was stationed at my town in the character of quarantine physician, where he performed very meritorious service which was recognized there as well as at New Orleans, where he is known. A man who has gone through a professional course, who has tested by experience this very ability that is called into question, is not in the same position as a man who is a stranger and who must first pass an examination to get on the list at all. If these men never had been intrusted with any duty of professional character, there would be much force in what is said; but here during the epidemic the lives of hundreds if not thousands of people were under one of these men, and I am credibly informed that he succeeded in bringing back to a state of health more patients than any other man who was engaged in a similar duty. It cannot be denied that in our widely extended naval service occasions will arise in the climates south of us that will call for the services of a man like him.

Mr. McPHERSON. You speak of Dr. Martin?

Mr. JONES, of Florida. Yes. The trouble is that when the yellow fever makes its appearance there are but few physicians in the Navy who are sufficiently acclimated to meet that monster. I have had sad experience about my own home in this regard, and I have seen the folly of the management of the Navy Department in ordering men from the North down South in the midst of a terrible epidemic simply to lay down their lives. I have seen men come there enjoying the highest professional reputation—learned, useful men, but at the same time utterly incompetent for the position that they were called upon to occupy. I have taken it upon myself to insist time and again that some regard ought to be paid by the Navy Department in its selections for public duty of men to select those adapted for the special service required. During the last epidemic in my town two or three of the best naval officers lost their lives by this folly, and finally the Government was called upon to send to the city of my friend on the left [Mr. JONAS] for a physician in order to attend to the duty, and hired him at an enormous salary to go there and attend to the dying people. Here is a man who has passed through all this terror and is familiar with this disease; who has proven by experience his capability to handle it; and I say if due regard is paid by the Naval Department to this branch of service such a man as this could be made most invaluable.

The case of Dr. Owens I am not familiar with; but I have heard enough to satisfy my mind that whatever physical infirmity existed at the time he appeared before the board was by the admission of the board itself brought about by his services to the country, and that he was not at that time in a physical condition to undergo the examination and they recommended that it be dispensed with.

Congress not having been bound in former days and years absolutely by any rule about this matter, as I have stated, I think these two cases present as much merit in themselves for the action which I ask as any cases that have ever been presented, and I shall vote for the bill.

Mr. INGALLS. Mr. President, before voting on this bill I want some information, and I will ask the Senator from Florida or the Senator from Louisiana when this action of the medical board that is mentioned in the report was taken, if either of them can inform me.

Mr. JONES, of Florida. The report states.

Mr. INGALLS. The report that has been read does not state when this action was taken.

Mr. JONES, of Florida. Last summer, I think.

Mr. INGALLS. I understand that the examination was suspended in consequence of the fact that these men were disqualified in some way to proceed further. Now, what I want to know is whether the board acted upon the fact that they were physically or mentally dis-

qualified, or whether there was some other legal obstacle in the way of the examination proceeding?

Mr. McPHERSON. I will say to the honorable Senator, although he has asked for information from the Senator from Florida or the Senator from Louisiana, that I can give him the desired information.

Mr. INGALLS. I ask the Senator from New Jersey, if he is familiar with the case.

Mr. McPHERSON. As near as my recollection serves me, an examination was made in 1879 on application of these parties to the Navy Department for appointment as assistant surgeons. They went before an examining board convened by the Secretary of the Navy, and they did not get through with either a professional or physical examination.

Mr. INGALLS. Why not?

Mr. McPHERSON. The reason that they assign themselves that they could not proceed with their professional examination is that it was on account of physical disability.

Mr. INGALLS. Ill-health?

Mr. McPHERSON. Ill-health. The board make no recommendation whatever. The examination was not completed simply because both of the applicants withdrew from the examination before it was completed. The president of the examining board kindly sent a letter to the Secretary of the Navy, in which he states that he thinks, in the course of time, by careful attention to health and other things, they might be able to pass an examination; but no examination has ever yet been passed before any naval examining board by either of these gentlemen. There is no record evidence of any character whatever showing that they have ever passed an examination before any board of naval officers competent to judge as to their qualifications and authorized to take the matter into consideration.

It seems to me, if I do not detain the Senator from Kansas too long, that to send one of these surgeons so appointed, as you propose to appoint them practically under this bill, on board a ship to a foreign port upon which three or four hundred souls are gathered, with no power on their part anywhere to select any better surgeon than the one furnished them by the Navy Department, and so far as that Department knows entirely incompetent, is an act so nearly approaching criminality that I do not believe the Senate will ever consent to it.

Mr. INGALLS. The Senator from New Jersey has anticipated what was in my mind. If this question affected alone the persons who are named in the bill, there would be comparatively little difficulty; but if they are placed in the Navy in the positions that they desire, they will immediately become the custodians to a certain degree of the health and of the lives of those over whom they may be placed; and whether the objection that the medical board found to them arose upon the question of their health, of their physical soundness, of their professional qualifications, or of their age, or whatever it might have been, we cannot disconnect our responsibility over the question of what will be the result upon the lives and health of the men over whom these officers may be placed.

This is a very serious question. These men are to be appointed in the face of the fact that we know they are disqualified from some cause or other. It is admitted; it is not denied by any one; the report itself confesses it.

Mr. JONAS. I ask the honorable Senator where he gets his information that they are disqualified?

Mr. INGALLS. The report itself says that the examination of the medical board was suspended at the request of the parties themselves, because they were incompetent to proceed further with it.

Mr. JONAS. I suggest that the report admits, and such was the fact, that they did not pass an examination from certain causes; but the report does not show that they were disqualified; on the contrary, the president of the board recommended this proposed action.

Mr. ANTHONY. If an applicant is disqualified from undergoing an examination, certainly he must be disqualified from an appointment.

Mr. JONAS. Temporarily.

Mr. ANTHONY. Then have another examination; the amendment provides for it.

Mr. INGALLS. Mr. President, we are establishing a precedent and in my judgment a very vicious one, and one upon which we cannot stand. It is true that there have been several cases in which similar action has been taken by the Senate before at this session. We have restored to the Navy two men who had been dismissed for habitual drunkenness while upon duty. We were assured by their friends that they had entirely reformed, and we were appealed to to remove the bar that has been placed upon these worthy and innocent and suffering men in order that they might be once more restored to the line of duty; and I have been credibly informed this morning by authority I do not question that within the last month one of those very men who had been dismissed for habitual drunkenness and restored upon the ground that he had reformed celebrated the fact of his restoration by getting blind, roaring drunk!

Now, Mr. President, I say that we are going altogether too fast in this matter. It is not a precedent that we can afford to establish, and if for any reason these men are found to be disqualified even for examination, how can we say that they are qualified for the duties of active service? I cannot, unless there is some more evidence than has appeared yet before the Senate, vote for this bill, unless, at least, it is accompanied by the amendment offered by the Senator from Rhode Island, that before being placed upon the roll they shall pass an examination, and the Secretary of the Navy shall be satisfied of their fitness and their qualification.

Mr. ANTHONY. I will modify my amendment by striking out the second proviso.

Mr. JONAS. I will accept that amendment.

Mr. WITHERS. How will it read then?

Mr. ANTHONY. Let the amendment be read.

The Chief Clerk read as follows:

Provided, That they shall pass the customary examination into their mental, professional, and physical fitness for the appointment.

Mr. McPHERSON. What does the honorable Senator from Rhode Island propose to do, to withdraw the last part of his amendment?

Mr. ANTHONY. The latter clause, providing that in the opinion of the Secretary of the Navy such addition to the Medical Corps of the Navy is desirable. I strike that out.

Mr. McPHERSON. Then it actually appoints them as soon as they pass an examination.

Mr. ANTHONY. When they pass examination. It has been suggested to me that the Senate is the best judge of the necessity of increasing the Medical Corps of the Navy; but it does not seem to me that the Senate should set itself up as a professional board for examining into the qualifications of surgeons in the Navy. The Senator from Florida has argued the power of this board. I require no argument to convince me of the power of this body to place the Senator from Florida or myself in the Medical Corps of the Navy, but I think it would be a great abuse of power to appoint any member of this body except my friend from Virginia, [Mr. WITHERS.]

The PRESIDING OFFICER. The Senator from Rhode Island modifies his amendment. If there is no objection it will be so modified, and the question is on concurring in the amendment as modified.

The amendment, as modified, 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.

LEGISLATIVE, ETC., APPROPRIATION BILL.

Mr. DAVIS, of West Virginia. I ask the legislative bill be taken up for the purpose of appointing a second conference.

The PRESIDING OFFICER. The Chair will lay before the Senate a message from the House.

The Chief Clerk read as follows:

IN THE HOUSE OF REPRESENTATIVES,
June 4, 1880.

Resolved, That the House further insists upon its amendments to certain amendments of the Senate to the bill (H. R. No. 6185) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1881, and for other purposes, insists upon its disagreement to the amendments of the Senate insisted upon by the Senate, and asks a further conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. ATKINS, Mr. CLYMER, and Mr. BAKER be the managers of the further conference on the part of the House.

Mr. DAVIS, of West Virginia. I move that the Senate further insist on its amendments and agree to the further conference asked by the House.

Mr. ANTHONY. Will the Senator from West Virginia explain the points of difference between the two bodies?

Mr. DAVIS, of West Virginia. In part I will; I hardly think it best for the service to explain in full yet. I will say to my friend from Rhode Island that the principal and perhaps all the difference is as to the salaries of the employés of the two Houses. That is the question now pending between the two Houses. We have disagreed, but I am not without some hope of an agreement, and therefore I prefer at this time not to say to the Senate all that I may have to say hereafter on the subject.

Mr. ANTHONY. I understand the difference is upon the salaries of the employés of the Senate alone; there is no difference about the salaries of the employés of the House.

Mr. DAVIS, of West Virginia. There is a difference as to the employés of the House in this way: The two Houses having agreed to the salaries of the House employés, there is hardly any question that can be acted on perhaps by the conference as to the House employés; but there is some question as to the pay of the employés of the House, though it is not a serious matter. The question now between the two Houses is as to the salaries of the employés of the Senate, and I am hardly prepared until there is a further conference with the House conferees to state what the full difference is, except that I am prepared to answer any question my friend may ask.

Mr. ANTHONY. I hope the conferees of the Senate will take the ground that each House shall judge of the number and compensation of its own employés. This question has been before us repeatedly. Once I remember the Senate objected to the compensation allowed to the employés of the House, and I advocated an agreement to the wishes of the House in that respect; and I equally insist upon the right of the Senate to fix the salaries of its own employés and the numbers of its own employés. Each House can certainly be intrusted with that amount of discretion. If the House desires cheap employés, let it have them; if we desire those that are worthy of a higher compensation, let it concede them to us. I think that the independence of the two Houses is involved in the question of the number and the compensation of the employés.

Mr. BAILEY. Will the chairman of the committee please explain—his language leaves a doubt in my mind—whether the Senate has proposed in any way to interfere with the action of the House in regard to the compensation paid to employés of the House. I wish to understand distinctly whether the Senate has undertaken to interfere in any manner with the compensation of the employés of the House.

Mr. DAVIS, of West Virginia. The question is a very proper one. The whole matter is yet in conference, and I do not wish to go as fully into it now as I may have to do hereafter. I will answer my friend from Tennessee that the Senate has uniformly, since I have been here, conceded to the House the right to fix the compensation and the number of its employés. The House, however, has undertaken several times, and perhaps at this time, to say what the compensation of the Senate employés shall be, but not to prescribe the number. There has been no question as to the number between us.

Mr. BAYARD. May I suggest to my honorable friend from West Virginia that in 1876 we had a prolonged conference lasting I think nearly a month with sessions day by day; I remember that the honorable Senator from Minnesota [Mr. WINDOM] was the chairman of the committee on which I served; and one of the controverted points was the disposition of the House of Representatives to control the discretion of the Senate as to the compensation and the number of the Senate employés. The end of that conference was, as I thought, a settlement upon the proper and the becoming principle that each House was to be the judge of what was proper and just in dealing with such a subject. In other words, the employés of each House performing their duties under the eye of the several Houses, the character of their duties and the amount of their compensation could be best understood by the House which appointed and employed them. I thought the question had then reached that very proper basis for future action that there should be no more than a spirit of comity and of courteous acquiescence by one House in the action of the other in a matter which pertained solely to its own discretion.

That was the basis of the settlement in 1876 after a very long controversy, and I am surprised to know and regret to know that there has been any disposition to change that basis. We know here who are the laborers, and we know what the hire of the laborer should be and whether he is worthy of it. Each House has its responsibility before the country in fixing these matters of compensation, and each should be left to its own discretion and its own responsibility. Such was the basis of our settlement in 1876 and in 1878, and I hoped then, and I hope still, that that question will not again arise between the two Houses.

Mr. ANTHONY. I understand—the Senator from West Virginia can correct me if I am in error—that at this session the House had altered the compensation of a number of its servants, lowering some and raising others, and to all this the Senate has courteously yielded. Now, if we choose to lower the hire of our servants or if we choose to raise it, we are entitled to the same consideration from the House.

Mr. WALLACE. The Senator from Rhode Island is correct. The House has increased the compensation of some of its employés and decreased the compensation of others, and the Senate conferees have acquiesced in their action.

Mr. ANTHONY. I ask the Senator from Pennsylvania if the House has not increased the compensation of some of its employés above the price paid to the corresponding employés of the Senate?

Mr. WALLACE. Such is the fact.

Mr. ANTHONY. And the Senate has made no objection to it?

Mr. WALLACE. Such is the fact. I desire to say on behalf of the committee of conference, so far as I have had any connection with it, that I have understood the instruction of the Senate to be that it is a subject-matter entirely under the control of the Senate, and so far as the conference is concerned I propose to carry that out.

Mr. WINDOM. I only want to say a word. This is an old controversy between the two Houses, which I had supposed was settled in 1878, if not in 1876; but after 1876 it was renewed again in 1878, and has been several times before the Senate and the House. In 1878, on the 14th of June, I had the honor to submit the report of a conference committee on this subject, in which it was stated that this was the only question about which there was any material difference, the only question that seemed to be irreconcilable in conference, and in submitting that question to the Senate the chairman of that conference committee stated:

> I desire to have the question submitted. I do not wish to have the yeas and nays upon it at present. If there is any disposition on the part of the Senate to recede from the position taken by its conferees, I hope it may be expressed. For one I am willing to be governed by the wish of the Senate; but believing the unanimous wish of the Senate to be that their conferees should adhere to the position taken deliberately and several times heretofore by the Senate, we could not agree with the House conferees.
>
> I will say one other thing upon this point. This question has been raised frequently heretofore. I have a distinct recollection of several occasions in which it has been tried, and the result has been that each House has been left to regulate its domestic affairs in its own way.

There was the request when a further conference was proposed that the report might lie over for a little while in order that the Senate might consider it and deliberately adopt the position upon which it desired to stand; and after some discussion, in which several Senators participated, with the understanding that that vote would be regarded as instruction to its committee, the yeas were 59 and the nays 2; so that the Senate, in 1878, as distinctly and unequivocally as was possible for it to express its sentiment upon that subject, declared its right to regulate this matter according to its own judgment and under its own responsibility to the people.

I wish to read a very brief statement made by the honorable Senator from Ohio [Mr. THURMAN] upon that point, which I think states the case very clearly:

> Then I wish to say that so far as concerns the employés of the Senate I shall certainly stand by the Senate managers. The House forced us to give up three or four years ago after three conferences, and insisted that the House was the best judge of what employés it wanted and what was a fair remuneration for them. It then compelled us, at the end of three conference committees, to accede to that proposition. What was good for them is good for us, and I think that is the sensible view of it anyhow. I voted so then and I shall continue to vote so now. The Senate knows best what employés it needs, and knows best what is a fair remuneration for them.

That was the ground upon which the Senate voted, 59 to 2, on the 14th of June, 1878. Your conferees have no feeling upon this subject; but they do believe that under the responsibility of the Senate to the people in the exercise of its best judgment as to what should be the compensation of its own employés, as well as the number, it should be permitted to designate them as it permits the House to designate the number and compensation of its own employés.

Mr. ANTHONY. I suppose it is not improper to read from the CONGRESSIONAL RECORD a remark made in the House as long ago as 1875, when this same question was up. Then Mr. RANDALL said:

> Of course it is not proper for me to reflect upon the action of the other branch of Congress; but I wish to say that so long as I have been a member here this House has conceded to the Senate the right of fixing the number and compensation of its own officers, while we have claimed the same authority for this body. In my judgment the House cannot in self-respect yield this right.

I agree with the honorable Speaker of the House of Representatives in this declaration. I think that each House is the proper judge of whom it wishes to employ and of what compensation he is worth. We concede this to the House of Representatives; we have allowed them to raise the compensation of some of their servants and to reduce that of others, making no objection in either case. We claim the same right from them, and I trust the conferees on the part of the Senate will insist upon it.

Mr. DAVIS, of West Virginia. I do not wish to prolong the discussion; but I am rather gratified the discussion has taken place, though I think it a little too early. I think we have not done our full duty as conferees yet; and therefore I will not ask the Senate to take any vote or express any opinion by general debate. The time perhaps is not very far off when I shall have to make a full statement to the Senate of what the differences are and what is claimed by us. Now I ask for a vote on my motion.

The PRESIDING OFFICER. The Senator from West Virginia moves that the Senate still further insist on its amendments and agree to the further conference asked for by the House of Representatives.

The motion was agreed to.

By unanimous consent, the President *pro tempore* was authorized to appoint the conferees on the part of the Senate; and Mr. DAVIS of West Virginia, Mr. WALLACE, and Mr. WINDOM were appointed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its clerk, announced that the House insisted upon its disagreement to the amendments of the Senate to the bill (H. R. No. 6237) making appropriations for the construction, repair, completion, and preservation of certain works on rivers and harbors, and for other purposes, agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. J. H. REAGAN of Texas, Mr. M. L. CLARDY of Missouri, and Mr. AMOS TOWNSEND of Ohio, managers at the conference on the part of the House.

The message also announced that the House had concurred in the amendments of the Senate to the bill (H. R. No. 698) to establish a district and circuit court at Chattanooga, Tennessee, with an amendment, in which it requested the concurrence of the Senate.

The message further announced that the House had concurred in the amendments of the Senate to the following bills and joint resolution:

A bill (H. R. No. 1806) granting a pension to Michael Lingenfelter;

A bill (H. R. No. 2039) granting a pension to Jacob J. Smith;

A bill (H. R. No. 2046) to authorize a compromise of the claims of the United States under the will of Joseph L. Lewis;

A bill (H. R. No. 2474) to increase the pension of Thomas Riley;

A bill (H. R. No. 2853) granting a pension to Elizabeth Aults;

A bill (H. R. No. 2855) granting a pension to Rachael J. Reber;

A bill (H. R. No. 2860) granting a pension to Thomas H. Vaughn;

A bill (H. R. No. 2861) granting an increase of pension to Herman Baldwin;

A bill (H. R. No. 2862) granting an increase of pension to John H. Black;

A bill (H. R. No. 2864) granting an increase of pension to Isaiah W. Bunker;

A bill (H. R. No. 3261) granting a pension to Elizabeth Dougherty;

A bill (H. R. No. 3264) granting a pension to Abner Hoopes;

A bill (H. R. No. 3351) for the relief of Rev. Paul E. Gillen; and

A joint resolution (H. R. No. 215) requesting the President to open negotiations with certain foreign governments relative to the importation of tobacco into their dominions.

ENROLLED BILLS SIGNED.

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

A bill (H. R. No. 5041) to authorize the Secretary of War to turn over to the governor of South Carolina four pieces of condemned cannon for the use of the Marion Artillery; and

A bill (H. R. No. 165) to consummate the resolution of the Continental Congress of October 4, 1777, and erect a monument to the memory of Brigadier-General Herkimer, as therein directed.

WILLIAM C. SPENCER.

Mr. GROOME. Mr. President, I move to suspend the pending and all prior orders in order to enable me to ask the Senate to take up Senate bill No. 662, order of business No. 688.

By unanimous consent, the bill (S. No. 662) for the relief of William C. Spencer was considered as in Committee of the Whole.

The bill was reported from the Committee on Military Affairs with an amendment, to strike out, in lines 9, 10, and 11, the words "appoint him, the said Spencer, to such rank on the retired list of the Army as he would have attained had he remained continuously in the service," and to insert in lieu thereof "instead of appointing him, the said Spencer, captain upon the active list, appoint him to the same rank upon the retired list;" so as to make the bill read:

That the President be, and is hereby, authorized to appoint William C. Spencer, late a captain in the United States Army, to be a captain in the infantry service of the Army, and to assign him to the first vacancy occurring in that grade in any regiment of infantry after such appointment: *Provided*, That if he shall deem it proper, the President may, instead of appointing him, the said Spencer, captain upon the active list, appoint him to the same rank upon the retired list.

Mr. ANTHONY. Should not that be amended, instead of "appoint" to say "be authorized to nominate and, by and with the advice and consent of the Senate, appoint?"

Mr. GROOME. I have no objection to that.

Mr. BURNSIDE. It should be amended in that way.

The PRESIDING OFFICER, (Mr. FERRY in the chair.) Does the Senator from Rhode Island propose an amendment?

Mr. BURNSIDE. I move to amend as proposed by my colleague.

The amendment was agreed to.

Mr. ANTHONY. The same correction should be made in two parts of the bill.

The PRESIDING OFFICER. The bill will be so amended.

Mr. DAVIS, of Illinois. Let us have the report read.

The Chief Clerk read the following report, submitted by Mr. CAMERON, of Pennsylvania, May 21, 1880:

The Committee on Military Affairs, to whom was referred the bill (S. No. 662) for the relief of William C. Spencer, have had the same under consideration, and beg leave to submit the following report:

Captain William C. Spencer was appointed as second lieutenant in the Second United States Infantry June 18, 1855. He joined his regiment on the 8th of August of that year and served with it in Minnesota and Nebraska until the spring of 1861. On the 30th of April, 1861, he was appointed to a first lieutenancy in the same regiment to which he had first been assigned.

During the Sioux troubles in Minnesota in 1857 Captain Spencer rendered such gallant and meritorious services to the United States Government as called forth from the Commanding General of the Army, Winfield Scott, the following complimentary order:

"[General Orders No. 14.]

"HEADQUARTERS OF THE ARMY,
"*New York, November* 13, 1857.

* * * * * * *

"This rule, however, must have a marked exception—that of Brevet Major T. W. Sherman, Third Artillery, who, in August, 1857, marched, at short notice, with his battery from Fort Snelling to the Indian agency at Yellow Medicine, Minnesota Territory, and, by his promptitude, judgment, and firmness, preserved the country from a war with the Mississippi tribes of the Sioux Nation. In this connection, Second Lieutenant William C. Spencer, Second Infantry, is commended for his gallant bearing on the occasion of his demanding, alone, the Indian murderer from the armed warriors of the tribe.

"By command of Brevet Lieutenant-General Scott:

"IRVIN McDOWELL,
"*Assistant Adjutant-General.*"

The battery of artillery of Major-General T. W. Sherman, now dead, was surrounded, and, to all intents, taken by the Sioux Indians. His sentinels were stoned off the post and the warriors straddled the guns, and in various other ways insulted the command. Captain Spencer hearing of the situation, he, with his company, made a forced march of forty miles in one day, charged through the Indians, and relieved the command. On the next day he rendered the heroic services referred to in the above order. Of this event General Sherman certifies in the following manner:

"It gives me pleasure to certify to whom it may concern that W. C. Spencer, of Maryland, was well known to me in the years 1858 and 1859, when he was a lieutenant of infantry in the United States Army, and that he was under my command for a short time in the summer of 1858 at the Upper Sioux agency on the Minnesota River, (Yellow Medicine,) where he distinguished himself by his coolness and intrepidity when sent with an interpreter to the Sioux camp to demand a culpable warrior, and where he, when surrounded by the braves of the nation and threatened with instant death, seeing that any attempt at defense on his part would be worse than useless, handed his pistols to his interpreter, dismounted his horse, bared his breast to the muzzles of their pieces, and begged them to fire, which act of energy and abnegation was so appreciated by the braves that they became completely disarmed of their intentions through their appreciation of his bravery, and no doubt prevented a bloody war with the Sioux, which certainly would have taken place had they carried out their threats. This signal act was highly commended by Major-General Scott in general orders; and it gives me pleasure to say also that the personal and military character of this officer, so far as I had the means of observation when stationed in Minnesota, was above all reproach at all times and under all circumstances.

"T. W. SHERMAN,
"*Major-General, U. S. A.*

"NEWPORT, R. I., *December* 31, 1873."

General William F. Barry also speaks of the same event as follows:

"HEADQUARTERS ARTILLERY SCHOOL, U. S. A.,
"*Fort Monroe, Va., September* 14, 1874.

"MY DEAR CAPTAIN: I have carefully read the papers composing the package which you placed in my hands yesterday. They seem to me to be conclusive as regards your character for integrity, gallantry, and loyalty while you were an officer of the Army.

"I scarcely think anything from me, under such circumstances, is needed to support them or aid you. Nevertheless, since you are of the opinion that a letter from me may be of service, I take great pleasure in stating that, while you were a second lieutenant in the Second Regiment United States Infantry, during the years 1858 and 1859, I served with you and noted you to be a young officer of the very highest standing socially as well as professionally. Your gallant conduct in connection with the Sioux troubles at the Yellow Medicine was as creditable to your personal courage as it was honorable to the Army and beneficial to the country.

"I remain yours, very truly,

"WILLIAM F. BARRY,
"*Colonel Second Artillery, Brevet Major-General, U. S. A.*

"Captain WILLIAM C. SPENCER,
"*Late Seventeenth Regiment United States Infantry, Baltimore, Md.*"

In the adventure referred to by General Sherman, Captain Spencer was accompanied by but two non-commissioned officers and ten privates, while the Indians numbered several thousand. He also performed splendid services during a difficulty between white settlers on the one side and the half-breeds and Indians on the other, which he settled at the risk of his life, after a fight had taken place at Crow Wing, Minnesota, a number on both sides having been killed or wounded, and when there was every prospect of a general Indian war. He took twenty enlisted men from the command at Fort Ripley and arrested the leaders on both sides and reinstated law and order. In verification of this statement the following letter from General N. H. Davis, Inspector-General United States Army, is quoted, as follows:

"NEW YORK CITY, *January* 10, 1874.

"SIR: Yours of the 13th instant just received, and informing me that you are an applicant for appointment in the Army, and soliciting a letter from me.

"With pleasure I submit the following:

"I have known you for several years, and when a lieutenant in the Second Infantry, a part of which time you served at the same post with me, and at times under my command. I bear testimony to your energy, efficiency, and marked gallantry as an officer. I may instance your cool bravery, good judgment, and firm course, as shown in a threatened conflict between Indians, whites, and half-breeds, at Crow Wing, Minnesota, when your life was in imminent danger and when you successfully settled the affair without bloodshed.

"Wishing you success in your application,

"I remain yours, very respectfully,

"N. H. DAVIS.
"*Inspector-General, U. S. A.*

"WILLIAM C. SPENCER,
"*Washington, D. C.*"

On the 14th of May, 1861, he was promoted to the rank of captain of the Seventeenth United States Infantry, on the recommendation of the Adjutant-General of the Army, and ordered to the seat of war in Virginia. He repaired to Fort Preble, Portland Harbor, Maine, and as senior captain organized the first battalion of that regiment and marched into the field under the command of General George B. McClellan in the spring of 1862. It appears that on the 24th of June of that year he was arrested on the charge of disloyalty on account of language used in connection with the arrest of a relative and confined at Fortress Monroe, but he was permitted by General Sykes "to join the division as it passed Old Point *en route* to Aquia Creek," and who also permitted Captain Spencer to do duty with the Fourteenth Infantry at the battle of Manassas, August, 1862, where, in the language of General Sykes, "officers say he acquitted himself creditably in that battle."

It would thus appear that the charge of disloyalty to his Government was not well founded. It is not at all likely that he would have risked his life in battle—doing his very utmost to sustain the integrity and the supremacy of the Federal Union, and to preserve the honor of the nation—had he cherished any sentiments of disloyalty in his bosom. On the contrary, it would be supposed that he would have joined the rebel army and risked his life in its behalf, had his inclination run in the direction of treason. It may be well at this point to quote Captain Spencer's explanation of the foundation of this charge. It is as follows:

"After serving during the advance on Richmond on picket in the trenches at the siege of Yorktown, and on the march up the Peninsula, and on the Chickahominy River, (being continually exposed to the fire of the enemy,) I heard of the arrest of my uncle, Judge Richard B. Carmichael, of the State of Maryland, who had procured for me my original lieutenancy in the Army. The manner in which this arrest was conducted brought forth from all parties an expression of disgust and condemnation, for while that elderly judge was presiding over his court he was dragged off the bench and beaten over the head to a state of insensibility with pistols in the hands of a gang of volunteer soldiers and roughs from Baltimore City. This outraged me beyond measure, and I asked the intercession of General George B. McClellan, and requested him to communicate with the President. He informed me, through his chief of staff, General Marcy, that although he sympathized with me (not approving of the manner in which the arrest was made) he could effect nothing at Washington. I therefore tendered my sword to my commanding officer, and was placed under arrest. While *en route* to Fortress Monroe, a prisoner, and under charge of General Rufus Ingalls, (Jackson's advance being reported near,) I applied to the general for a command, and was informed if an engagement took place I should have one. After remaining several weeks at Fortress Monroe, and finding I could do nothing for my uncle, I joined my division for trial, and was the guest of Colonel David McKibben, Fourteenth Infantry; while under the charge of disloyalty, I marched with the battalion into position on the field of the second Bull Run, and was requested by the colonel to take command of his right company. I did this with the sanction of the division commander, and after the engagement (the loss being three officers and forty-five men out of two hundred and fifty men carried into the action) I was reported by the colonel for gallantry on the field.

"Shortly afterward General George D. Ruggles, of General McClellan's staff, informed me I would be shortly released from arrest, which was never done.

"My health being impaired by the campaign of the previous spring and summer, I was given a certificate of ill-health, and remained absent from the Army until the 1st of December, when I received orders to report for trial. On doing so, one of the witnesses for the prosecution being absent, it was found inexpedient to try me. I then proceeded to Washington and resigned my commission."

This resignation was accepted on the 11th of December, 1862.

Captain Spencer further states that his resignation was in no proper sense a voluntary one, but was caused by the fact that for upward of five months he had been deprived of his command and kept under charges which prevented him from being afforded an opportunity, which otherwise his commission would have secured him, of rendering valuable services as an officer of the Army to his country, and by the fact that after that time the trial of the charges was further postponed by the prosecution, and that he abandoned the hope of securing a speedy trial and consequent vindication. He further states that at the time of tendering his resignation his health was much impaired by the campaign of the previous spring and summer.

The following is the report of Captain D. B. McKibbin of the battle of Manassas, in which he alludes to Captain Spencer in a very complimentary manner:

"CAMP NEAR HALL'S HILL, VIRGINIA,
"*September* 4, 1862.

"SIR: In compliance with orders, I have the honor to report, for the information of the colonel commanding first brigade, Sykes's division, the operations of the second battalion, Fourteenth Infantry, at the battle near Bull's Run, Virginia, 30th August, 1862.

"We left bivouac on the Centreville and Gainsville road at daybreak. About 10 o'clock a. m. took up a position in front of Dogan's house, in a corn-field, my left resting on and perpendicular to the Centreville and Warrenton road. The enemy's sharpshooters and batteries opened upon us at once without loss, excepting a negro detained as prisoner. We then marched forward in line of battle, taking position in the rear of a skirt of woods about one thousand yards in advance and to the right of our former position. After remaining in this position a short time we were advanced to the front in rear of the first battalion, Fourteenth Infantry, about two hundred yards. We were ordered to lie down. Hitherto the firing had not been heavy. We were now under a terrific fire of shell, case, canister, and musketry. The position that my men had been placed in by the colonel commanding in a ditch was all that saved them from a more than severe loss.

"About one-half hour afterward we were ordered to fall back very slowly (which order was executed in good order) to the plateau in front of Robinson and Henry's house. Here we were formed in battalion in mass. Shortly afterward, General Milroy needing assistance, we were ordered to the front, deploying to the left; we were then within forty yards of the enemy, almost entirely concealed by the trees and thickets. After receiving and returning fire several times, I ordered the men to cease firing, and sent the sergeant-major with two men to my left along the road to find out if they were trying to flank us. He reported large numbers moving up, and I then caused my battalion to change front to rear on the right. Shortly afterward we were ordered to retire. This was about sundown. I had three officers wounded, Captains Coppinger, Locke, and Lieutenant Wharton, the first seriously, the others slightly.

"I cannot but call particular attention of the colonel commanding to the conduct of the officers of the battalion. The coolness and gallantry with which they fought their companies and attended to their several duties is worthy of commendation.

"There was but one officer with each company.

"Captain Spencer, of the Seventeenth Infantry, under charges for disloyalty, knowing how much I needed officers, volunteered his services, and fought the right company. His conduct was as cool and brave as that of any officer on the field.

"Sergeant-Major Graham, of this battalion, deserves especial notice. I believe he has been mentioned before for brave and soldier-like conduct.

"Three officers and forty-five enlisted men is the total loss in this battalion, out of two hundred and seventy-three who went into the fight.

"I am, sir, very respectfully, your obedient servant.

"D. B. McKIBBIN,
"*Captain Fourteenth Infantry, Commanding Second Battalion.*

"W. H. POWELL,
"*Second Lieutenant, Fourth Infantry, A. A. A. G.*"

"CHAMBERSBURGH, *May* 4, 1874.

"I have the honor to state that in July or August, 1862, I was appointed judge advocate of a general court-martial convened to try Major Davidson, Fourth Infantry; Captain Spencer, Seventeenth Infantry. The Army having been ordered to move, Captain Spencer, in arrest, was ordered to accompany me. The day of the battle of second Bull's Run, being in command of the second battalion, Fourteenth Infantry, I approached Captain Spencer and proffered him a command with a temporary release from arrest. He, although in bad health at the time, accepted the proffer with avidity, and demeaned himself with great coolness and gallantry, and was so reported by me in my official report of the battle. My reasons for acting as I did under the circumstances were as follows:

"First. I was short of officers.

"Second. Captain Spencer had been introduced to me by my most intimate friend, Captain John D. O'Connell. I became well acquainted with Captain Spencer, and I had no doubt in my own mind of Captain Spencer's sincere loyalty to the Government. This was also the feeling of Captain John D. O'Connell, and so expressed to me in several conversations on the subject.

"Third. I was (believing as I did) sincerely anxious that he should by action disprove any charge of disloyalty both as an Army officer and as my friend. I feel sure that all his old friends in the Army would gladly welcome him back.

"D. B. McKIBBIN,
"*Major Tenth Cavalry and Brevet Brigadier-General.*"

No fair-minded or unprejudiced person could, from the facts just narrated, entertain a doubt for one moment as to Captain Spencer's loyalty to the United States.

As a further proof of the falsity of the charge, it appears that on the 13th of December, 1865, President Johnson directed Captain Spencer's appointment as second lieutenant, but the examining board in New York, before which he appeared, found him disqualified on account of physical disability. On the 2d of July, 1868, the President again directed that Captain Spencer be allowed a re-examination. He appeared before an examining board on the 16th of December, 1868, but was again reported disqualified by reason of loss of right eye.

It is perhaps proper to say here that a bill was introduced in the Forty-fourth Congress authorizing "the President to appoint William C. Spencer, late a captain in the Seventeenth United States Infantry, to fill the first vacancy occurring in the list of captains of infantry, with the same date of rank held by him July 1, 1862; provided that instead of such reappointment the President is authorized to appoint him to such rank on the retired list of the Army as he would have attained had he remained in the service continuously;" but the committee declined to grant the relief prayed for, on the ground that it would be an act of injustice to the other officers of the Army, as it would entitle him immediately on his appointment to promotion to the rank of major over the heads of all the captains of infantry who have rendered continuous service since Captain Spencer's resignation. The bill was therefore reported adversely by the committee.

Your committee still adhere to that belief; but they are, however, of the opinion that, in justice to his previously good record and his valorous and heroic conduct while in the Army, he ought to be restored to the ranks to take position at the foot of the grade of captains. As the charge of disloyalty has been shown to have been entirely groundless, and as it is clear that Captain Spencer's resignation was not a voluntary one, your committee deem it but an act of justice and equity on the part of the Congress of the United States to restore him to the Army.

Your committee are averse to restoring officers of the Army who have voluntarily resigned their commissions, and have so decided in several cases at this session; but on account of the peculiar circumstances connected with this case they consider it an exceptional one; for, after all, the primary cause which led to his resignation was the fact that this unjust charge was hanging over his head, and at a time of great excitement, when it was a very difficult matter for him to free himself from the accusation.

Your committee therefore beg leave to report the bill back to the Senate with an amendment, and as thus amended they recommend its passage.

Mr. BURNSIDE. I feel constrained to oppose the passage of the bill. It is the first time I have ever heard anything about the matter, except that in a general way the Senator from Maryland [Mr. GROOME] talked to me about it the other day. At this very session of Congress I reported against the application of General Schuyler Hamilton, of General Scott's staff, who resigned during the late war. General Hamilton was shot through the body at the battle of Contreras, or Churubusco, I forget which, and is broken down in health; but it is a rule of the committee that officers who voluntarily resign should not be reinstated. Otherwise great injustice would be done to the Army. Hundreds of other applications just like this would come in. I certainly hope no action will be taken about it now until I look into the matter a little further. If this bill passes, I shall feel constrained myself to go back and have bills offered in some other form if the Senate adopt a precedent of this kind to reinstate several officers of the Army against whom I have reported. It is known to my colleagues on the committee that I reported against a man who lives a few miles from me, who was a soldier under me in the war. He had as meritorious a case as this, and more so.

I shall oppose the bill. I do not think it is just. I think it would be establishing a very bad precedent. All I know of the case is what I have caught from the reading of the report. I do not know whether it was acted upon in committee or not; I suppose it must have been, and I must have been absent. But I certainly think it would be very unwise action to pass the bill now. I make no point of disloyalty against this man. I think myself from what I have gathered from the report that it has been established that he was a loyal officer and that he probably said what he did at the time he was accused of disloyalty under a high state of excitement. I do not mean to justify it, but I say it can probably be excused. But the precedent of putting officers back in the Army in this way is a bad one. If we go on for ten years as we have been going on for the past few years in reference to the reinstatement of officers in the Army, the discipline will be just about ruined.

Mr. GROOME. Mr. President——

The PRESIDING OFFICER. The morning hour has expired.

Mr. GROOME. In view of the fact that fifteen or twenty minutes or more of the morning hour were occupied by the interjection of another matter, I would ask the Senate to indulge me in allowing this bill to be considered for a few moments. I think we can dispose of it soon.

Mr. BURNSIDE. I shall object.

The PRESIDING OFFICER. It must be by unanimous consent, unless the Senator moves to postpone the regular order.

Mr. GROOME. I do make that motion.

Mr. HARRIS. I hope the pending order will not be postponed. If the Senate will consent to let the pending order be informally laid aside without prejudice, and this matter will take but a few minutes, I shall not interpose an objection; but otherwise I must demand the regular order.

The PRESIDING OFFICER. The Senator from Rhode Island objects to unanimous consent.

Mr. BURNSIDE. I object to any arrangement by which this bill shall be passed at present. I shall put every obstacle I can in the way of its passage until I am better informed than I am now.

Mr. GROOME. Before the Senator from Rhode Island makes objection will he hear one remark from me?

Mr. BURNSIDE. Certainly.

Mr. GROOME. I agree with him in his objection as to cases to which it properly applies. I agree fully with the Senator from Rhode Island that where there are strictly voluntary resignations from the Army of the United States, more particularly in time of war, the parties who so resign should not be reinstated in the Army.

Mr. HARRIS. The Senator from Rhode Island, I understand, objects.

Mr. GROOME. He is willing to hear a remark from me.

Mr. HARRIS. I thought the Senator from Maryland had concluded. I did not intend to interrupt him.

Mr. GROOME. No, sir; I say that I agree thoroughly with the Senator from Rhode Island in the cases to which his point applies, but this report, if the Senator from Rhode Island had listened to it carefully——

Mr. BURNSIDE. I listened to every word.

Mr. GROOME. It shows that this officer was arrested upon an unfounded charge upon the 24th of June, 1862.

Mr. BURNSIDE. Hardly unfounded. His offense may not have been a grave one, but the charge was not unfounded, because he admits that what he said was said under a state of great excitement.

Mr. GROOME. There is nothing——

Mr. HARRIS. I must demand the regular order. This discussion is out of order.

Mr. BURNSIDE. I will say to the Senator from Maryland that I will take great pains to examine the report, and if I find occasion to change my mind I will very frankly state it to him.

The PRESIDING OFFICER. The regular order is before the Senate. The Senator from Maryland has the floor and has a right to debate it.

Mr. GROOME. I will simply take occasion before taking my seat to say this, that I shall call up at the close of the morning business on Tuesday next this bill, and shall ask the Senate to take it up, and hope to have it disposed of then.

HOUSE BILLS REFERRED.

The following bills from the House of Representatives were severally read twice by their titles, and referred to the Committee on Pensions:

A bill (H. R. No. 1953) for the relief of Henry C. Groomes;

A bill (H. R. No. 2123) granting a pension to Albert L. Jack; and

A bill (H. R. No. 3558) for the relief of Charlotte M. Coward, widow of Captain Joel M. Coward.

EXECUTIVE COMMUNICATIONS.

The PRESIDENT *pro tempore* laid before the Senate a communication from the Secretary of War, transmitting to the Senate the memorial of Captain Guy V. Henry, Third Cavalry, remonstrating against the passage of the bill (H. R. No. 6253) to promote Captain J. Scott Payne, Fifth Cavalry, to the first vacancy of major of cavalry, and calling attention to the indorsement thereon of the General of the Army; which was referred to the Committee on Military Affairs, and ordered to be printed.

INTEREST ON ARREARAGES OF TAXES.

The PRESIDENT *pro tempore* laid before the Senate the amendment of the House of Representatives to the joint resolution (S. R. No. 64) extending the provisions of the first section of an act entitled "An act fixing the rate of interest upon arrearages of general taxes and assessments for special improvements now due to the District of Columbia, and for a revision of assessments for special improvements, and for other purposes," approved June 27, 1879.

Mr. HARRIS. The joint resolution is returned from the House of Representatives with a single amendment, extending the time within which arrears of taxes may be paid from the 1st of July, 1880, to the 1st of January, 1881. I ask that the Senate concur in that amendment. The amendment is rendered necessary by reason of the fact that the resolution has been detained in the House for the last six months, having passed early in the session in the Senate.

The PRESIDING OFFICER, (Mr. FERRY in the chair.) The amendment of the House will be read.

The amendment of the House was to strike out all after the word "the," in line 12, and insert "1st day of January, 1881."

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

The motion was agreed to.

CLAIMS AGAINST THE DISTRICT.

Mr. MCDONALD. I ask my friend from Tennessee and the Senate to allow me to call up Senate bill No. 1230; it will not take five minutes.

Mr. HARRIS. I should be exceedingly glad to gratify the Senator from Indiana, but in my opinion the bill now under consideration will not take thirty minutes, and the Senator from Delaware has notified me that he will insist on calling up the Louisiana case.

Mr. DAVIS, of Illinois. The Senator from Indiana simply has a bill to make Indianapolis a port of delivery.

Mr. HARRIS. I reply to the Senator from Illinois that I have been appealed to by a dozen Senators, each with a matter equally simple, and if I yield to one I shall be bound to yield to another, and therefore I think the better policy is not to yield at all and endeavor to get through this bill. We can get through it in the next thirty minutes.

The PRESIDING OFFICER. The unfinished business is House bill No. 2328.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. No. 2328) to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes, the pending question being on the amendment proposed by Mr. ALLISON, in section 6, line 23, after the word "payable," to strike out the following words:

> And the gross amount of such bonds heretofore and hereafter issued shall not exceed in the aggregate $15,000,000: *Provided*, The bonds issued by authority of this act shall be of no more binding force, as to their payment, on the Government of the United States than the 3.65 bonds issued under authority of the act of June 20, 1874.

Mr. SAULSBURY. I have no disposition to antagonize this bill, but I shall be compelled to do so if I find that it is to take much time. I cannot in justice to the committee I represent consent to longer delay action on the resolutions relating to the seat of the Senator from Louisiana, [Mr. KELLOGG.] Several Senators desire to express their views on that question. I am informed by the Senator having charge of the pending order that his impression is that it will not take exceeding thirty minutes to dispose of it. If I find, however, that he is mistaken, and that protracted debate will ensue upon that bill, I shall then move to lay it aside, but I will wait for a short time to see what disposition will be made of it.

Mr. ALLISON. Mr. President, I think for the present I will withdraw that portion of my amendment striking out the words limiting the total issue of these bonds to $15,000,000. I have made some further examination of this question and I find that $15,000,000 will cover all claims that ought to be referred to the Court of Claims, and unless some other Senator shall offer an amendment I shall at the proper time (I am not clear that I can do it now in Committee of the Whole inasmuch as the amendments of the Committee on the District of Columbia have been agreed to) offer an amendment striking out all reference to the Court of Claims of claims on account of contracts made with the commissioners of the District of Columbia or on account of contracts extended by the commissioners of the District of Columbia originally made with the board of public works.

Mr. HARRIS. If the Senator from Iowa will indulge me a single moment I think it probable that he and I will arrive at a very satisfactory conclusion in regard to that matter. By the act of 1874 the policy was plainly adopted to continue certain improvements, but to pay for them in 3.65 bonds. The commissioners were required to continue them, but to pay for those improvements in 3.65 bonds. That policy was changed by the joint resolution of March 14, 1876, and the commissioners were forbidden to make any improvements or to make any contracts payable in 3.65 bonds after that date.

I shall propose first, in deference to the suggestion of the Senator from Ohio [Mr. THURMAN] that struck me with force, in line 4 of the first section to strike out the word "exclusive," and then in line 24 of the amendment that has been adopted, when we get into the Senate, I shall propose after the words "eighteen hundred and seventy-four" to add the words "and prior to the 14th of March, 1876." That confines the cases to be referred to the Court of Claims, contracts in respect to which the Court of Claims is to have jurisdiction, to contracts made by the commissioners after the passage of the act of 1874 and before the passage of the resolution of the 14th of March, 1876. One is entirely consistent with the other. I mean it would be proper for the Court of Claims to have jurisdiction of all those claims originating in the extension of contracts made by the commissioners after the act of 1874 and up to the 14th of March, 1876, just as proper as it is that they should have jurisdiction of the claims based on contracts made with the board of public works.

Mr. ALLISON. I regret to say that the Senator from Tennessee and myself cannot agree fully with reference to this matter. As I understand this question, it is proposed to settle up and close out the old contracts with the board of public works. The District commissioners made contracts of their own, and made extensions of their own of old existing contracts. In the law of 1874 we only required them to carry out valid contracts already made by the board of public works. When they were carrying out those contracts they were allowed and required to pay for them as they progressed in 3.65 bonds. If the District commissioners failed to discharge their duty, the courts of the District of Columbia are open to the contractors, are they not? And if they are open to the contractors, why is it that we shall now proceed to give these contractors with the board of District commissioners an equitable jurisdiction in the Court of Claims? It does not seem to me that that is wise. If we do not do that, I am satisfied that the million and a half of dollars or about that sum will be amply sufficient to cover all these claims. I find these claims reported in the report of the commissioners of the District of Columbia in 1877, and very clearly stated and set forth. The commissioners in the report of 1877 make no allusion whatever to extensions of contracts under their jurisdiction, but they only seek to include in the settlement and adjustment proposed the claims unadjusted by the board of audit, which were either presented and not disposed of or for some reason or other were not presented to the board of audit for their examination.

Now, what is the necessity of going beyond the claims included in the report of the District commissioners of November 1, 1877? If this bill is confined to that class of claims, I think a million and a half will amply cover the amount.

Mr. HARRIS. Mr. President——

Mr. BAYARD. Will my friend from Tennessee allow me to ask him why is it that the jurisdiction of the courts of the District is now sought to be replaced by the Court of Claims? The courts of the District have had during the whole period of time covered by the transactions alluded to in the bill, since 1871, confessed jurisdiction of this class of claims; and any man having sustained injury could bring his suit. Any man who was injured by the improper execution of the law could have enjoined their proceedings. And I am disposed to believe that there has been a great deal of litigation in the courts of the District. I would ask the honorable Senator from Tennessee why is it at this day that the courts of the District are deprived of their jurisdiction and this whole class of local business is transferred to the Court of Claims, a court of very special and statutory jurisdiction, designed only to protect the Government against claims arising under contracts with it, and a very untechnical court, and a court both of law and equity combined?

It strikes me with some surprise at the end of nearly ten years of litigation, of doubt, of great confusion in the affairs of this District, that a tribunal which naturally and properly it would seem should be intrusted with the decision of this class of cases is suddenly deprived of it, and at the same time all statutes of limitations are removed in order that all claims covering a very vexed period of time, in regard to transactions not only of great magnitude but many of them of a very doubtful and questionable class, may be introduced without limit in this new tribunal—I mean in this tribunal of new jurisdiction on this subject. That, I confess, is something that I should like to have answered for my satisfaction.

Mr. HARRIS. Mr. President, I have given a notice, that the Senator from Delaware perhaps did not hear, that I should, when it was proper to do so, move to strike out the word "exclusive." It is not the intention to deprive the supreme court of the District of Columbia

of any jurisdiction that it now has, and it certainly has jurisdiction of all these claims.

Mr. BAYARD. That is what I supposed.

Mr. HARRIS. And it has had from the beginning. The only reason that I know of why suits have not been brought in that jurisdiction upon these claims is found in two facts: First, when the board of public works was abolished in 1874, the act abolishing it created the board of audit and required that board to audit such of these claims as should be presented to it and to issue its certificates so far as claims were allowed, which certificates were to be funded into 3.65 fifty-year bonds; and to the extent of thirteen million seven hundred and some odd thousand dollars claims were audited, were so certified, were so funded. But there remained outstanding claims based upon contracts made with the board of public works and extensions of those contracts made by the commissioners of the District of Columbia, as the commissioners of the District of Columbia were clearly authorized to make them by the act of 1874. Indeed, under the act of 1874 the commissioners of the District of Columbia were to carry out to some extent, some considerable extent, that system of public works inaugurated by the board of public works, and these contracts were to be paid in 3.65 bonds. That condition of things continued to the 14th day of March, 1876, when a joint resolution was adopted abolishing the board of audit and forbidding the District commissioners to make any contract for any improvement payable in 3 65 bonds.

Up to 1876 my friend from Delaware will observe that the board of audit was in existence and had jurisdiction to investigate, determine, and certify such claims as in its judgment were allowable. Since that time there has not been a single session o Congress that there have not been pending in one or the other House, and generally in both Houses, bills proposing some easy and simple method of adjusting these old improvement claims, and upon two occasions at least a bill for that purpose has passed the House but has never become a law.

One other reason why the claimants have not sued in the supreme court of the District of Columbia upon these claims is found in the fact that the dockets of the supreme court of the District of Columbia have been and are so crowded that there is no hope of getting a trial within two or three years from the time a suit is commenced. Another reason that a number of claimants have assigned to me has been that if a claimant shall have brought his suit, obtained his judgment and his execution, he comes to a dead-lock at that point, and for the reason that he has no means on earth of making the money.

Mr. BAYARD. Are there any outstanding judgments unsatisfied of the kind the Senator has indicated?

Mr. HARRIS. Of exactly what kind I am not prepared to state to the Senator from Delaware, but there are to-day over $33,000 of judgments. I have an amendment here on my table that I propose to offer to the deficiency appropriation bill for the purpose of paying $33,000 of outstanding judgments against the District of Columbia to-day.

Mr. BAYARD. I took some interest in the bill pending before Congress at the time this 3.65 loan was authorized, and I remember that when upon inquiry it was found that very nearly $14,000,000 of 3.65 bonds had been issued, $13,743,250, Congress stepped in and arrested the issue of any more of these bonds upon the ground that they were not satisfied that the certificates which were being issued by the board of audit had been properly examined. They thought they were paying claims which were of doubtful propriety. Upon that they arrested the payment, as the Senator said. From 1874 until 1876 the board continued and they issued $758,226.15 more of certificates which were unfunded and forbidden by the act of 1874 to be funded in the 3.65 bonds. All this time, if any man had a claim against the District, there was nothing to prevent his reducing it to a judgment in the courts of the District; the District was suable at the option of any man to whom it was indebted. All these claims, audited or unaudited, form the basis of a good cause of action against the District of Columbia.

Mr. HARRIS. Unmistakably.

Mr. BAYARD. And judgments could be ascertained in the courts of the District for that amount. As the object of Congress in stopping this funding of the claims of the certificates of the board of audit into 3.65 bonds was that there should be an examination of those claims, the courts of the District formed a perfectly proper tribunal for the just ascertainment of what was honestly due to the various claimants for the supply of materials or labor to the District. Whenever a judgment shall appear by the courts of the District in favor of anybody, I shall very gladly vote for an appropriation of money to pay that judgment; but not yet have I been satisfied why we should give this jurisdiction to the Court of Claims when we have ample machinery for the purpose of ascertaining what is due to the citizen from the government—I mean from the government of the District, for these are suits not against the Government of the United States, but they are suits against the corporation or the government known as the District government of Columbia.

I do not wish to underrate at all, on the contrary I fully appreciate the labor and pains of the District Committee and of my friend from Tennessee. I am not given in this Chamber to underrating the labors of other committees upon which I am not assigned to labor myself; but at the same time there has been so much in this District of irregular government, so much of instability, that I now am unable to see why there is not under the existing law and has not been since 1876, or indeed since 1871, an opportunity for any creditor of the District to place his claim in the shape of a judgment against the District; and when that has been ascertained in a court of justice I will vote the money to pay it promptly. I have no doubt that many of these contractors may be suffering from want of prompt payment, and yet I do not see why it was not in their power to reduce their claims to the shape of judgments, and if it was so then I should feel relieved as to any share of responsibility I had in paying the debt.

We know that there were claims in this District of a very vague character, and many of them open to a great deal of suspicion. It was that fact which caused Congress to arrest the funding of the audit certificates in 3.65 bonds, because Congress is not a fit body to sift such claims; there must be a court, with pleadings, with evidence *pro* and *con*, and with argument *pro* and *con*, to ascertain what is due. I think the courts of this District are competent and fit to be trusted for that purpose. In my judgment they are fitter for it than the Court of Claims, and I feel an objection to voting to ingraft this local jurisdiction upon the general purposes for which the Court of Claims was created. The Court of Claims is a United States Court of Claims. It is to recognize claims against the Government of the United States. The officers who appear there are the officers of the United States. I do not think it wise to mingle the local affairs of this District and the debts of this District with the debts of the United States and the affairs of the United States. I know that in the end perhaps we—I mean by "we" the people of the United States—will have to pay the debts of this District for all that, and perhaps we ought; for I do not think this District, the city of Washington, stands in a simple municipal attitude. It is not a local government in that sense. This is the federal center of the Government, and the people of the United States, all of them, are interested in its maintenance upon a scale becoming the capital of a nation like our own.

But that is not the question here. When we are dealing with money, and money in such large sums, it seems to me that we cannot be too defined in what we legislate.

The Court of Claims ought not to be burdened with this jurisdiction. It is not germane to the general subject for which that court was created. The courts of the District are the proper tribunal. It may be that they are overcrowded and that their dockets are full of suits, which I hear with some surprise when I think of the numerical force of the courts, and when I think of the very small amount of commerce and the total absence of anything like manufacture or production in this District. I am surprised to hear that the judicial force of this District is not ample to dispose of all the litigation which may arise in it. We have a court here which is composed I think of five judges. They sit at *nisi prius* and they sit in banc. They may all sit at the same time at *nisi prius* if it is necessary to be done, and also consider questions in banc. I wish to be unjust to no one, but it seems to me to imply a great want of diligence on the part of the supreme court of the District to suppose that its business should be in such condition that a suit instituted to-day cannot be brought to judgment for three or four years. It does not bear comparison with the work of courts elsewhere in any of the busy centers of this country, with such an amount of business as we have in this District, for that to be the condition of the docket in a court composed of five judges, in a community of one hundred and twenty-five thousand people, and more than half of them clerks with no business with the court at all, with no manufacture, no production, no commerce worth speaking of. It is for that reason that I would wish and would now desire that the jurisdiction of these courts be allowed to remain unassisted by the Court of Claims, and that there should be at this time no raising of the bar of limitation where the statute has commenced to run. Statutes of limitation are statutes of repose. Statutes of limitation are essential for justice, simply because there is, as all men know, a decay and a death of the necessary proof in regard to contested transactions.

I hope that this bill may be so amended as to continue the courts of the District in the work for the jurisdiction for which they were designed, and not to ingraft this labor upon the Court of Claims.

Mr. INGALLS. Mr. President, I concur very largely with what has been said by the Senator from Delaware to the effect that this whole subject is complicated by innumerable difficulties. This situation arises largely from the fact that the United States Government assumes and exercises under the Constitution exclusive legislative authority over the affairs of the District.

As the Senator from Delaware has said, the city of Washington does not occupy the attitude of an ordinary municipal corporation. It is the great Federal city, ordained and established as such under the Constitution, for the permanent seat of the Government of the United States. The course of previous legislation has established the fact upon which creditors and residents and the citizens of the Republic everywhere have a right to rely, that the United States Government itself is ultimately responsible for the expenses, for the debt, and for the entire organization of this District. It is no use to attempt to blink this question out of sight. The Government has assumed the debt of this District, and has pledged its faith to the payment, principal and interest, of the entire amount of these 3.65 bonds, now amounting to between thirteen and fourteen million dollars. When the Senator from Delaware states a desire that all the public creditors here in this District should resort to the local courts for the

enforcement of their claims he forgets the very important distinction to which I have referred, that the Government itself has assumed the existing indebtedness, has assumed the payment of principal and interest, and that upon this fact they have a right to rely.

Mr. BAYARD. I understand the difficulty to be in ascertaining the justice of these claims; and Congress is, as we know, the most unfit body in the world to determine the justice of a claim against the Government.

Mr. INGALLS. That is very true.

Mr. BAYARD. Claims against the Government are sent to the Court of Claims in certain specified cases, but here are claims of a local character in the District, which have been tried and litigated in the courts of the District, and I ask why not continue them there and have them there ascertained before we pay them?

Mr. INGALLS. My opinion of the fitness of Congress as a tribunal to adjudicate claims concurs so far with that of the Senator from Delaware that if I could enforce my own views I would have a constitutional amendment forbidding consideration of any private claim by Congress. There is no sense in which Congress is fit to consider those questions. The ordinary rules of evidence cannot be applied here, and therefore they ought all to be excluded from congressional and legislative consideration.

But to return to the question as to the forum in which these matters should be inquired into; I have given some time and some thought to the investigation of the condition of the local tribunals of justice here in this District, and I state from information derived from eminent and reputable practitioners that if these matters were to be referred to the District courts for consideration they could not be passed upon within a period of five years from the present time.

Mr. BAYARD. But why were they not taken up five years ago and suits brought?

Mr. INGALLS. They were not taken up for the reason that Congress had already directed the funding of $13,000,000 of ascertained indebtedness into 3.65 bonds, leaving some $758,000 outstanding, which the holders of those certificates, I assert, had a right to rely would be assumed by the Government and treated in the same way. There was no reason why they should go to the courts, because by a tribunal established and recognized by Congress, consisting of two officers of the Treasury, to wit, the First and Second Comptrollers, these claims had been passed upon and their validity had been recognized. Therefore why should these creditors go into court to establish the validity of claims which had been recognized by a tribunal established by Congress for that purpose? I certainly cannot see the force of that reasoning. If there were any claims that were of a different character from those that had been adjudicated by the authorized agents of the Government I could see the force of the Senator's suggestion.

Mr. BAYARD. Are there none?

Mr. INGALLS. There are some, and we propose that that class shall be adjudicated by the Court of Claims, for two reasons. The first reason, the one to which I have already referred, is the congested accumulation of business upon the docket that renders the consideration of that class of cases a practical impossibility, so that to refer them to the courts of the District would be a practical refusal of justice.

Mr. CAMERON, of Wisconsin. Can the Senator from Kansas inform the Senate how many cases are now pending and undetermined on the common-law calendars of the courts in this District?

Mr. INGALLS. Of course I cannot give the Senator any statistics about the calendars of the District courts, and I have not assumed to do so. I have stated to the Senate information that I have derived from reputable practitioners at the bar here. They state to me that the condition of business is such that if a litigant takes an appeal from a justice of the peace to a District court he is sure of at least two years' stay of judgment under the best that can be done. Of course I do not assume to give the number of cases, or the statistics, or the data, for I do not know anything about it, and the Senator would not expect me to do so.

Mr. CAMERON, of Wisconsin. Inasmuch as the Senator had given special attention to this matter, I thought he might have inquired. The Senator has stated, as other Senators have stated, that the calendars of the courts of this District are so overcrowded that if one of these claimants were to bring an action into the supreme court of the District it would be two or three or four or five years before he could reasonably expect a determination of his case in that court. I did not know but that, inasmuch as there was that much information, the Senator had gone further and inquired the number of cases upon the calendar of the court. It seems very strange, as the Senator from Delaware has stated, that a court having five judges cannot dispose of the litigation arising in this District with more celerity than they seem to have disposed of it.

Mr. INGALLS. I have no criticism to make upon the activity of the judges or the abundance of litigation here, but merely state the facts as they have been delivered to me. The Senate Committee on the District of Columbia concurred with the opinion of the House in believing that the Court of Claims is for this reason a tribunal that may properly be vested with at least concurrent jurisdiction of this class of claims. They have not, as we are informed, such an amount of business before them as would prevent them from taking charge of this litigation.

There is another reason why the Court of Claims should be vested with this jurisdiction, and that rests in the fact that in case judgment should be rendered in the local tribunals against the District there is no power in those courts to levy a tax or in any other way to compel payment of the judgment. Therefore a judgment would be entirely nugatory, and if the court should inquire into and render judgment upon these claims the persons entitled to the judgments would be absolutely without remedy. There is no power to enforce the judgments by the levy of a tax, and they would therefore be compelled to come to Congress exactly the same as they are in this bill here.

Mr. HARRIS. If the Senator will allow me, there is yet another reason found in this fact: If a judgment is rendered in the supreme court of the District it will have to be paid in money, when if the party comes in under this bill and obtains judgment in the Court of Claims it will be paid in 3.65 bonds.

Mr. McMILLAN. I should like the Senator from Kansas to take notice of the fact that this bill does compel the judgment creditor to take the payment of his judgment in 3.65 bonds.

Mr. INGALLS. I do not so understand it. My object and purpose is to place the creditors of the District who are provided for in this bill upon exactly the same footing as those that were provided for under the act of 1874; that is to say, to allow them to have their certificates or judgments funded into these bonds, if they see fit to take them; in other words, to authorize the commissioners or the Secretary of the Treasury to exchange these certificates or judgments for the 3.65 bonds if the holders so desire. It is not my purpose to provide, nor do I think the bill is justly open to the interpretation, that in case these judgments are rendered they shall by the operation of the bill itself be payable in 3.65 bonds. It is an attempt on the part of the committee, so far as I understand it, to place these creditors, or the remainder of these creditors, upon exactly the same basis as that occupied by those recognized in the laws of 1874.

Mr. McMILLAN. If the Senator will permit me to read the language of this bill, beginning in line 9 of section 6, it provides:

> Which bonds shall be received by said claimants at par in payment of such judgments.

Mr. MORGAN. Mr. President, I am in a very much better condition to seek information than I am to give advice upon this bill, because I am not exactly familiar with the history of this legislation; but in the course of the debate it has occurred to my mind that there are two classes of claims provided for in this bill, both of them arising under contract, however, in one of which the amount has been adjusted and liquidated, and in the other where the amount has not yet been settled by the proper authority. I will state the question that has occurred to my mind.

We have established a board of audit to take into consideration all the claims heretofore existing arising under contract with the District of Columbia, or at least up to a certain period of time. It seems to me that Congress in the creation of that board of audit has given to a special tribunal a special jurisdiction to ascertain, adjudicate, and determine upon the rights of parties, and that having done so Congress cannot afterward by a prohibition in reference to the issue of certificates in conformity with the judgment of that tribunal deprive the parties of rights that had been fixed by law. It seems to me that that board of audit is as much a court, and so to be regarded, for the establishment of these claims, their verity, their amount, and their binding effect, as if we had sent the claimants before any other tribunal. It was a court of our own selection. We conferred upon it jurisdiction; the parties went there with their claims and the certificates have issued.

Mr. ALLISON. Will the Senator allow me on that point to say that the board of audit consisted of the First and Second Comptrollers of the Treasury, and their auditing was supposed to have the same effect as the ordinary auditing of Government accounts in the Treasury, upon whose certificates these bonds were to be issued?

Mr. MORGAN. Then the effect given to the judgments or adjudications of the board of audit under the statutes of the United States would be that whenever a judgment was certified into any court whatever it would be conclusive of the action of the Department and would stand in the nature of a case finally adjudicated and settled. If that be a correct proposition in reference to the law of the case, then the holders of these certificates have claims against the Government of the United States, or rather against the District of Columbia and ultimately against the Government, which have been adjudicated. I take it that a lawyer would have a good deal of difficulty in preparing a bill in equity or in any other legal procedure by which one of these certificates was to be vacated.

I will suppose now that the District of Columbia become an acter in any litigation whatever for the purpose of vacating one of these certificates. I do not see but that the plea would be a perfect answer to such an action as that, "You have selected the tribunal, conferred the jurisdiction; the tribunal has acted and has given a judgment in my favor; and now if you propose to disturb that you can do it only upon the plea which will bring up the question whether I have perpetrated fraud or falsehood or perjury in the obtension of that certificate." It seems to me it stands in every legal sense upon the ground of adjudication, really upon the ground of judgment, so far as the right is concerned and so far as the ascertainment of the amount of certificates is concerned.

If that be so, then but one duty remains to Congress, and that is to provide the same optional arrangement in regard to these certificates that has heretofore existed in regard to the same class of certificates up to a certain time, the option to receive their pay in a certain description of bonds, in 3.65 bonds, in place of money. I am not sure that any plea of the statute of limitations would lie against one of these certificates in one of the district courts here that would not lie against a judgment. I do not consider that these are open accounts. Certainly they are not. Neither are they merely accounts stated, but they are accounts adjudicated; they are in the nature of judgments. I should think if you were to undertake to plead the bar of the statute of limitations to an action upon one of these certificates to-day you would have to resort to that portion of the statute of limitations applicable to judgments before the bar would be sufficient to prevent a recovery. At all events, I do not consider that it is the duty of the Congress of the United States to compel the holders of these certificates to go into a new litigation as if nothing had been done, for in doing so you cast a reflection on these certificates without any just cause that I know of, which would be equally applicable to every dollar of the certificates upon which bonds have hitherto issued. I have heard of no distinction made, I have heard no case mentioned, I have heard nothing suggested to show why our action in regard to these certificates should be exceptional, and why we should include them in the ban of our reprehension and disapprobation when certificates of precisely the same character and issued by the same tribunal have heretofore been allowed and the bonds issued upon them.

I would suggest to some gentleman of the committee that if there is any difficulty in regard to the actual *bona fide* character of these certificates it is easy to amend by putting in a provision that in the event the commissioners of the District of Columbia shall make objection in writing to the funding of any of these certificates an issue shall be made up and referred to the Court of Claims to ascertain as to the validity of the specific certificate.

Mr. HARRIS. The commissioners recommend the certificates.

Mr. MORGAN. That of course removes the objection. I suppose they never made any objection; they must have looked over the ground and ascertained that these certificates were worthy of being allowed.

Mr. ALLISON. Mr. President, I want to say one word with reference to these certificates in connection with the act of 1876. I remember very well the occasion of that act and the reasons that impelled Congress to pass it. In 1874, when a joint committee of the two Houses undertook to make an adjustment of the affairs of the District of Columbia, it was provided that the valid contracts made by the board of public works might be carried out by the commissioners of the District of Columbia. It was also provided that the system of sewerage, then begun under contract and partly completed, should be conducted to completion. The commissioners of the District of Columbia under that statute construed every contract, I believe, made by the board of public works as a legal, valid, and binding contract. In many of those contracts there were provisions like this, that a certain contractor was to pave a square or two squares in a particular street, which might be extended in the discretion of the board of public works to other streets. In 1876 we found that the District commissioners were constructing pavements in almost every portion of this city under these provisions, and extending these contracts without any limit whatever. That was, perhaps, a wise thing for the District commissioners to do so far as the people of the District of Columbia were concerned, because bonds were being issued for the payment of the amounts due upon those contracts. It required no taxation, no present payment except the interest at the rate of 3.65 per cent. per annum. It was because the commissioners were doing this that Congress cut off the board of audit and cut off the further power to issue 3.65 bonds. We said, "If these pavements are to go on they must be paid for by taxation and by appropriation, and Congress must know from time to time the extent of these expenditures." But it so happened that while these acts were passing through Congress the board of audit was continuing its functions, and was continuing the issuance of certificates, so that when the act came to go into effect it caught a certain number of the certificates in the hands of persons who had not presented them to the sinking-fund commissioner for the purpose of securing bonds.

I thoroughly agree with the Senator from Delaware [Mr. BAYARD] that these certificates of the board of audit, so far as they have been issued, ought to go *pari passu* with the certificates that have been converted into 3.65 bonds. They are just as binding, and no court can go behind them, in my judgment, or ought for a moment to go behind them.

Mr. HARRIS. The Senator will allow me to suggest that when he was absent from the Chamber I believe an amendment was adopted.

Mr. ALLISON. I was aware of that amendment. I was in favor of that amendment; but the statement I think goes still further than this committee proposes to go. Where the board of audit has passed upon these claims, it is just as much an adjudication, in my judgment, as though the Supreme Court of the United States had passed upon these claims, unless there was an appeal. I am afraid that under the language of this bill persons who have not been satisfied with the action of the board of audit can come in and have their claims readjudicated. That is the point I object to, if there is any such power.

Mr. HARRIS. I say it is not possible.

Mr. MCMILLAN. If the Senator from Tennessee will look at the third line of the eighth section, he will see that there is an express provision for it.

Mr. SAULSBURY. Will the Senator allow me to make an inquiry?

Mr. ALLISON. Yes, sir.

Mr. SAULSBURY. I ask whether in the former discussion of this question some years ago statements were not made in debate that many claims which were not proper but were fraudulent claims had been passed upon by the board of audit, and was not that the reason why there was a hesitation in refunding any more of those claims that had been audited?

Mr. ALLISON. I am aware that statements of that kind were made at the time, but I cannot say that that in any sense constituted a reason why the board of audit was deprived of any further exercise of its functions. It was because the board of audit construed the law to authorize them to audit claims and accounts made by the commissioners of the District of Columbia in the extension of the contracts, which Congress did not believe the law authorized them to do; and therefore it was that this authority was cut off.

Mr. HARRIS. On that point will the Senator allow me to read section 8?

Mr. ALLISON. Yes, sir.

Mr. HARRIS. Section 8 provides that—

No claim shall be presented to or considered by the Court of Claims under the provisions of this act which was after a hearing upon its merits rejected by the board of audit.

The Court of Claims will have no jurisdiction of a claim that has been, after a hearing upon its merits, adjudicated by that board, and cannot take jurisdiction of it at all.

Mr. MCMILLAN. If the Senator from Tennessee and the Senator from Iowa will permit me to call their attention to that section, I think they will both discover that where a case was not heard upon its merits it is not embraced in that section.

Mr. HARRIS. That is not pretended.

Mr. MCMILLAN. The bill as it came from the House read thus:

No claim shall be presented to, or considered by, the Court of Claims under the provisions of this act which was rejected by the board of audit.

The Senate committee amended that section by inserting "after a hearing upon its merits" before the word "rejected;" so that the section reads:

No claim shall be presented to, or considered by, the Court of Claims under the provisions of this act which was, after a hearing upon its merits, rejected by the board of audit.

Mr. ALLISON. I only want to say a word or two about this bill, because I do not wish to embarrass its passage, if it is to pass, and I think some bill upon this subject ought to pass. I think there is force in the criticism just made by the Senator from Maine. I think the words "after a hearing upon its merits" ought not to remain in the bill. Where the board of audit have rejected a claim, that ought to be the end of it.

Mr. EATON. It is to be supposed that they heard it upon its merits.

Mr. ALLISON. Yes, and that ought to be the end of it. Now, what did we do by the act of 1874? We provided a board of audit for the purpose of allowing every contractor and every citizen of this District who had a claim against the District to go before that board and have his claim adjudicated. We selected eminent men for that purpose. Having gone before that board of audit, they could either acquiesce in its decision or they could bring suit in the courts of the District of Columbia and have their matters adjudicated. That they have not done.

Mr. HARRIS. Does the Senator from Iowa think that section 8 would be rendered more safe, more satisfactory to him, if the Senate should non-concur in the amendment that has been made in Committee of the Whole as recommended by the Committee on the District of Columbia?

Mr. ALLISON. I think it would.

Mr. HARRIS. I do not think I have any serious objection to non-concurring in that amendment. I am about as well satisfied with the section without that amendment as with it.

Mr. EATON. I hope it will be stricken out.

Mr. ROLLINS. Let the vote be reconsidered and the amendment rejected; and let us dispose of the question.

Mr. SAULSBURY. I think that is a very proper amendment. I had myself prepared an amendment, for I confess I do not want to vote for a bill providing that the claims adjudicated by the board of audit shall be paid, after having heard in the discussion here in 1876 that there had been imposition upon that board and that certificates had been obtained from it upon claims that were not valid. I for one would prefer that all these claims be opened in a court subject to inquiry rather than to have the court precluded from any inquiry into the validity of any of the claims which had been certified to by the board of audit. Hence I have prepared an amendment, which I shall not offer at present, that will suit my views.

Mr. ALLISON. If the Senator will allow me just to finish the remaining remark or two I desired to make upon this bill, then I will allow him to read his amendment.

There is another difficulty that I see in this bill, and that is that the Court of Claims is to have "exclusive, original, legal, and equi-

table jurisdiction of all claims now existing against the District of Columbia." What is to be understood by the two words "equitable jurisdiction?" Here, for example, is a citizen who had a contract with the board of public works for the paving of a street or for building a sewer. That contract on its face provided that he should be paid, if you please, $20 per lineal yard for building a sewer. In 1874 we said to him: "In the adjustment of your account you may go to the Treasury and draw a 3.65 bond for this claim of yours. You are not obliged to do it, but you can go there and draw a 3.65 bond." A great many of the contractors did protest against that at the time. They said: "You are compelling us to take a bond for a claim for which we have contracted to be paid in dollars." Now, will not many of these people come in and say, "These bonds being worth only at the time we had to take them from sixty-five to seventy cents on the dollar, in equity we are entitled to the difference between the market value of the bonds at the time you allowed us to take them and the money dollar which our contracts offered; we were compelled to take them or get nothing, and the money which we were to receive under our contracts ought to be paid to us as a matter of equity?"

Mr. HARRIS. Will the Senator allow me to suggest to him that under this bill the Court of Claims can take jurisdiction of no claim unless the claim is based upon a contract?

Mr. ALLISON. I understand.

Mr. HARRIS. Now is there any contract, can there by implication or otherwise arise a contract that the claimant would be entitled to the difference?

Mr. ALLISON. I do not know.

Mr. HARRIS. I do.

Mr. ALLISON. But what I want the Senator to explain, and I merely make this statement for the purpose of ascertaining the fact, is what there is in these claims that makes it necessary to invoke the equitable jurisdiction of a court. If there are contracts, then contracts can be enforced without going into a court of equity for that purpose. They are legal and binding upon all parties. However I make that criticism more with a view to ascertain what it is proposed to do under this equitable jurisdiction than to say what I think myself can be done under it.

Mr. HARRIS. I did not interfere with that language in the bill, as the member of the committee having it in charge, for the reason that if a party has a claim against the District of Columbia that is just and right in itself, whether that claim is technically a legal claim or technically an equitable claim, it is not the less a just claim; and it is not the less dishonest to withhold the money from the claimant and I am willing to allow it, whether it be legal or equitable.

The PRESIDING OFFICER. Does the Chair understand the Senator from Iowa to withdraw a part of his amendment?

Mr. ALLISON. I withdraw that part of the amendment which strikes out the limitation of $15,000,000 upon the gross amount of bonds, so that my amendment is only to strike out the proviso.

Mr. HARRIS. There is no objection to the amendment of the Senator from Iowa and I hope it will be adopted.

The amendment, as modified, was agreed to.

Mr. SAULSBURY. I do not desire that any of these parties holding any claims against the District of Columbia shall not be paid; but I confess I do not like to vote for this bill if effect is to be given to the certificates, which is conclusive upon the court. I remember in 1876 when this matter was under discussion in the Senate the opinion obtained in this body that the board of audit had been imposed upon and had given certificates to persons for greater amounts than they were entitled to, and it was for that, among other reasons, that the Senate refused to refund any of those certificates in the 3.65 bonds that are now provided to be paid under this bill. Having heard that these certificates are at least tinctured with fraud, not fraud perhaps on the part of the board of audit but on the part of those who obtained the certificates, I do not like to vote for a bill which gives to those certificates such validity that they are not open to inquiry in the court in which they are to be inquired of.

I have prepared an amendment which I have not offered and perhaps will not offer, but which expresses my opinion and which I will read. The amendment is to add to the sixth section:

That the certificates of the board of audit or other certificates mentioned in this section shall not be conclusive of the amount due the holder thereof; but the validity of such claims shall be open to inquiry in the court.

I think that that is a proper amendment. I do not like to interfere with a bill which has been properly under consideration by a committee of this body; but if the suspicion that in 1876 attached to these certificates was well founded, I for one do not like to vote that when the certificates are taken to a court they shall be conclusive as to the amount due to the holders thereof. I do not know whether the committee have had that matter properly brought to their attention; but such were the suspicions, I know, in 1876 in reference to these certificates; that it was partly upon that ground that Congress refused to refund the certificates in 3.65 bonds, which are now outstanding.

I think I shall be compelled to vote against this bill on the ground that it proposes to render valid and conclusive upon the court claims which were under suspicion here in 1876.

Mr. HARRIS. In section 1, line 4, after the word "have," I move to strike out "exclusive;" so as to read:

Shall have original, legal, and equitable jurisdiction.

The amendment was agreed to.

Mr. HARRIS. I move to amend the amendment that was adopted in committee yesterday, by inserting in line 24 of section 1, after the word "four," the words "and prior to the 14th of March, 1876;" so as to read:

And such claims as have arisen out of contracts made by the District commissioners since the passage of the act of June 20, 1874, and prior to 14th of March, 1876.

Mr. ROLLINS. There is no objection to that.

The amendment was agreed to.

Mr. McMILLAN. Was the language stricken out in section 8?

Mr. HARRIS. No, sir; no action has been taken. I suggested that if Senators desired it I had no objection to striking out that language.

Mr. McMILLAN. It is certainly an objectionable feature in the bill.

Mr. ROLLINS. I move a reconsideration of the vote by which the amendment in the eighth section was adopted.

The PRESIDING OFFICER. The question is on the motion of the Senator from New Hampshire, to reconsider the vote by which the words "after a hearing upon its merits" were inserted in section 8.

The motion to reconsider was agreed to.

The PRESIDING OFFICER. The question is, Will the Senate agree to the amendment inserting those words?

Mr. ROLLINS. I hope the amendment will be rejected.

Mr. KERNAN. What is the amendment?

The CHIEF CLERK. In section 8, line 3, before the word "rejected," the committee report to insert "after a hearing upon its merits;" so as to read:

No claim shall be presented to, or considered by, the Court of Claims under the provisions of this act which was after a hearing upon its merits rejected by the board of audit.

The amendment was rejected.

Mr. HARRIS. The Senator from Minnesota suggested an amendment yesterday evening to which I have no objection if he sees proper to insert it, in respect to appeals.

Mr. McMILLAN. I have not the amendment prepared.

Mr. HARRIS. The amendment suggested, which I think wholly unobjectionable, is to strike out, in section 2, line 7, after the word "case," the words "in which the amount in controversy exceeds $5,000." To strike out those words would leave the right of appeal just as it is, regulated by the general law without the limitation of $5,000.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Tennessee.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments made as in Committee of the Whole were concurred in.

The PRESIDING OFFICER. The question is, Shall the amendments be engrossed and the bill be read a third time?

Mr. McMILLAN. Mr. President, one of the principal objections that I have to the bill is the transfer of jurisdiction in civil actions arising upon contract from the local courts to the Court of Claims of the United States. The District of Columbia before the law is a municipal corporation and stands as an individual. The citizens of the District are as any other citizens of the United States. The Congress of the United States by the Constitution is invested with the exclusive power of legislating for this District. The court that it establishes is established under the power of government of the District conferred by the Constitution. The courts of the District, then, are provided for the adjudication of all local questions. The Court of Claims is a tribunal of a character altogether different. It is a court established under the Constitution of the United States, and the clause of the Constitution which defines the judicial power of the United States is in these words:

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

Under that provision of the Constitution Congress has seen proper to provide a court into which the nation, the Government of the United States, consents to go and permit herself to be sued by any one of her citizens having a contract out of which any rights arise against the Government. This is an advance step in the progress of the law. Nations do not permit themselves to be sued by their citizens. The old maxim of the law, that the king could do no wrong, prevented the nation from submitting to litigation in any of the courts of the kingdom. Our Government, appreciating to such a high degree the justice existing between the Government and her citizens, has provided a tribunal and thrown open its doors to all her citizens, and invited them to come in and have their wrongs redressed, even against the sovereignty. That jurisdiction is one of a federal character. As between the citizens of States, their rights to sue each other in the courts of the United States are regulated by the statutes, but in the Territories of the United States the citizens must go into their local tribunals; they must have their rights adjudicated under the forms of the common law.

In the courts of the District of Columbia the municipal corporation represents the tax-payers of the District. A judgment against the District must be paid out of the taxes of all the people of the District. The corporation, therefore, in the faithful discharge of its duty to its citizens, must see that its rights are protected. It has a right to invoke all the securities and all the privileges guaranteed to it by the common law. It has those rights in the courts of this District. When a suit is brought against the District in the courts of

the District, it can have every fact in issue found and determined by a jury. So can any citizen bringing a suit in that tribunal. But this bill provides that these citizens may bring a suit in a tribunal of special jurisdiction, one of a different sovereignty, and there be deprived of the right of trial by jury altogether. Article 7 of the amendments to the Constitution provides that—

In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved.

The word stricken out which gave "exclusive" jurisdiction to the Court of Claims has modified the objection to the bill with reference to the question of trial by jury. Perhaps a suitor who has the election of going into the courts of the District of Columbia where the right of trial by jury obtains waives that right by going into the Court of Claims where the trial by jury cannot be had is estopped by that act from saying that he insists upon his right of trial by jury; but when the citizen having that election goes into the Court of Claims and compels the District of Columbia to follow him there and deprives the District of Columbia of the rights which it would have, of a trial of these issues of fact by a jury in the courts of the District, then it is in direct conflict with this amendment of the Constitution.

The District of Columbia has the same right to have these issues of fact in actions at common law passed upon by a jury that a citizen has, and being a defendant and compelled to enter the Court of Claims at the election of a suitor she cannot be construed to waive her rights when she goes into that tribunal; she is there by compulsion; she waives no right, and a jury cannot be summoned in that court and the issue of fact cannot be passed upon by a jury. Yet this bill compels her to submit to a suit in that court if the citizen so elects. She has no opportunity of electing as to waiving this right.

The first section of the bill provides:

That the jurisdiction of the Court of Claims is hereby extended to, and it shall have original, legal, and equitable jurisdiction of all claims now existing against the District of Columbia, arising out of contracts made by the late board of public works, and extensions thereof made by the commissioners of the District of Columbia, and such claims as have arisen out of contracts made by the District commissioners since the passage of the act of June 20, 1874.

The Senator from Iowa has already called attention to the fact that the commissioners of this District were prohibited by law from extending contracts in certain cases. These cases were those in which the commissioners had the jurisdiction to make contracts and to extend them but for the existence of this prohibition by the statute. The act under consideration, by repealing the inhibition upon the commissioners and recognizing the contracts which they have extended since that prohibition was placed upon them, legalizes every extension which they have made whether right or wrong. Whatever may have been the character of the claim, right or wrong, the fact that the commissioners have extended it and this bill recognizes the extension and permits them to bring an action upon that extension, legalizes it and prevents any inquiry into the power of the commissioners to extend such contract, although at the time it was done the act prohibited it; no inquiry can be made into the propriety of those extensions whatever.

With reference to the measurements embraced also in this section, the provision is:

All measurements made by the engineers of said District of work done under contracts made since February 21, 1871, for which no certificates have been issued to and received by the contractor or his assignee.

The certificate of these measurements delivered to the contractors is, by the terms of this bill, made *prima facie* evidence of the correctness of the measurements, so that it changes the burden of proof from the contractor to the District of Columbia. It compels the District to show that these measurements were incorrect rather than permitting the burden of proof to remain where it would, in the absence of such a provision, upon the suitor, because in coming into court relying upon these measurements the suitor would be compelled to aver the correctness of the measurements and, therefore, to prove them, if they were put in issue; but under this bill it will only be necessary for him to produce a memorandum of the measurements, and that will be *prima facie* evidence of their correctness; and, as I understand the fact to be, these measurements were grossly wrong in many instances.

With these remarks I submit the question and am ready for action.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time.

Mr. McMILLAN. I ask for the yeas and nays on the passage of the bill.

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

Mr. KIRKWOOD, (when his name was called.) I am paired on this bill with the Senator from Nebraska, [Mr. PADDOCK.] If he were here, he would vote "yea" and I should vote "nay."

The roll-call having been concluded, the result was announced—yeas 29, nays 13; as follows:

YEAS—29.

Bailey,	Hampton,	Kernan,	Vance,
Bayard,	Harris,	McDonald,	Walker,
Brown,	Hereford,	McPherson,	Wallace,
Butler,	Hill of Georgia,	Maxey,	Williams,
Cockrell,	Ingalls,	Morgan,	Withers.
Eaton,	Johnston,	Pryor,	
Farley,	Jonas,	Rollins,	
Ferry,	Jones of Florida,	Saunders,	

NAYS—13.

Allison,	Call,	Platt,	Windom.
Anthony,	Cameron of Wis.,	Saulsbury,	
Baldwin,	McMillan,	Slater,	
Burnside,	Morrill,	Vest,	

ABSENT—34.

Beck,	Davis of Illinois,	Hoar,	Randolph,
Blaine,	Davis of W. Va.,	Jones of Nevada,	Ransom,
Blair,	Dawes,	Kellogg,	Sharon,
Booth,	Edmunds,	Kirkwood,	Teller,
Bruce,	Garland,	Lamar,	Thurman,
Cameron of Pa.,	Groome,	Logan,	Voorhees,
Carpenter,	Grover,	Paddock,	Whyte.
Coke,	Hamlin,	Pendleton,	
Conkling,	Hill of Colorado,	Plumb,	

So the bill was passed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. GEORGE M. ADAMS, its Clerk, announced that the House had agreed to the amendments of the Senate to the bill (H. R. No. 4911) to amend the statutes in relation to the immediate transportation of dutiable goods, with amendments in which it requested the concurrence of the Senate.

The message also announced that the House insisted on its disagreement to the amendments of the Senate to the bill (H. R. No. 6036) making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1881, and for other purposes; it insisted on its amendment to the seventh amendment of the Senate to said bill disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and had appointed Mr. J. C. S. BLACKBURN of Kentucky, Mr. J. H. BLOUNT of Georgia, and Mr. J. G. CANNON of Illinois, managers at the conference on the part of the House.

The message further announced that the House had passed the following bills:

A bill (S. No. 52) for the relief of John N. Reed;

A bill (S. No. 287) for the relief of the heirs of Charles B. Smith, deceased;

A bill (S. No. 559) donating condemned cannon and field-pieces to William L. Curry Post, No. 18, Grand Army of the Republic, for their place of burial;

A bill (S. No. 715) for the relief of the estate of N. Boyden;

A bill (S. No. 996) for the relief of Monroe Donoho; and

A bill (S. No. 1358) for the payment of certain moneys to the heirs of Constantine Brumidi, deceased.

The message also announced that the House had agreed to the amendments of the Senate to the following bills:

A bill (H. R. No. 2788) to authorize the President to appoint an officer of the Navy or the Marine Corps to perform the duties of solicitor and judge-advocate-general, &c., and to fix the rank and pay of such officer; and

A bill (H. R. No. 5053) granting relief to William Turman, guardian of William W. Brewer.

AMENDMENTS TO BILLS.

Mr. THURMAN and Mr. McPHERSON submitted amendments intended to be proposed by them respectively to the bill (H. R. No. 6266) making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1881, and for other purposes; which were referred to the Committee on Appropriations, and ordered to be printed.

Mr. WALLACE, Mr. RANSOM, Mr. VOORHEES, and Mr. EATON submitted amendments intended to be proposed by them respectively to the bill (H. R. No. 6325) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1880, and for prior years, and for those certified as due by the accounting officers of the Treasury in accordance with section 4 of the act of June 14, 1878, heretofore paid from permanent appropriations, and for other purposes; which were referred to the Committee on Appropriations, and ordered to be printed.

IMMEDIATE TRANSPORTATION OF DUTIABLE GOODS.

Mr. BECK. Mr. President, I ask the Senate to allow me to call up a bill returned from the House of Representatives for the immediate transportation of dutiable goods. The House concur with all the Senate amendments except that they have added two words, in which I move to concur.

The Senate proceeded to consider the amendments of the House of Representatives to the amendments of the Senate to the bill (H. R. No. 4911) to amend the statutes in relation to immediate transportation of dutiable goods.

The amendments of the House of Representatives were in the twelfth amendment of the Senate, after the word "Wilmington," to insert "and Seaford," and after "Delaware" to insert "Salem, Massachusetts."

The amendments were concurred in.

UNITED STATES COURT AT CHATTANOOGA.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the amendment of the Senate to the bill (H. R. No. 698) to establish a district and circuit court at Chattanooga, Tennessee, which was to insert as a new section:

SEC. 9. That each of said courts shall be held in a building to be provided for that purpose by the State or municipal authorities, and without expense to the United States.

Mr. HARRIS. That is the only amendment, and I desire that the Senate shall concur in it. It merely requires that the building shall be furnished to the United States free of expense.

The amendment was concured in.

SENATOR FROM LOUISIANA.

Mr. SAULSBURY. I desire now to call up the resolutions reported by the Committee on Privileges and Elections relating to the seat of the Senator from Louisiana, [Mr. KELLOGG,] which were laid aside some ten days ago. After they are taken up I will, if the Senate desires to go on with formal business, yield. I desire to have the resolutions before the Senate as the regular order.

The PRESIDING OFFICER. The Senator from Delaware moves that the Senate proceed to the consideration of the resolutions touching the seat of Senator KELLOGG, of Louisiana.

Mr. ALLISON. Before that motion is put I should like to ask the Senator from Delaware when it is his intention to press a vote upon this question?

Mr. SAULSBURY. I do not intend to press a vote until the return of Mr. KELLOGG.

Mr. ALLISON. Then I have no objection to the motion.

Mr. KERNAN. Mr. President——

Mr. MAXEY. I would ask the Senator from New York——

Mr. KERNAN. Allow me a moment. Are the resolutions before the Senate?

The PRESIDING OFFICER. They are not. The question is on the motion of the Senator from Delaware, to take up the resolutions.

The motion was agreed to.

The PRESIDING OFFICER. The resolutions are before the Senate.

Mr. KERNAN. Mr. President——

Mr. MAXEY. May I ask the Senator from New York——

Mr. KERNAN. Being entitled to the floor I am willing to yield for to-day if the regular order will not lose its place by an adjournment to Monday. The Senator from Delaware [Mr. BAYARD] wants to go away in a few moments, and he has a short bill to which I will yield before yielding to the Senator from Texas.

The PRESIDING OFFICER. Is there objection to the understanding that the Kellogg resolutions shall not be prejudiced by an adjournment? The Chair hears none, and that is the understanding.

Mr. BAYARD. The Senator from Texas has a measure that I understand will lead to no debate. If so, I do not desire to antagonize it.

CREEK ORPHAN FUND.

Mr. MAXEY. I ask that Senate bill No. 451, order of business 634, be taken up and put on its passage, and I will state to the Senate that owing to a very severe drought in that country these people are, many of them, in actual want; hence the reason why I press it. I leave the case in the hands of the Senator from Oregon, [Mr. SLATER,] who reported the bill with a written report.

The PRESIDING OFFICER. The bill will be read for information.

The Chief Clerk read the bill (S. No. 451) to reimburse the Creek orphan fund.

The PRESIDING OFFICER. Will the Senate consider this bill at this time? The Chair hears no objection, and the bill is before the Senate as in Committee of the Whole.

The bill was reported from the Committee on Indian Affairs with amendments.

The first amendment was, in line 4 of section 1, after the word "cents," to insert "with 5 per cent. interest on $176,755.97 from April 6, 1872;" so as to make the clause read:

That the sum of $251,055.97, with 5 per cent. interest on $176,755.97 from April 6, 1872, be, and the same is hereby, appropriated, out of any money in the Treasury not otherwise appropriated, &c.

The amendment was agreed to.

The next amendment was to strike out, in lines 16 and 17, the words "or invested in registered bonds of the United States for their benefit, and the interest paid to them annually;" so as to make the proviso read:

Provided, Said sum shall, in the discretion of the President, be paid to the Creek orphans and their heirs under the direction of the Secretary of the Interior.

The amendment was agreed to.

The next amendment was, in line 18, after the words "provided further," to strike out "in case of payment;" and, in line 24, after the word "orphans," to insert "and their heirs;" so as to make the proviso read:

Provided further, It shall be the duty of the Secretary of the Interior to ascertain who are entitled under the aforesaid treaty of March 24, 1832, and the provisions of this act, to receive the money hereby appropriated; and it shall be his duty to see that said moneys shall be paid to the actual beneficiaries under said law, the orphans and their heirs, to the exclusion of all claims by attorneys for fees, except such reasonable attorneys' fees as shall be approved by the Secretary of the Interior after the passage of this act.

The amendment was agreed to.

The next amendment was, in line 29, after the word "fund," to strike out "except such as are not non-paying stocks;" so as to make the proviso read:

Provided further, That all bonds heretofore purchased with moneys belonging to this fund shall be the property of the United States.

The amendment was agreed to.

The next amendment was to add to the bill:

Provided further, That the Secretary of the Interior is hereby authorized and instructed to charge the sum of $69,956.68, used for general purposes of the Creek Nation, against the general fund of said nation, and said sum shall be retained by the Secretary of the Interior in such installments as shall not seriously embarrass the object of the annual appropriations for the support and necessities of the Creek Nation.

The amendment was agreed to.

Mr. COCKRELL. This bill appropriates the sum of $251,055.97 "for the purpose of reimbursing the Creek orphan fund, which sum has been diverted from the said fund and is due to the Creek orphans and their heirs, under the treaty of March 24, 1832." I should like some explanation of it.

Mr. SLATER. I call for the reading of the report.

The PRESIDING OFFICER. The report will be read.

The Chief Clerk read the following report, submitted by Mr. SLATER May 13, 1880:

The Committee on Indian Affairs, to whom was referred the bill to reimburse the Creek orphan fund, have had the same under consideration, and make the following report:

This claim is based on the second article of the treaty of March 24, 1832, which provides—

"And twenty sections shall be selected, under the direction of the President of the United States, for the orphan children of the Creeks, and divided and retained or sold for their benefit, as the President may direct," &c.

The President directed this land to be sold under the provisions of the act of March 3, 1837, (5 Stat., 186,) and the proceeds, $108,713.82, were invested in stocks. The President, under the third section of said act, ordered two payments made to the Creek orphans, to wit, August 26, 1868, $106,534.12, and July 1, 1870, $24,291.63. No other payments have ever been made to the orphans except on account of interest.

There was expended out of this trust fund, and without the consent of the orphans and without warrant of law, the following sums: $69,956.29 and $106,799.68. There was invested, in violation of law, $74,300 in non-interest-bearing State stocks. These three items, amounting to $251,055.97, constitute the claim of the Creek orphans.

On the 5th of April, Hon. F. A. Walker, Commissioner of Indian Affairs, addressed a communication to Hon. C. Delano, Secretary of the Interior, in which he said:

"The Assistant Attorney-General (W. H. Smith) decides, and the Department rules accordingly, that the Creek orphan fund is entitled to be reimbursed in the following amounts:

"1. By value of certain depreciated bonds, purchased in contravention of law, with money belonging to said fund, as follows (Tennessee bonds, $20,000; Virginia, $3,500, $9,000, and $41,800)—$74,300.

"2. By the sum of $68,956.29, taken without authority of law from said fund and applied to the general purposes of the Creek Nation.

"3. By the sum of $106,799.68, taken without authority of law from said fund and applied to the support of loyal refugees of the Creek Nation.

"The said Creek orphan fund is thus, in the opinion of the Assistant Attorney-General and by the decision of the Department, entitled to be reimbursed in an aggregate amount of $251,055.97."

On April 6, 1872, Hon. B. R. Cowen, Acting Secretary of the Interior, submitted to the Speaker of the House of Representatives the following estimate:

"Estimate of appropriation required to restore to the Creek orphans of 1832 certain funds to which they are entitled under the provisions of the treaty with the Creek Nation of March 24, 1832, but illegally invested in stocks or diverted to other purposes:

For this amount, to restore to the Creek orphans the par value of certain stocks now held in trust by the United States for said orphans, provided that said stocks shall become the property of the United States	$74,300 00
For this amount, to restore to the Creek orphans the amount taken from their fund and used for the support of the loyal refugees of the Creek people during the late rebellion	106,799 68
For this amount, to restore to the Creek orphans the amount taken from their fund and used for general purposes of the tribe	69,956 29
Total	251,055 97

The opinion of Assistant Attorney-General W. H. Smith, dated March 15, 1872, and which opinion was approved by Hon. C. Delano, Secretary of the Interior, March 30, 1872, says:

"My conclusion is that this orphan fund was not released, and that the same is a subsisting legal liability against the United States to its full amount, diminished only by the two payments that have been made to the orphans."

On May 18, 1878, Hon. Carl Schurz, Secretary of the Interior, submitted this matter to Hon. Charles Devens, Attorney-General, who gave, on June 6, 1878, an elaborate opinion, sustaining the right of the Creek orphans to reimbursement, as shown by the following extracts:

"The accrued interest of the Creek orphan fund, arising from investments made in interest-bearing stocks, was drawn out of the Treasury by the Indian Bureau in the same manner as interest on trust funds is generally drawn. But the act of the bureau in devoting it to the benefit of loyal refugees of this tribe was a diversion of the fund not authorized by the original intention of the treaty, the act providing for the creation of the same, nor by the subsequent legislation during the rebellion."

Again:

"The diversion of this fund to the amount of $176,755.97 by the Indian Bureau, between 1862 and 1865, to the benefit of the loyal refugees of the Creek Nation, was one that has not been ratified by the Creek Nation by its subsequent treaties."

As to the investment in State stocks, the Attorney-General decides:

"While the original investment was authorized by the act of March 3, 1837, there was an actual investment made after the act of September 11, 1841, out of funds arising from a sale of stocks of the State of Alabama. By this action an error was undoubtedly made by the President in investing in stocks which the law at that time prohibited an investment in. It is to be observed that the act requiring an investment in United States stocks of this trust fund is not a portion of the treaty, nor was it in existence at the time of the treaty, but is a rule laid down for the conduct of the trustee of this fund, in order that the provisions of the treaty might be properly carried out. In answer to your inquiry, I am therefore of opinion that in making the investment of the proceeds of the sale of Indian lands (which sales were provided for by treaty stipulations) the President was required by the provisions of the second section of act of September 11, 1841, to make all such investments from and after that date in United States stocks, bearing interest at not less than 5 per cent. per annum. There is, however, no mode in which this error can now be remedied by the Department of the Interior, and it will be for Congress to consider whether it is just that the loss, which has been occasioned by this mistake in investing the funds, should be one which should fall upon the

United States, or whether it is the duty of the United States to restore to the Creek orphan fund the value of the property thus invested."

In this same connection the opinion of the Assistant Attorney-General says:

"It seems to me that the loss should fall upon the United States, and not upon its wards."

As to the question of interest the committee, after careful and thorough consideration, report in favor of allowing interest on $176,755.97 from the date of the decision of the Department of the Interior, April 6, 1872, that the Creek orphans were entitled to the sum of $251,055.97, "illegally invested in stocks or diverted to other purposes." The United States has recognized its liability to pay 5 per cent. interest on a part of this sum, to wit, $74,300, and regularly appropriates the interest every year and pays the same to the Creek orphans, and the same principle requires that 5 per cent. interest should be paid on the balance of said amount. The United States, as a trustee, laid down the rule for its own conduct, as follows, act September 11, 1841:

"All funds held in trust by the United States, and the annual interest accruing thereon, when not otherwise required by treaty, shall be invested in stocks of the United States bearing a rate of interest not less than 5 per cent. per annum." (See Revised Statutes, 3659.)

The United States, under this rule, did invest and reinvest the principal and the annual accruing interest up to the time of these illegal diversions, and had not these diversions occurred the trustee would have continued to comply with the rule beyond any doubt. "The trustee misapprehended his powers and invested in stocks which the law prohibited him from investing in, and a loss has resulted therefrom. It seems to me that the loss should fall upon the United States, and not upon its wards," says the Assistant Attorney-General. The loss has been made good as to interest in the case of the illegal investment in non-interest-bearing State stocks, and should be made good in the other case of illegal diversions of this orphan trust fund. The error of the United States caused the loss to these orphan wards, and the trust fund should be reimbursed according to the rule established by the trustee himself.

We recommend the passage of the bill with the following amendment: Insert in line 4, between the words "be, and," these words, to wit, "with 5 per cent. interest on $176,755.97 from April 6, 1872."

Mr. ANTHONY. I did not listen to the reading of the report as attentively as I should have done, but I should like to inquire by whom was this wrong investment made in non-interest-bearing State stocks.

Mr. SLATER. It is shown by the report along about 1840, I think—I do not remember under what administration; it was in 1840 or 1841.

Mr. McDONALD. I desire to make inquiry if the amendment suggested by the report has been made to the bill.

The PRESIDING OFFICER. The bill is open to amendment.

Mr. McDONALD. I should like to inquire if there is any fund of the Creek Nation that this can be refunded from.

Mr. SLATER. I understand that there is, and the bill provides for reimbursing $69,000 to the United States.

Mr. McDONALD. The $166,799.68 seems to have been paid for the support of the loyal refugees of the Creek Indians during the rebellion. Why is that to be charged to the United States?

Mr. SLATER. Because that fund does not belong to the Creek Nation, and was not considered by the committee or by the Department as proper to be reimbursed by the nation. The arrangement as to the $69,000 is recommended by the Department.

Mr. McDONALD. When was that fund diverted to the support of the loyal Creeks?

Mr. SLATER. That was at the close of the rebellion, August 26, 1868.

Mr. ANTHONY. I understand that the improper investment of the fund was made under the act of 1841, not in 1841.

Mr. McDONALD. In part only, as I understand.

Mr. ANTHONY. I should like to know at what time it was made and by what authority, and in what non-interest-bearing stocks the investment was made.

Mr. SLATER. The report shows that:

The President, under the third section of said act, ordered two payments made to the Creek orphans, to wit, August 26, 1868, $106,534.12, and July 1, 1870, $24,291.63.

These are the amounts which have been paid out. The state of the investment in State securities is not given.

Mr. ALLISON. I should think, without knowing exactly when that investment was made, that it was about 1855. There were a great many investments made about that time. I find of this Creek orphan fund of $76,000 provided for there is invested $20,000 in bonds of the State of Tennessee; $3,500 in bonds of the State of Virginia, Richmond and Danville Railroad; $9,000 State of Virginia, Chesapeake and Ohio Canal. Then there was invested $2,693.66 in the funded loan of 1881 United States bonds; and in State of Virginia registered certificates $41,800. Thus, with the exception of $2,693.66, the whole of this investment is non-interest-bearing and practically worthless at present.

Mr. ANTHONY. Has the Government paid the interest upon the defaulted bonds?

Mr. ALLISON. Yes, sir; to the orphans, regularly.

Mr. ANTHONY. Did not the Creeks by going into the rebellion forfeit their rights?

Mr. ALLISON. That is a very great question. A portion of the Creeks went into the rebellion and another portion of them were obliged to flee from their homes and take refuge in Kansas, and did. In 1866, after the close of the war, we made treaties with the five civilized tribes in the Indian Territory, in which we substantially restored them to their rights under the treaties as they stood prior to the rebellion; so that it is a very grave question whether they forfeited anything by means of their going into the rebellion. Let me read the twelfth article of the treaty with the Creeks of June 14, 1866:

ARTICLE XII.

The United States reaffirms and reassumes all obligations of treaty stipulations with the Creek Nation entered into before the treaty of said Creek Nation with the so-called Confederate States, July 10, 1861, not inconsistent herewith; and further agrees to renew all payments of annuities accruing by force of said treaty stipulations from and after the close of the present fiscal year, June 30, 1866, except as is provided in article 11.

Mr. ANTHONY. It seems to me with my very little knowledge on the subject that a portion of the Creeks went into the rebellion and forfeited their treaty rights, and the money due to the whole of the nation was paid to the loyal portion of the tribe, and this bill seeks to return to the rebel Creeks what we have given to the loyal Creeks.

Mr. ALLISON. No; this bill, as I understand it, proposes to reimburse what is known as the Creek orphan fund, which was diverted, at least so declared by the Attorney-General in his opinion, from the purpose provided for in the treaty and used by loyal refugees of the Creek Nation.

Mr. ANTHONY. Was not that a legal diversion?

Mr. ALLISON. The Attorney-General says it was not, and we certainly had no right, having a trust fund for a specific purpose, as a trustee to use that fund for another and different purpose. That is all there is in this case.

Mr. McDONALD. That may be true; but still if the Creek Nation have a general fund that we are paying them the interest on annually, why should the orphan fund be reimbursed by the United States for moneys expended for the benefit of the Creek Nation?

Mr. ALLISON. As I understand this bill—the Senator from Oregon [Mr. SLATER] can speak of it better than I can—so far as the diversion to the Creek Nation is concerned we provide that it shall come out of the funds of the Creek Nation, the general funds of which there is a considerable sum.

Mr. McDONALD. For the general purposes of the tribe; but the $106,799.68 used for the support of the loyal Creeks is to be paid by the United States out of the Treasury of the United States.

Mr. SLATER. As I understand this bill the provision is this: at the time of the treaty there was a tract of land set apart for the so-called orphans of the Six Nations. Part of this land was sold and the proceeds reinvested as a trust fund for the orphans. The amount being invested, the accumulations were also to be reinvested, until the fund came to a very considerable sum. Afterward, some time perhaps between 1850 and 1860, a portion of that fund was invested in a class of securities not contemplated by the trust, that were non-interest-bearing, and it is held by the Department of the Interior and also by the Attorney-General to have been an improper investment of this fund, and therefore the trustee should make good to the ward this fund.

Another portion of the fund was diverted and paid, not to the orphans of the Creek Nation, but to the loyal refugees, which the Government of the United States had no right to do as trustee. These diversions, under the interpretations of the Secretary of the Interior and also the opinion of the Attorney-General, should be made good by the United States to the orphans or their heirs. These two funds provided for in the bill amount, one to $176,755.97 and the other to $69,956.68.

Mr. DAWES. What has become of the fund into which the $106,000 were invested which were not proper interest-bearing funds?

Mr. SLATER. They are in the hands of the Secretary of the Treasury, and the bill provides they shall become the property of the United States.

Mr. DAWES. Are they of any value?

Mr. SLATER. I understand that some of them are valuable now.

Mr. McDONALD. I can understand why the trustee should be held liable for the loss arising from the improvident investment of these funds in the securities referred to if they have depreciated or become worthless, but I do not just see yet why the United States Treasury should be burdened with the money that was paid out for the support of the loyal refugees of the Creek Nation.

Mr. SLATER. The refugees of the Creek Nation were not the Creek orphans, and the Government had no right to take a fund belonging to individuals of that nation and disburse it for the benefit of a portion of the nation or tribe; and hence it is that although it was expended for the benefit of the loyal Creeks, the Government of the United States should reimburse the Creek orphans, reserving to itself the right to recoup out of the general fund of the Creeks as much as was thus disbursed.

Mr. McDONALD. That was disbursed for the general purposes of the tribe, but not that which was disbursed for the support of the refugees. Now, why not indemnify itself also for that? The statement in this report is:

The diversion of this fund to the amount of $176,755.97 by the Indian Bureau, between 1862 and 1865, to the benefit of the loyal refugees of the Creek Nation, was one that has not been ratified by the Creek Nation by its subsequent treaties.

That is all. It has not ratified it, but in the restoration of this orphan fund why should the United States make good their disbursements that were made on account of a portion of the tribe?

Mr. MAXEY. I think I can make the point which the Senator from Indiana raises quite clear. This fund does not belong to the Creek Nation; it is not a fund of the Creek Nation; it is a fund belonging to individuals of the Creek Nation, and who were known under the treaty of 1832 as orphans, and this was called the Creek orphan fund, a fund belonging to a specific part only of the Creek Nation. During the war the United States diverted the use of something over $69,000 of that money belonging to this particular portion of the Creek Nation to the use of all the nation. It was a diversion of a trust fund

held not for the Creek Nation, but for a part of the Creek Nation. That question was submitted by the Secretary of the Interior to Attorney-General Devens, who says:

The accrued interest of the Creek orphan fund, arising from investments made in interest-bearing stocks, was drawn out of the Treasury by the Indian Bureau in the same manner as interest on trust funds is generally drawn. But the act of the bureau in devoting it to the benefit of loyal refugees of this tribe was a diversion of the fund not authorized by the original intention of the treaty, the act providing for the creation of the same, nor by the subsequent legislation during the rebellion.

It was a special fund belonging to a part of the Creek people. The Government had no right to divert that special fund to the use of the Creeks generally; but it having done so, now what course is to be pursued? The bill provides that the entire Creek Nation shall restore to the Creek orphan fund this sixty-nine thousand dollars and odd, and the United States being the trustee, holding the funds of the Creek Nation in hand, the United States pays this Creek orphan fund that much, and then the bill provides that it shall retain out of the general fund of the Creek Nation that $69,000 to reimburse the United States. That seems to me to be clear.

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

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

NIGHT INSPECTORS OF CUSTOMS.

Mr. BAYARD. I ask the Senate to proceed to consider order of business No. 544, being the bill (H. R. No. 2508) to regulate the compensation of night inspectors of customs.

Mr. COCKRELL. Is there a report?

The PRESIDING OFFICER. There is no report of the committee. Is there objection to the consideration of the bill?

Mr. BECK. I object to the consideration of the bill.

Mr. BAYARD. I move to take up the bill for consideration.

The PRESIDING OFFICER. The Senator from Delaware moves to proceed to the consideration of the bill.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

Mr. BAYARD. I will merely say before the Senator from Kentucky states his objection to the bill, that the Senate may comprehend precisely what is intended by it, that section 2733 of the Revised Statutes provides:

Each inspector shall receive, for every day he shall be actually employed in aid of the customs, $3; and for every other person that the collector may find it necessary and expedient to employ, as occasional inspector, or in any other way in aid of the revenue, a like sum, while actually so employed, not exceeding $3 for every day so employed.

By section 2737, it is provided:

The Secretary of the Treasury may increase the compensation of inspectors of customs in such ports as he may think it advisable so to do, and may designate, by adding to the present compensation of such officers a sum not exceeding $1 per day.

Section 2733 was originally enacted in 1799, and amended in 1816 by providing for the appointment of occasional inspectors. In 1878 the pay of night inspectors was reduced from $3 per day to $2.50, and the whole scope and effect of the present bill is to allow the pay of night inspectors to be increased from $2.50 to $3. That is the beginning and that is the end of it. The bill before us is a House bill. It has been reported to the Senate favorably by a majority of the Finance Committee.

The reason why this pay was thought proper to be increased was not so much on account of the labor involved as it was the responsibility of the occupation. These men are not simple watchmen over an ordinary property; but the public revenues to a very large amount depend upon their fidelity. Therefore we should consider them not simply as men who will keep awake, but as men of character when awake, who will be faithful in the execution of their important duties.

This is the recommendation that comes from the House. The Senator from Pennsylvania [Mr. WALLACE] who reported the bill and has it in charge was also possessed of a large body of petitions showing why this increase from $2.50 to $3 should be made. It was the judgment of the committee that the bill ought to pass.

Mr. WITHERS. Before the Senator sits down I should like to inquire whether he is in possession of information as to whether there is any difficulty in securing the services of competent and reliable men at the present rate of compensation.

Mr. BAYARD. I cannot answer as to that, not being one of those who have had the employment or selection; but there was a very large presentation of recommendations and numerous petitions——

Mr. WITHERS. By persons other than those interested?

Mr. BAYARD. I would rather that the Senator from Pennsylvania should answer that, because he is more familiar with the subject. I do not know the *personnel* of the service. I know that this has been recommended by members of Congress, and by members of the Senate. It passed the House I believe without objection, and it has the approval of a great many persons who are not of the class to be appointed.

Mr. BECK. The bill was called up unexpectedly to me. There are communications in the room of the Committee on Finance, which I have asked the clerk to bring me, and he is now on his way to endeavor to get them. My information is that the Secretary of the Treasury himself does not ask or demand that the pay of these men should be increased all over the country to $3 a day. If I am right—and I speak in the absence of the papers I have sent for—at some of the ports he thought it would be well for him to have the authority to pay them that amount. The law of 1878 fixes their pay at $2.50 a day. That is as much or more than any of the watchmen or inspectors in three-fourths of the towns of the United States are paid for their services. It was believed to be enough for the payment of these men. Now, the effort is to increase the pay from $2.50 up to $3 all over the United States, at large ports and small ports, regardless according to my recollection of the recommendation of the Secretary, and I may almost say adverse to it.

Efforts have been made to increase the pay of men all over the country. It was said some years ago when the greenbacks were the money that officials had to take then that they were a dishonest money. We have got back to gold now. The money of this country is equal to the money of any other country in the world, and the assumption is that it will purchase as much as the money of any other people. If there ever was a time when we ought not to be increasing salaries, now seems to me to be the time. We are here proposing to increase the pay of all the night inspectors at one hundred and thirty-five custom-houses in the United States, when the present cost of collecting the revenue at one hundred and twenty-nine of those hundred and thirty-five ports is over 20 per cent. of the amount collected, and the official documents show it. And yet, while that is the present cost, now when our money is as good as money can be made, better than it was when Congress, two years ago, fixed $2.50 as a reasonable compensation, we are required because these men have been able to get petitions signed, against the will of the Secretary and against the recommendation of the Secretary, at every port in the United States, at the whole one hundred and thirty-five, to increase the pay from $2.50 to $3 a day.

Mr. BAYARD. These are night inspectors.

Mr. BECK. Three dollars a night; and we are called on to do this, when men are willing to serve and ready to serve at ninety-nine out of every hundred of these ports for $2.50, and glad to get it. I said in committee, and I repeat the remark in the Senate and before the country as an issue, that if the democratic party in the face of all these facts, against the recommendation of the Secretary, at all the small ports of the country, vote to increase the pay of the republican employés in the view of a coming election from $2.50 to $3 a day, then the campaign fund will be largely increased, and I suppose it ought to be.

I am annoyed at it! Our money has been made good, and everybody said we could get more for the same amount when it was made good and men could afford to work cheaper because it was honest money. And yet the democratic Finance Committee comes here under all these circumstances and insists upon increasing the pay of republican employés from $2.50 a day to $3 a day at one hundred and thirty-five ports, at one hundred and twenty-nine of which the cost to-day of collecting the revenue is over 20 per cent. of the amount received, in order to add to the campaign fund of the republican party. If I was a republican I would vote for it and make these men pay 20 per cent. of the increase to the campaign fund, if I had the ways that the republicans seem to have of coercing money out of the Federal officials, and I suppose it will be done. My voice is powerless as against the Finance Committee and the leading men of it, but I want the yeas and nays called so that I can record my vote against the bill.

I cannot find the papers. The clerk says there are none in the committee-room. I do not know where they are. They were read in committee. But my recollection is, and I think the Senator from Pennsylvania [Mr. WALLACE] will bear me out—but I do not see him in his seat—that this wholesale increase over the law of 1878 is not recommended by the Department. There is no sort of reason for it except a desire which is laid before us every day to increase pay. On the sundry civil bill we have had for the last three days and nights efforts to induce us to increase the pay of paymasters' clerks, policemen, watchmen, everybody, backed by highly respectable petitions; and if that is to be a reason for increasing pay, we should be increasing it every day and every hour and we should be adding thousands and hundreds of thousands of dollars to every bill that comes before the Appropriations Committee. I have opposed it in committee and I have opposed it in the Senate because it is unnecessary, not demanded, because the cost of the collection of the revenue to-day is too high.

While there may be one or two cities where the expenses of living are very great, and it may be somewhat of a hardship upon these men there to serve for $2.50 a day, yet in over one hundred and twenty of the one hundred and thirty-five custom-houses where this increase is demanded the pay is not only ample but men are clamoring and seeking for and begging for and glad to get these positions at $75 a month. Still I do not expect to be able to halt it or even delay it.

Perhaps at San Francisco, where it costs so much to live, there ought to be some increase, and perhaps at New York. There ought to be some discretion given to the Secretary in these ports. But this bill increases from $75 to $90 a month all the hordes of men who are called night inspectors at all the one hundred and thirty-five ports of the country. It seems to me to be a monstrous proposition for us to go into now.

Mr. BAYARD. I would merely say that it never occurred to my mind, and I hope it never will occur to my mind when I come to legislate in regard to the compensation of a public officer, whether he is a democrat or whether he is a republican. That is one fact.

Another fact is that I do not propose to time my votes and make them one way in the face of an election and one way after the election is over. I propose to legislate here according to that which I think right and just both as to men and to time. If I make a mistake, I only hope I shall have the credit of having intended what was right by those in regard to whom I vote.

Mr. BECK. I did not intend to impugn the virtue of the Senator from Delaware. I believe he intends to do exactly what he proposes; but at the same time I insist that when a democratic Congress in 1878 fixed this price at $2.50 a day and when men have been obtained all the time without any sort of difficulty and when they are clamoring to obtain the places, now when the money in which they are paid is better than it was then, it is a remarkable exhibit in the face of the Secretary's recommendation for a democratic committee to raise the pay of Federal officials just before an election and in the face of the known demands made upon these people.

Mr. DAWES. Mr. President, I had not seen the communication of the Secretary of the Treasury, but I think the Senator from Kentucky has fallen into this error: The day inspectors have a compensation fixed by law at $3 a day with authority in the Secretary to increase it to $4 if in his judgment it is necessary. The night inspectors have now a compensation of $2.50 without any authority in the Secretary to increase it under any circumstances or at any particular port. My impression is that the Secretary's letter covers the day inspectors and not the night inspectors. If the Senator has it, or if the Senator's recollection is clear upon it, of course I will not put mine against his.

Mr. BECK. I desire to say that I have not the letter; but the Senator from Pennsylvania I think had it, and he can state what it was.

Mr. WALLACE. I wrote to the Secretary of the Treasury for information in regard to this bill, it having been referred to me as a sub-committee, and he replied. Of course I sent a copy of the bill to him. His reply in substance was against the bill, saying that it was unwise to raise the compensation all over the country, that the rate fixed in the bill would make large compensation at one port and perhaps not too much at another, but that it would be better to leave it to the discretion of the Secretary. That was the substance of the letter.

Mr. DAWES. The last remark of the Senator shows just what I supposed was the fact. There is no discretion in the Secretary in regard to night inspectors; but there is in relation to the day inspectors; and there is a bill pending in reference to increasing the pay of the day inspectors; and I happen to know that the opinion of the Secretary in reference to the day inspectors is that it had better be left to his discretion at certain ports to increase. I know that in the port of New York he has increased the pay of the day inspectors to $4 a day. But in reference to the night inspectors, unless the Senator is clear, I am still of opinion, both from what has fallen from the Senator and from my own conference with the Secretary, that his opinion is different. Still I do not assert it against the recollection of those two Senators.

Previous to this law of 1878 the compensation was $3, with the discretion in the Secretary to increase that to a sum not exceeding $4, in his judgment. When Congress reduced it in 1878 as to the night inspectors that discretion was not left with the Secretary, so that night inspectors are brought down at all the ports, without any discretion in the Secretary, to $2.50. The day inspectors are $3, with the discretion in the Secretary to make it up to $4; and in point of fact, in the port of New York and one or two other ports, he does allow the day inspectors $4; the others he allows $3. But the night inspectors at all ports are cut down to $2.50 without any discretion in the Secretary.

Now, to look at it for a moment, it would seem that the duty and responsibility of a night inspector are greater than those of a day inspector. Then, too, the danger to which he is exposed from temptation and from assault and from thieves in the night-time and from exposure to the weather at all the ports must be in the nature of the case greater than in the case of a day inspector. At some of the ports, like the port of New York and the port of San Francisco and perhaps the port of Boston, (though of course not to such a degree as at the port of New York,) the labor and the duty and the exposure of a night inspector are a great deal more than those of a day inspector. At the port of San Francisco, where he comes in contact with the Chinamen much more in the night-time, I am told, than in the day-time, the complaint has come much more than from any other port. But from the nature of the case he ought to have a fair compensation; and if it were left in the discretion of the Secretary, as it is in reference to the day inspector, there would be no occasion for legislation, because the Secretary would see to it that within the limits that exist as to day inspectors he would make distinctions and discriminations among the different inspectors at the different ports according to the nature of their service and their responsibility.

Surely you ought to pay enough to secure proper men, either democrats or republicans. I would not use those words if the Senator from Kentucky had not brought them in. I do not care who they are. I have had something to do with trying to regulate the collection of customs duties with the Senator from Kentucky, and he will not charge me with any desire to feed out of the public Treasury republican officials in this country; nor do I charge him with any attempt to do toward a republican what he would not do toward a democrat. That is not what I am here for, and I cannot believe that is what he is here for. Let the Senator from Kentucky look at it as a reasonable man. We want proper men to do this work in the night-time; twelve hours daily in the night-time are required in the large cities. And is it enough to say that there can be men found willing to take the place? So there would be for half that sum; but would the Government be willing to trust them with its revenue?

Mr. BECK. I desire to ask the Senator from Massachusetts to observe the language of the law now proposed to be passed. It increases from $2.50 to $3 a night this pay not only at New York, Boston, Philadelphia, and San Francisco, but at all the little ports of the country where a ship does not land once a month, and where if she does the law provides that she shall not be unloaded between sundown and sunrise. And yet we are to pay $3 a day, and the Secretary is not allowed a discretion. It is against that I protest, and it is against that the Secretary protests; but for that the bill provides.

Mr. DAWES. How many of these night inspectors are at these little custom-houses compared with the number of night inspectors that it is necessary to employ in the great port of New York, where seven-eighths of all the revenue of the country is collected? You do not have any night inspector at these little bits of ports; it is not necessary to have one at a great many of these ports where all that is necessary is to prevent smuggling. If the statute of 1878 had left the discretion with the Secretary, there would perhaps have been no occasion for legislation now; but it has left no discretion. Every inspector, no matter what his duties or where he is, has to serve twelve hours of the day for $2.50. That is not a reasonable compensation.

Mr. KERNAN. I wish to say a word in reference to this bill. It came from the House in the form in which it is, was sent to the Finance Committee, and I tell no secret when I say that it was reported adversely. Thereupon we were called on by members from New York City, by men who had come from California, representing that this $3 a day, certainly for San Francisco and New York, was not overpaying an intelligent man that watched all the night the valuable property that was there, and who was exposed, as the Senator from Massachusetts has said, to all weather, often open to assaults, and who runs the risk of being attacked. Thereupon a man from each party in New York, Mr. COX of the one side, Mr. MORTON of the other, came to me personally, asked us to have the bill referred back and reconsidered. It was so referred back and was reconsidered and reported as it now is by the majority of the committee.

I have no objection, I would rather prefer to have it left in the discretion of the Secretary that he may pay, as I trust he would, in a place as expensive to live as New York and other cities, the $3 a day. I do not think it is overpaying a faithful, intelligent man there $3 a day for watching, guarding, and protecting the valuable goods that come in there. In my judgment, any intelligent, respectable man who has a family to support in the city of New York who is fit for this service can earn in some way as much as $3 a day. You must have good men there. Remember that of the one hundred and thirty millions collected from imports a year or two ago, when I examined it, ninety millions were collected in that city, showing the amount of valuable property there subject to depredation, and now I am told that one hundred millions of the one hundred and forty or one hundred and fifty collected in the United States are collected in that port.

I assented to this bill, and concurred in its report, believing that at New York and cities like it, where the great body of these imports come in, $3 a day was only a fair allowance for this service. The Senator from Massachusetts says the Secretary has the discretion and has raised the day inspectors from $3 to $4. I think as to these night inspectors there should be authority at least to pay them $3. I inquire not what the politics of a faithful watchman is. I am willing to pay him what is a fair, reasonable compensation for the service he does, and I am not willing to pay him any more, no matter to what party he may belong.

On the representation of these two respectable, intelligent members to me personally, and, besides, upon the representations of those who came here from California before the committee, we reported this bill. If it is thought better to leave it within the discretion of the Secretary, I shall not object to that. Indeed, I think very well of that suggestion; but I think we should not have an iron rule, that none of these men living in cities, where they cannot live as cheaply as they can in small towns, and doing this duty which requires intelligence, and men who are willing to take some risks in guarding property, shall receive no more than $2.50 a day. I am willing to have them paid, and I think they should be paid $3 a day.

Mr. EATON. I understand the Senator from Kentucky has prepared an amendment leaving the price at $2.50 per day as it now is, but giving discretionary power to the Secretary of the Treasury to pay not to exceed $3 per day, so as to accommodate places where the larger sum ought to be paid, if there be any such places. I shall be very glad to vote for that amendment if the Senator from Kentucky offers it.

Mr. BECK. I had endeavored to draw an amendment in these words:

That hereafter the Secretary of the Treasury shall have the right to increase the compensation of inspectors of customs employed for service at night to an amount not exceeding $3 per night while actually employed.

Mr. EATON. I suggest the words "if in his opinion the public interests demand it."

Mr. DAWES. I think the Senator had better turn to the Revised Statutes and use the phraseology they employ in reference to day inspectors.

Mr. EATON. There may be circumstances to be considered that cannot be presented in an act of Congress.

Mr. BECK. The object of the suggestion is that the Secretary shall have the right to allow an additional sum where he thinks it proper.

Mr. COCKRELL. I should like to ask the Senator from New York a question, and that is whether there is any record where any one of these night inspectors has ever resigned the office and declined to serve on account of the pay that he receives?

Mr. KERNAN. I do not know whether there is or not.

Mr. COCKRELL. If there is a record of that character I should like to see it. There has not been one solitary night inspector that has resigned his office because his salary has not been raised, I venture to say.

Mr. EATON. So far as I know—and I have been approached by several gentlemen in regard to this matter, members of the other House and gentlemen from New York, Boston, and San Francisco—I have not yet heard that any man has resigned; I have not been told that anybody has resigned. It is pretty difficult just now, or has been for the past year or two, to get employment. But that is not the sole question, I hope, with my friend from Missouri; it certainly is not with me. I know something about the duties that these men have to perform. I know of my own knowledge acquaintances of my own, men who went from my State to New York, that have been assailed by organized bands of river thieves, that have been assaulted, shot, cut. Those men did not resign, but still continued to perform their duties for $2.50 if they were not killed. It does not furnish any reason to my mind that they ought not to receive more.

Mr. COCKRELL. The question is, how many of these night inspectors are in that condition out of the whole number?

Mr. EATON. Not a great many.

Mr. COCKRELL. Very few. As to two-thirds of them, if they would vacate their office to-day, could not as good men be had for $1.50.

Mr. EATON. No; I think not. We pay in my own city for our night watchmen a thousand dollars a year.

Mr. McDONALD. It seems to me that the correct mode of undertaking to determine the compensation for labor or service is not to consider the fact that men do not resign or that their places could be filled if they did resign at present prices. We ought to exercise our best judgment upon the nature of the service and its responsibilities, and pay what we believe to be a fair compensation.

Now I have no doubt that if the pay of Senators was cut down to $2,500 a year there would not be a great many resignations, and if there were I am satisfied that able men could be found to fill the places. It is an argument that is always offered, but it never struck me as having any proper, solid foundation to rest upon. The real question is whether these employés, taking into consideration the nature of their service and its responsibilities and the time at which it has to be performed, are now receiving a fair compensation; not whether they would resign if it were not raised, but whether the compensation is a fair one. If it is not, then means ought to be provided for making it fair. That is all there is in this case.

Mr. COCKRELL. I thank the Senator from Indiana for his kindly suggestions in the matter. I think there are some rules which ought to be observed in regard to fixing the salaries of Government employés. I was asking questions for the purpose of eliciting the facts upon which we might base what is a reasonable compensation. I say for one that I am not in favor of paying those who work for the Government a much larger compensation than private individuals pay for the same labor at the same place; and if the Senator from Indiana believes in making the employés of the Government receive a greater salary than individuals pay for the same kind of work in the same locality I differ with him.

If individual labor can be procured in these places for less than the $3, and that for the same kind of work, the Government rate ought to be the same precisely. Now, in the city of New York and other places where there is extraordinary risk incurred in the discharge of the duty the pay ought to be commensurate; but there are places where I guarantee just as good men can be employed at $2 a day where there is no responsibility and no work, not a particle, and I say it is wrong to pay those employés $3 a night.

Mr. EATON. With the amendment that will be offered by the honorable Senator from Kentucky it strikes me the Senator from Missouri will be satisfied.

Mr. COCKRELL. If he gets the amendment in in that way, very well. I ask these questions for the purpose of ascertaining the facts in this case, and I desire now simply to call attention to a certain resolution which I heard in 1876 very often, and I believe the distinguished Senator from Indiana was one of the originators of it, and I am sure the Senator from New York was in the convention, and I desire for one that the actions of the democratic party shall be in consonance with its professions. In 1876 we declared:

That this convention, representing the democratic party of the United States, do cordially indorse the action of the present House of Representatives in reducing and curtailing the expenses of the Federal Government, in cutting down salaries, extravagant appropriations, and in abolishing useless officers and places not required by the public necessities, and we shall trust to the firmness of democratic members of the House that no committee of conference and no misinterpretation of the rules will be allowed to defeat these wholesome measures of economy demanded by the country.

Mr. McDONALD. I move the adoption of the resolution just presented by the Senator from Missouri. [Laughter.]

Mr. COCKRELL. I have no doubt but what the Senator will subscribe to this, as he was a member of the convention, and I think if the action of the democratic Senate in the laws they pass was more strictly in conformity with the resolution it would inspire greater confidence in the masses.

Mr. KERNAN. I agree with my friend in cutting down, but I am not disposed to be particularly sharp with the men who are getting day wages for watching nights in all weather, and who cannot get off with six or eight hours a day, but have to stay there during all the hours of the night. I would give such a man what in my judgment is fair pay, such as any good firm, any business house, would pay the man who did that service; and when it is in a city where he cannot live for less than $3 a day, I would give him that pay.

Mr. McMILLAN. I should like to know which of the Senators expresses the doctrine of the democratic party?

Mr. KERNAN. Both. I agree with my friend from Missouri.

Mr. CAMERON, of Wisconsin. One expresses the opinion of the democratic party in the national convention and the other in the National Congress.

Mr. McPHERSON. My friend from Indiana has well said that the resolution of the democratic convention is worthy of adoption. As far as I am concerned I do not see that the amendment proposed by the Senator from Kentucky in any sense or form improves the original proposition. I think there is very great misapprehension existing in the minds of the Senate in reference to the absolute requirements of this service. In the city of New York steamers arrive from foreign ports. They commence discharging and most of the goods are removed during the day-time, and there is absolutely no need of night inspectors; there is need only for night watchmen. Scarcely any goods are taken out in trucks from the different piers in New York to the warehouses at night. Goods that are forwarded in bond arrive and are at once put in the bonded cars. The proprietors of the cars are as much responsible as the custom-house officers themselves. They are forced to see that the custom-house officer has every facility for the inspection and examination of the goods.

Although I live in close proximity to the city of New York, and although very many people who live in my State are inspectors in the custom-house in New York under the present Administration, I have yet to know a case where a custom-house inspector can be said to have any very arduous duty at night. I believe that the civil-service orders of the present Administration have been entirely done away with, and the present Executive has become a stalwart, giving his consent, as I understand he has, to the collection of assessments for political purposes from the men who hold political positions all over the country. So it seems to me that whatever increase you make will only be giving the party in power an opportunity to collect additional assessments for political purposes. I understand the collectors have a schedule. A man receiving a certain salary is forced to pay a certain sum into the treasury of the republican party for election purposes. One who receives a less sum pays a less assessment, and so on down to the most minute office in the gift of the Administration. If you give these night inspectors $3 per day you only add fifty cents more to their power of assessment, and whatever may be the result they will have only that amount of their salaries less the assessment to pay for the necessaries of life, and the balance must go for an election fund.

For my part I am not willing to do it. If it would add one particle to the comfort of these officers who are employed, if it would give them one single dollar, if I believed it would do anything to assist them in the clothing and education of their families, I would gladly give it; but at this particular time I very much fear that it would not give them one single cent in addition to what they now receive, and I am unwilling at this time to vote the public money and to place it in such a position that any political party can use it for election purposes.

Mr. MORRILL. I desire to call the attention of the Senator from New Jersey to the fact that these men, whether inspectors or night watchmen, must be men of character, and that we therefore need not fear that they will spend their wages at a corner grocery. The fact is that these inspectors must be on the lookout for smugglers across the line or from vessels to the shore, and then again for this purpose other inspectors or watchmen are placed upon vessels. We understand perfectly how much smuggling is done in the night season. If these men are not men of character, and if they can be induced to step aside while any amount of foreign cigars, jewelry, packages of silk, or anything else is unloaded and put into a boat alongside of the vessel, see how the Government will be defrauded. Therefore the collector at San Francisco and New York and Boston, and various other places, are compelled to employ men of character, men of integrity, whom they can trust, and men who will not be bribed.

Mr. BECK. I wish now to have the substitute which I propose to offer for the first section read.

The PRESIDING OFFICER. The amendment will be read.

The CHIEF CLERK. It is proposed to strike out the first section of the bill and in lieu thereof to insert:

That hereafter the compensation to inspectors of customs employed under existing law for service at night may be increased by the Secretary of the Treasury at such ports as he may think it advisable so to do to a sum not exceeding $3 for each night's service.

Mr. WITHERS. I am perfectly willing to vote for that substitute to the bill, and I hope the Senate will adopt it. I wish to say simply that I do not propose to discuss this question or to vote upon it from a political stand-point at all. Both parties profess to desire an economical administration of the Government and to secure the services of competent agents for the dispatch of the business of the Government. Therefore, it seems to me that the whole of this question resolves itself into this: Is it possible to secure the services of competent, reliable men, such as have been described by the Senator from Vermont, for the discharge of these duties at the compensation fixed by the existing law? That is the whole question.

If it is possible to do that, it seems to me that no argument can be used which would justify an increase of their pay. If it can be shown that it is impossible or even impracticable to secure the services of men of the character indicated, as I am just as strongly in favor of securing the services of reliable and of competent men for this service as the Senator from Vermont or the Senator from Delaware, then I will vote for the increase. But in response to my inquiry and to the speech of the Senator from Missouri no man has indicated upon this subject that there has been the slightest difficulty in securing the services of men competent and reliable. No man can be shown to have resigned because of this reduction of pay. No one can assert that any difficulty has been experienced in securing for the services which are to be rendered by these men persons of unblemished character and thorough reliability.

The substitute offered just now by the Senator from Kentucky it seems to me fills all the requirements. In a place like New York or San Francisco, or any other locality where the expense of living is known to be so great as to render it impracticable for these employés of the Government to live upon the salary fixed by law, the Secretary of the Treasury is given the discretion of increasing the inspector's salary so as to support himself and family, but the amendment does not make this increase horizontal and applicable to every locality, in a great many of which it does not require the expenditure of half the salary to secure the means of living. I hope the substitute will be adopted.

Mr. McPHERSON. I should like to say one word in reply to the honorable Senator from Vermont, and I do not wish to delay action on the bill. He said that the officers employed must be men of character. I confess that they should be men of character, although, perhaps, in some cases they are not. He said that they have a great trust committed to them. I do not consider that that trust is much greater than that of a policeman who pickets the city of New York and other cities, who receives no greater pay than is already paid to night inspectors of customs. A policeman performs, perhaps, more service. I think if you were to visit during the night any of the piers or docks of New York, where a steamship lands that conveys products to this country, you would find nine times out of ten the night inspector safely ensconced in some office or room without doing any particular labor.

Mr. EATON. May I ask my friend a question?

Mr. McPHERSON. Certainly.

Mr. EATON. Am I right in understanding him as saying that a night watchman in New York receives but $2.50 per night?

Mr. McPHERSON. I think they receive $60 per month. I know in my own city, Jersey City, they receive $60, and I think they receive about the same in New York.

Mr. EATON. Their pay is much more than that in the city where I live, and I believe it is less there than in New York.

Mr. McPHERSON. I only wish to say that if it be the proposition of the Senator from New York or from Connecticut to pay night inspectors $100 per month, after they have paid all the political assessments which they will be required to pay I do not believe they would have any more than if they received $2.50 as now.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Kentucky, [Mr. BECK.]

The amendment was agreed to.

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

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

The bill was read the third time.

The PRESIDING OFFICER. The question is on the passage of the bill.

Mr. COCKRELL. I ask for a division.

There were on a division—ayes 19, noes 10; no quorum voting.

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

Mr. BECK. Let us have the yeas and nays.

Mr. CAMERON, of Wisconsin. Perhaps a further count will not be insisted upon.

Mr. ALLISON. I do not ask for the yeas and nays unless other Senators do.

Mr. MORRILL. There is not a quorum present.

The PRESIDING OFFICER. No quorum has voted.

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

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

Mr. BECK, (when his name was called.) On this question I am paired with the Senator from Delaware, [Mr. BAYARD,] who was obliged to leave the Senate Chamber. If he were here, he would vote "yea" and I should vote "nay."

The roll-call was concluded.

Mr. McPHERSON, (after having voted in the negative.) I perhaps should not have voted. I am paired with the Senator from Maine [Mr. BLAINE] upon all political questions. If this is a political question, I ask to withdraw my vote.

Mr. CAMERON, of Wisconsin, and others. Oh, no.

Mr. EATON. Only the Senator from Vermont and the Senator from New Jersey would consider this to be a political question.

Mr. McPHERSON. I will let my vote stand.

Mr. ANTHONY. My colleague, [Mr. BURNSIDE,] who is necessarily absent from the Senate, is paired with the Senator from New Jersey, [Mr. RANDOLPH,] who is also absent.

The result was announced—yeas 26, nays 16; as follows:

YEAS—26.

Allison,	Ferry,	McDonald,	Saunders,
Anthony,	Groome,	McMillan,	Vest,
Butler,	Hampton,	Maxey,	Wallace,
Cameron of Wis.,	Jones of Florida,	Morgan,	Williams,
Dawes,	Kernan,	Morrill,	Withers.
Eaton,	Kirkwood,	Platt,	
Farley,	Lamar,	Rollins,	

NAYS—16.

Brown,	Davis of W. Va.,	Jonas,	Saulsbury,
Call,	Harris,	McPherson,	Slater,
Cockrell,	Hereford,	Pryor,	Vance,
Davis of Illinois,	Ingalls,	Ransom,	Walker.

ABSENT—34.

Bailey,	Cameron of Pa.,	Hill of Georgia,	Randolph,
Baldwin,	Carpenter,	Hoar,	Sharon,
Bayard,	Coke,	Johnston,	Teller,
Beck,	Conkling,	Jones of Nevada,	Thurman,
Blaine,	Edmunds,	Kellogg,	Voorhees,
Blair,	Garland,	Logan,	Whyte,
Booth,	Grover,	Paddock,	Windom.
Bruce,	Hamlin,	Pendleton,	
Burnside,	Hill of Colorado,	Plumb,	

So the bill was passed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. T. F. KING, one of its clerks, announced that the House had passed the following bills:

A bill (S. No. 324) for the relief of Somerville and Davis;

A bill (S. No. 392) to remove the political disabilities of John R. F. Tatnall, of Georgia;

A bill (S. No. 1148) to amend an act entitled "An act authorizing the commissioners of the District of Columbia to issue twenty-year 5 per cent. bonds of the District of Columbia to redeem certain funded indebtedness of said District," approved June 10, 1879;

A bill (S. No. 1256) to authorize the Secretary of War to improve and repair the Mullan wagon-road between Forts Missoula and Cœur d'Alene;

A bill (S. No. 1408) to further amend the act entitled "An act to reorganize the courts of the District of Columbia, and for other purposes," approved March 3, 1863, and to repeal section 861 of chapter 24 of the revised statutes of the District of Columbia, and re-enact the same as amended; and

A bill (S. No. 1404) to provide for issuing patents for public lands claimed under the pre-emption and homestead laws in cases where the claimants have become insane.

ORDER OF BUSINESS.

Mr. McPHERSON. I move that the Senate proceed to the consideration of the bill (H. R. No. 3983) to provide a permanent construction fund for the Navy, and for other purposes.

The PRESIDING OFFICER. The question is on the motion of the Senator from New Jersey, to proceed to the consideration of the bill indicated.

Mr. McDONALD. Let the bill be reported for information.

The Chief Clerk read the bill.

Mr. DAVIS, of Illinois. That is too important a bill to be taken up at this time in the evening and with such a thin Senate. I move that the Senate proceed to the consideration of executive business.

Mr. CALL. I ask the Senator from Illinois to withdraw his motion to allow me to make a motion.

Mr. McPHERSON. What objection, if any, does the Senator from Illinois make to this bill?

Mr. DAVIS, of Illinois. I do not think such a bill as this can be considered at this time in the evening. If it were a smaller one, well and good.

The PRESIDING OFFICER. The Senator from Florida rose for a purpose.

Mr. CALL. I give way to the Senator from Delaware, [Mr. SAULSBURY.]

Mr. SAULSBURY. I think that the bill moved by the Senator from New Jersey ought to be maturely considered. As I understood

from the reading of the bill, it authorizes the Secretary of the Navy to expend a portion of the money arising from the sale of material and to be placed in the construction fund, provided for by the bill, without the authority of Congress, to the amount, I believe, of a million dollars. I am unwilling to see the public funds of this country expended by any officer of this Government to any such amount without being appropriated by Congress. I think, therefore, that this bill will require more consideration than we can give it this afternoon.

Mr. McPHERSON. Let it lie over.

Mr. McDONALD. At this late hour in the evening, and on the last day of the week, it seems to me that we ought not to be called upon for a consideration of a bill of this kind. I therefore move that the Senate adjourn.

Mr. CALL. I ask the Senator from Indiana to withdraw his motion and allow me to move to postpone the pending order and take up a little bill that will require but a very few moments.

Mr. McDONALD. I have just such a bill myself that I would like very much to have considered, but I waive my own right in the case.

Mr. SAULSBURY. Let me appeal to the Senator from Indiana to allow the Senator from Florida who has been trying for several days to have his bill considered.

Mr. McDONALD. I give way to the Senator from Florida.

Mr. ANTHONY. I hope the pending bill will not be postponed, but laid aside informally.

Mr. CALL. I have no objection to laying it aside informally.

Mr. ANTHONY. So that it may retain its place as unfinished business.

The PRESIDING OFFICER. The Senator from Florida asks that the present and all prior orders be postponed.

Mr. ANTHONY. Let the bill be postponed without prejudice.

Mr. McPHERSON. Will that displace the bill which I called up?

The PRESIDING OFFICER. It will not.

Mr. McPHERSON. It will come up as the first business on Monday morning.

The PRESIDING OFFICER. The resolutions of which the Senator from Delaware [Mr. SAULSBURY] has charge will take the place of this bill on Monday. The order in regard to this bill will live only through this day.

PALATKA MILITARY RESERVATION.

Mr. CALL. I ask for the present consideration of the bill (H. R. No. 4849) to confirm certain entries and warrant locations in the former Palatka military reservation in Florida.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill.

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

WINNEBAGOES OF WISCONSIN.

Mr. CAMERON, of Wisconsin. I move to postpone all orders prior to order of business No. 279.

Mr. ANTHONY. I will not interfere with the bill of my friend from Wisconsin, but I give notice that after that is disposed of, whatever may come up, I shall move an adjournment.

The PRESIDING OFFICER. The bill named by the Senator from Wisconsin will be read for information.

The Chief Clerk proceeded to read the bill (S. No. 323) for the relief of the Winnebago Indians in Wisconsin, and to aid them to obtain subsistence by agricultural pursuits, and to promote their civilization; and having read the preamble——

Mr. McDONALD. I should like to submit a motion now to adjourn.

Mr. FARLEY. Do not let us adjourn now.

Mr. McDONALD. It is very certain that we cannot consider that bill this evening. It involves some very important questions. It is quite lengthy, and we might as well quit on that as anything else. I move that the Senate adjourn.

Mr. CAMERON, of Wisconsin. I hope the Senator from Indiana will not insist upon his motion. This bill has been called up several times, and it went over upon objection. It was reported favorably by the Committee on Indian Affairs in the last Congress. It has again been reported favorably by the Committee on Indian Affairs at the present Congress. If there are important principles involved in it I do not know what they are; but if there are important principles in it we may as well discuss them and settle them now as at any other time.

Mr. McDONALD. Not at this hour of the evening will it be possible for us to consider the provisions of a bill so important as that.

Mr. CAMERON, of Wisconsin. I know it is out of order, but the Senate will indulge me while I say that a portion of the Winnebago Indians reside on a reservation in the State of Nebraska. Another portion, about one-third of the tribe, reside in Wisconsin, where nearly all of them have taken homesteads. This bill is for the purpose of making an equitable settlement between the Nebraska portion of the tribe and the Wisconsin portion of the tribe. The bill was prepared about two years ago by the Commissioner of Indian Affairs, or at least it was prepared in his office; it was sanctioned by the Indian Bureau; and it has been examined and recommended by the Secretary of the Interior.

Mr. McDONALD. I withdraw my motion.

The PRESIDING OFFICER. The Senator from Indiana withdraws the motion to adjourn. The Secretary will proceed with the reading of the bill.

The Chief Clerk read the bill.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill (S. No. 323) for the relief of the Winnebago Indians in Wisconsin, and to aid them to obtain subsistence by agricultural pursuits, and to promote their civilization.

Mr. COCKRELL. Is there any explanation of the bill or any report?

Mr. CAMERON, of Wisconsin. There is a report.

Mr. COCKRELL. Let the report be read.

The Chief Clerk read the following report, submitted by Mr. LOGAN February 11, 1880:

The Committee on Indian Affairs, having had under consideration Senate bill No. 224, Senate joint resolution No. 4, and Senate bill No. 1124, all for the relief of the Winnebago Indians of Wisconsin, report:

The committee recommend the indefinite postponement of Senate bill No. 224 and joint resolution No. 4, and recommend the passage of Senate bill No. 323, with amendments.

The Winnebago tribe of Indians formerly resided within the limits of the State of Wisconsin, and by various treaties on and prior to June 16, 1838, (Revised Indian Treaties, 1001,) conveyed to the United States all of their lands in that State. By the treaty of June 16, 1838, the United States ceded to them a tract of land in the Territory of Minnesota known as the neutral lands, and to which a claim in their behalf attached under one of the former treaties.

By the treaty of 1846 (*Ibid.*, 1004) the title of the Winnebagoes to the neutral lands was extinguished, and, in part consideration therefor, they were given a tract of land on the Saint Peter's River, in Minnesota, estimated to contain about 879,600 acres. Their title in this tract was entirely extinguished by the treaty of 1855, (*Ibid.*, 1006,) and in full compensation for the same the United States agreed to give them $70,000, and to grant them, as a permanent home, a tract of land equal to eighteen miles square on Blue Earth River, in one of the most fertile regions in Minnesota, to which they removed, and where they were immediately surrounded and pressed upon all sides by the whites.

Again, by treaty of 1859, (page 1011,) in order to aid in their civilization, and at the request of the tribe, townships 106 and 107, ranges 24 and 25, and the two strips of land immediately adjoining on the east and north, within their reservation, were authorized to be allotted in severalty to the members of the tribe, and it was provided that the remainder of their lands should be sold and the proceeds applied to their benefit.

Under these provisions allotments in severalty were made in 1861, and certificates issued to them. At the outbreak of the rebellion in 1861 numbers of the Winnebagoes enlisted in the Army, and during the Sioux outbreak of 1862 the tribe maintained the most friendly relations with the whites. Their lands, however, were very desirably located for settlement, and the settlers commenced a series of encroachments against the Winnebagoes, which finally rendered their condition unsafe, so that it became necessary to remove the tribe from the State.

An act was accordingly passed by Congress, on the 21st of February, 1863, (12 Statutes, page 658,) providing for their removal and the sale of their lands for their benefit, and they were removed to the Missouri River in Dakota. On account of the proximity of this location to the Sioux, who were hostile to them, and their remoteness from the whites, among whom they preferred to live, the tribe became dissatisfied, and large numbers of them returned to the States, about one-half of whom settled in Wisconsin, as stated by the Commissioner of Indian Affairs in a communication addressed to the committee.

Another treaty was made with the tribe in 1866, (see page 1014, Revised Indian Treaties,) whereby the tribe was gathered together and settled upon a reservation in Nebraska, where they now reside.

Arising from these treaties, the Winnebagoes, as a tribe, have a fund of $883,249.58 in the Treasury, the income of which at 5 per cent. is, by treaty provision, to be distributed to them in cash or supplies, as the President may direct.

By act of June 25, 1864, (13 Statutes, p. 172,) it was provided—

"That the proportion of annuities to which the stray bands of Winnebago Indians would be entitled, if on their reservation, should be retained in the Treasury to their credit, from year to year, to be paid to them when they should reunite with their tribe, or to be used by the Secretary of the Interior in settling and subsisting them on any other reservation which might thereafter be provided for them."

The fund herein provided for was not reserved until 1876, when, by direction of Secretary Chandler, their estimated proportion ($\frac{1}{19}\frac{1}{19}$) of the tribal annuities was retained, and has since been retained for them, amounting at the present time, in this proportion, to $48,249.17. This sum remains in the Treasury awaiting the direction of Congress.

The annuities so far to the tribe, from 1864 to 1875, inclusive, amount to $541,312.78, all of which, with a single exception, has been paid to the Winnebago Indians of Nebraska. Assuming that the tribe in Wisconsin would be entitled to their *pro rata* share, they ought to have received of this amount $253,383.12.

In 1873 and 1874 an appropriation was made (18 Statutes, p. 170) for the removal of the Winnebagoes of Wisconsin to a reservation to be purchased for them in Nebraska, adjacent to the reservation now occupied by the remainder of the tribe. There was expended in this removal, and subsistence, and purchase of lands, $154,624.49, and retained to be expended in settling them on their new lands, $26,131.13, and about eight hundred and sixty of them were removed to Nebraska. The Wisconsin Winnebagoes, however, were dissatisfied with their new location, and all but two hundred and four of them returned to Wisconsin prior to January, 1876.

The Commissioner of Indian Affairs reports that there is now in the Treasury to the credit of the tribe, accruing under treaty appropriations for the fiscal year 1873 and prior years, the sum of $40,406.42, from which a sufficient amount should be withdrawn and paid to the Wisconsin band to equalize the payments heretofore made in excess to the tribes in Nebraska.

During the last fiscal year there was appropriated to the tribe in Nebraska the sum of $29,260.68, and to the Wisconsin Winnebagoes $14,901.79.

The committee therefore recommend the payment to the Wisconsin Winnebago Indians of $48,249.17, now in the Treasury belonging to them, together with a sufficient sum to equalize the payments hereinbefore alluded to.

The committee also recommend that the proportion of annuity funds accruing from year to year hereafter should be applied to the Winnebagoes in Wisconsin, until they shall have been refunded the amount due them under the act of 1864.

The bill provides for a careful census of the Indians in Wisconsin, as well as the Winnebagoes in Nebraska, in order that a just division may be made.

By an act passed March 3, 1875, (18 Stats. at Large, 420,) it is provided that an Indian now in the United States, who is the head of a family, or arrived at the age of twenty-one years, and who afterward abandons his tribal relations, shall be authorized to take a homestead under the homestead laws, and shall still be entitled to receive his proportion of the tribal annuities. These Winnebagoes of Wisconsin, to the number of about two hundred, have taken, and others are desirous

of taking, homesteads under this provision of the act of 1875, and therefore the provisions of the bill apply only to such as have taken or shall take homesteads, having been carefully constructed for such Indians only.

A section is added against the alienation of these lands for a period of twenty years. This provision is considered necessary to protect the Indians having homesteads. The bill has been submitted to the Interior Department, and receives the sanction of the Commissioner of Indian Affairs and the Secretary of the Interior.

The commitee therefore recommend its passage, with a single amendment to the last section, which is herewith reported.

Mr. CAMERON, of Wisconsin. There are amendments proposed by the Committee on Indian Affairs.

The PRESIDENT *pro tempore*. The first amendment of the committee will be reported.

Mr. BUTLER. I should like to inquire of the Senator from Wisconsin what the chances are of getting through with this bill? I should like very much to have the Senate adjourn myself.

Mr. CAMERON, of Wisconsin. I think the bill can be passed in five minutes.

Mr. BUTLER. I will not make the motion just now, but will wait.

The PRESIDENT *pro tempore*. The amendments will be reported.

The first amendment of the Committee on Indian Affairs was, in section 2, line 7, after the words "fiscal years," to insert "1874, 1875;" in line 9, after "1877," to strike out "and;" in line 10, after "1878," to insert "1879, and 1880;" and in line 12, to strike out "$48,249.17" and insert "$90,689.93;" so as to read:

That upon the completion of the census of the Winnebago Indians in Wisconsin the Secretary of the Interior is authorized and directed to expend for their benefit the proportion of the tribal annuities due to and set apart for said Indians under the act of June 25, 1864, of the appropriations for the tribe of Winnebago Indians for the fiscal years 1874, 1875, 1876, 1877, 1878, 1879 and 1880, amounting to $90,689.93.

Mr. COCKRELL. I should like to ask the Senator from Wisconsin how it happens, if this bill was prepared in the Indian Bureau, that there is such a discrepancy between the bill as prepared and as reported?

Mr. CAMERON, of Wisconsin. The bill was prepared two years ago, and since that time additional moneys have been placed in this fund. These amendments were made during the present session. It is all right.

The amendment was agreed to.

The next amendment of the Committee on Indian Affairs was, in section 2, line 15, to strike out "$40,406.42" and insert "$41,012.74;" so as to read:

And the Secretary of the Interior shall also expend for the benefit of said Indians, out of the sum of $41,012.74 now in the Treasury to the credit of the Winnebago tribe of Indians, and accruing under treaty appropriations for the fiscal year 1873 and prior years, such sum as may, upon the completion of said census, be found necessary to equalize the payments between the two bands on account of the payment of the sum of $100,000 in the year 1872 from the principal funds of the tribe to the Winnebagoes in Nebraska.

The amendment was agreed to.

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

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

Mr. CAMERON, of Wisconsin. There are amendments to the preamble.

The PRESIDENT *pro tempore*. The amendments to the preamble will be reported.

The CHIEF CLERK. In the second clause of the preamble, before the word "portion," the committee report to strike out the word "small," and after the words "sum of" to strike out "$48,249.17" and to insert "$90,689.93;" so as to read:

Whereas a portion of the funds belonging to said Winnebago Indians of Wisconsin, and accruing under the act of June 25, 1864, "providing for deficiencies in subsistence and expenses of removal and support of the Sioux and Winnebago Indians of Minnesota," amounting to the sum of $90,689.93, is now in the Treasury of the United States to their credit; and.

The amendment to the preamble was agreed to.

The preamble, as amended, was agreed to.

CENSUS SUPERVISORS.

The PRESIDENT *pro tempore* laid before the Senate a message from the President of the United States, transmitting, in response to a resolution of the 31st ultimo, a report from the Secretary of the Interior in regard to the removal of supervisors of the census; which was referred to the Select Committee to make provision for taking the Tenth Census, and ordered to be printed.

INDIANAPOLIS A PORT OF DELIVERY.

Mr. McDONALD. I ask the present consideration of Senate bill No. 1230, order of business No. 420. It will not take five minutes.

Mr. COCKRELL. That bill has been reported adversely.

Mr. McDONALD. Oh, I reckon not.

Mr. COCKRELL. It is so stated on the Calendar.

Mr. McDONALD. It is a bill to establish Indianapolis as a port of delivery.

Mr. COCKRELL. "Senate bill 1230. A bill to establish a port of delivery in Indianapolis, in the State of Indiana: March 18, 1880; Mr. BALDWIN, Committee on Commerce, reported adversely."

The PRESIDENT *pro tempore*. That does not prevent the Senate from taking it up.

Mr. McDONALD. Certainly not.

The PRESIDENT *pro tempore*. Will the Senate postpone all prior orders?

The motion was agreed to.

The PRESIDENT *pro tempore*. Will the Senate proceed to the consideration of this bill?

A division was called for.

Mr. McDONALD. I wish to say that this bill simply makes a port of delivery of the city of Indianapolis, which is the first interior city in the United States.

Mr. WITHERS. Does my friend from Indiana think we are to take up bills reported adversely?

Mr. McDONALD. If there is any Senator who has any objection to this bill when taken up, I am willing to lay it aside.

Mr. WITHERS. An adverse report necessitates objection. I do not know anything about this particular case.

The question being put, the motion was not agreed to, the ayes being 18, less than a majority of a quorum.

LAKE NEAR COUNCIL BLUFFS.

Mr. KIRKWOOD. I ask the Senate to take up order of business No. 700, House bill No. 1064. It will not take two minutes.

The PRESIDENT *pro tempore*. The Senator from Iowa moves to postpone all orders prior to order of business No. 700.

The motion was agreed to.

The PRESIDENT *pro tempore*. The Senator from Iowa now moves to proceed to the consideration of House bill No. 1064.

The motion was agreed to; and the bill (H. R. No. 1064) to grant to the corporate authorities of the city of Council Bluffs, in the State of Iowa, for public uses, a certain lake or bayou situated near said city, was considered as in Committee of the Whole.

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

CHARLES DOUGHERTY.

Mr. WALLACE. I move that the Senate proceed to the consideration of House bill No. 270, order of business No. 495.

The PRESIDENT *pro tempore*. The Senator from Pennsylvania moves that all orders prior to order of business No. 495 be postponed.

The motion was agreed to.

The PRESIDENT *pro tempore*. The Senator from Pennsylvania now moves to proceed to the consideration of House bill No. 270.

The motion was agreed to; and the bill (H. R. No. 270) to reimburse Charles Dougherty for his expenses to the consulate of Londonderry was considered as in Committee of the Whole.

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

COLLECTION DISTRICTS IN CALIFORNIA.

Mr. FARLEY. I move to postpone all orders prior to order No. 614, so as to take up Senate bill No. 1271.

The PRESIDENT *pro tempore*. The Senator from California moves to postpone all orders prior to No. 614.

The motion was agreed to.

The PRESIDENT *pro tempore*. The Senator from California now moves to proceed to the consideration of Senate bill No. 1271.

The motion was agreed to; and the bill (S. No. 1271) to amend sections 2582, 2583, 2607, and 2684 of the Revised Statutes of the United States, relating to the collection district of California, was considered as in Committee of the Whole.

Mr. McDONALD. Is that bill reported from the Committee on Finance?

Mr. FARLEY. I will state to the Senator that the Committee on Commerce nearly two months ago reported this bill unanimously and recommended its passage. The bill simply provides for making Wilmington a port of entry, which has a commerce that furnishes supplies to the people in Arizona and along the line of the Southern Pacific road. It leaves San Francisco just as it is; leaves San Diego just as it is. The bill has been unanimously reported, and I understand there is no objection to it.

Mr. EATON. My friend says it leaves San Francisco as it now is?

Mr. FARLEY. Precisely.

Mr. EATON. With the same number of deputy collectors in that collection district?

Mr. FARLEY. Yes, sir; the same precisely.

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

WILLIAM L. WHITE.

Mr. SLATER. I ask the Senate to proceed to the consideration of Senate bill No. 483, order of business No. 701.

The PRESIDENT *pro tempore*. The Senator from Oregon moves to postpone all orders prior to No. 701.

The motion was agreed to.

The PRESIDENT *pro tempore*. The Senator from Oregon now moves to proceed to the consideration of Senate bill No. 483.

The motion was agreed to; and the bill (S. No. 483) for the relief of William L. White was considered as in Committee of the Whole.

The bill was reported from the Committee on Public Lands with an amendment, which was in line 9, after the word "moneys," to strike out the words "at his disposal for the compensation of clerical services" and to insert in lieu thereof "not otherwise appropriated;" so as to read:

And to pay the same out of any moneys not otherwise appropriated.

The amendment was agreed to.

Mr. SLATER. I offer a verbal amendment. In line 7 I move to strike out "reasonable," after "such."

The amendment was agreed to.

Mr. SLATER. In line 9, after "moneys," I move to insert "in the Treasury."

The amendment was agreed to.

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

The Chief Clerk read as follows:

That the Secretary of the Interior be, and he is hereby, authorized and directed to audit and allow the claim of William L. White for actual services performed by him as a clerk in the land-office at Oregon City, under contract with the register and receiver thereof, at such rate for said services as to said Secretary shall be deemed reasonable, and to pay the same out of any moneys in the Treasury not otherwise appropriated.

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

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

FRANK P. GROSS.

Mr. WILLIAMS. I move to take up Senate bill No. 74, order of business No. 467.

The PRESIDENT *pro tempore*. The Senator from Kentucky moves to postpone all orders prior to No. 467.

The motion was agreed to.

The PRESIDENT *pro tempore*. The Senator from Kentucky moves to proceed to the consideration of Senate bill No. 74.

Mr. WILLIAMS. There will be no contest about it. The bill is reported from the Committee on Military Affairs with an amendment.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill (S. No. 74) for the relief of Lieutenant Frank P. Gross.

The bill was reported from the Committee on Military Affairs with an amendment, to strike out all after the enacting clause and in lieu thereof to insert the following:

That the Secretary of War is hereby authorized and required to ascertain the value of the property lost by First Lieutenant Frank P. Gross, United States Army, by the burning of his quarters at Fort Clark, Texas, on or about the 19th day of April, 1869, without fault or neglect on his part; and the amount so ascertained is hereby appropriated for that purpose: *Provided*, That no allowance be made for any property except what was useful, necessary, and proper for such an officer while in quarters, engaged in the public service, or exceeding in amount the sum of $2,000.

The amendment was agreed to.

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

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

JOHN THORNLEY.

Mr. ANTHONY. I move that the Senate proceed to the consideration of the bill (S. No. 1206) for the relief of Medical Director John Thornley, United States Navy, order of business No. 240.

The PRESIDENT *pro tempore*. The Senator from Rhode Island moves to postpone all orders previous to order of business No. 240.

The motion was agreed to.

The PRESIDENT *pro tempore*. The Senator from Rhode Island moves that the Senate proceed to the consideration of Senate bill No. 1206.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill. It provides that Medical Director John Thornley, United States Navy, be considered as having been retired from active service as a surgeon and placed on the retired list of officers of the Navy June 1, 1861, on account of physical incapacity originating in the line of duty; and that the accounting officers of the Treasury be directed to allow him the rate of retired pay of the grade in which he was retired prescribed by section 1588, Revised Statutes, for officers so retired; and the accounting officers are further directed, in adjusting the account, to allow and pay to him the difference between the pay he has been allowed as a surgeon on the retired list since the passage of the act approved March 3, 1873, (section 1588, Revised Statutes,) and that to which he is entitled under that act as having been retired as a surgeon for incapacity originating in the line of duty, the sum to be paid out of any money in the Treasury not otherwise appropriated.

Mr. MORRILL. Will not the Senator from Rhode Island give way to a motion to adjourn?

Mr. ANTHONY. As soon as I get this bill through.

Mr. COCKRELL. This bill will take some time.

Mr. MORRILL. Evidently there is no quorum present. I give notice that I will make the motion as soon as this bill is disposed of.

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

The Chief Clerk read the bill.

Mr. COCKRELL. Is there a written report in that case?

The PRESIDENT *pro tempore*. There is.

Mr. COCKRELL. I intended to state the facts when that bill was up some time ago. It is to pay this man back salary for a considerable time. I wrote to the Department, and got some data in regard to it, and I thought I had them in my desk. I find that I have not. I examined the bill, and according to my understanding of the facts——

Mr. MORRILL. Will the Senator from Missouri give way to a motion to adjourn?

Mr. COCKRELL. I will.

Mr. MORRILL. I move that the Senate do now adjourn.

The motion was agreed to; and (at five o'clock and forty-seven minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

SATURDAY, *June* 5, 1880.

The House met at eleven o'clock a. m. Prayer by the Chaplain, Rev. W. P. HARRISON, D. D.

The Journal of yesterday was read and approved.

VOTE ON POST-OFFICE APPROPRIATION BILL.

Mr. KLOTZ. I rise to make a personal explanation. Yesterday I was announced as paired with my colleague from Pennsylvania [Mr. OVERTON] on the Post-Office appropriation bill, and I did not vote. My colleague agrees that I would have been at liberty to vote on a vital portion of the bill. I desire to have my name called and my vote recorded.

The SPEAKER. The Chair thinks he cannot allow that.

Mr. KLOTZ. I ask unanimous consent.

The SPEAKER. The Chair thinks that request cannot be entertained. The gentleman, however, in making his statement has accomplished his purpose.

Mr. KLOTZ. I will state, then, that I should have voted in the negative, that is, against laying upon the table the motion to reconsider the vote by which the Senate amendment concerning star routes was concurred in. I am opposed to the Senate amendment striking out the House proviso.

Mr. LOWE. I desire to state that I was paired on the Post-Office bill with the gentleman from Maine, [Mr. MURCH.] The pair was not announced.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. BURCH, its Secretary, informed the House that the Senate concurred in the amendment of the House to the amendment of the Senate to the bill (H. R. No. 2440) to authorize the Secretary of War to transfer to the Fairmount Park Art Association thirty condemned or captured bronze cannon to be used in the erection of an equestrian statue to the late Major-General George Gordon Meade.

The message further announced that the Senate had passed the bill (H. R. No. 5053) granting relief to William Turman, guardian of William W. Brewer, with an amendment in which the concurrence of the House was requested.

The message further announced that the Senate insisted upon its amendments to the bill (H. R. No. 6036) making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1881, and for other purposes, disagreed to the amendment of the House to the seventh amendment of the Senate to the said bill, asked a conference with the House on the disagreeing votes of the two Houses thereon, and had appointed Mr. WALLACE, Mr. BECK, and Mr. BOOTH to be the conferees on the part of the Senate.

ORDER OF BUSINESS.

The SPEAKER. The Chair will state that many of the members who seek to be recognized desire to reach bills upon the Speaker's table. The Chair suggests to the House that some equitable mode might be agreed upon by which unobjectionable bills on the Speaker's table could be reached and disposed of.

Mr. BOUCK. I call for the regular order.

The SPEAKER. The regular order is the morning hour.

Mr. CARLISLE. I move to dispense with the morning hour; and I desire to state for the information of the House that my purpose, if the morning hour be dispensed with, or if it be not dispensed with, then immediately after the morning hour, is to move to proceed to the consideration of business upon the Speaker's table, with the understanding that no matter of a political nature shall be considered. [Cries of "All right!"] The sole purpose is to get rid of a large number of bills and resolutions now upon the Speaker's table.

The SPEAKER. The gentleman from Kentucky moves that the morning hour be dispensed with.

Mr. RYON, of Pennsylvania. Is that motion debatable?

The SPEAKER. It is not.

Mr. CONVERSE. I wish to make a parliamentary inquiry, whether unfinished business does not come up before we can go to the Speaker's table?

The SPEAKER. Unfinished business, unless the previous question is prevailing, would come up after the morning hour.

Mr. CONVERSE. But if the morning hour should be dispensed with?

The SPEAKER. Then the unfinished business would come up.

Mr. CONVERSE. I would suggest to the Chair that the Des Moines River lands bill is the unfinished business.

The SPEAKER. The Chair does not now rule whether the gentleman's parliamentary statement is correct; that is, whether the bill comes over as unfinished business.

Mr. COX. I rise to a parliamentary inquiry. If the morning hour should be dispensed with, will it not require another motion to go to business on the Speaker's table?

The SPEAKER. It would, of course. The motion to go to the