SENATE.

THURSDAY, *February* 18, 1886.

Prayer by Bishop E. G. ANDREWS, D. D., of the city of Washington.
The Journal of yesterday's proceedings was read and approved.

HOUSE BILLS REFERRED.

The following bills, received yesterday from the House of Representatives, were severally read twice by their titles, and referred to the Committee on Post-Offices and Post-Roads:

A bill (H. R. 4177) to reduce the fee on domestic money-orders for sums not exceeding $5; and

A bill (H. R. 4415) to make the allowance for clerk-hire to postmasters of the first and second class post-offices cover the cost of clerical labor in the money-order business, and for other purposes.

The bill (H. R. 129) to protect homestead settlers within railway limits, and for other purposes, was read twice by its title, and referred to the Committee on Public Lands.

PETITIONS AND MEMORIALS.

The PRESIDENT *pro tempore* presented a petition of 26 ex-Union soldiers, praying for the passage of a bill embodying the recommendations of the national pension committee of the Grand Army of the Republic; which was referred to the Committee on Pensions.

Mr. HARRISON presented the petition of M. L. Spencer and 50 other citizens of Huntington County, Indiana, praying for the passage of a joint resolution submitting to the several State Legislatures an amendment to the Constitution to protect women in the enjoyment of the right of suffrage on equal terms with men; which was ordered to lie on the table.

He also presented the petition of Ira Miller, late a private in the Fifteenth and Seventeenth Regiments Indiana Volunteers, praying that he be granted an increase of pension; which was referred to the Committee on Pensions.

Mr. HALE presented a petition of the Rock Bound Assembly, Knights of Labor, of Vinal Haven, Me., praying the passage of the bill (H. R. 1914) relating to the wages of printers in the Government Printing Office; which was referred to the Committee on Printing.

Mr. WILSON, of Iowa, presented a petition of the quarterly meeting of Orthodox Friends assembled at Damascus, Ohio, praying for the passage of the bill (S. 355) to promote peace among nations and for the creation of a tribunal for international arbitration, and for other purposes; which was referred to the Committee on Foreign Relations.

Mr. CALL. I present a petition of J. J. Delaney, president; W. D. Cash, first vice-president; E. Canals, second vice-president; George W. Allen, third vice-president; William Curry, and other members of the board of governors of the Board of Trade at Key West, Fla. The petition is as follows:

The Board of Trade of the port of Key West, Fla., respectfully asks the enactment of a law providing that signal stations be established at Point Jupiter (Jupiter Inlet) and Fort Jefferson, Tortugas, Florida, to be connected with Key West by telegraph; looping in Sand Key light-house, which is in direct line, and could be arranged with very little if any extra expense.

In our opinion this will be of great benefit to commerce.

All vessels from the Gulf of Mexico to ports on the east coast of North America and to Europe pass within signaling distance of Tortugas and Sand Key and nearly all steamers from the east coast of North America on their way to ports in the Gulf pass within signaling distance of Point Jupiter.

These vessels after reaching Tortugas on their way north encounter the most dangerous part of the Florida reef, which continues nearly to Jupiter, and coming south pass along this line of dangerous reefs from Jupiter to Tortugas.

Vessels should be warned when entering these reefs from either station. Key West is the nearest port to these points, and is connected with Cuba and South America and the mainland of Florida by cable and is a signal station, and is the only point from which assistance to vessels in distress on the Florida reefs can be speedily had, and great saving to property and oftentimes to life would result by timely information of vessels in distress conveyed by telegraph from these points.

The petitioners therefore urge this subject upon the early consideration of Congress. I move that the petition be referred to the Committee on Commerce.

The motion was agreed to.

Mr. MORGAN. I present the petition of Sigmond Roman, administrator of A. Gugenheim, in which he states that the recent French and American Claims Commission expired without time for the proper and legal consideration of a number of claims of great magnitude, which by reason of the large amount involved and the character of proof required were necessarily crowded to the heel of the docket, and instead of the causes being considered on their respective merits they were dismissed with a decree of a single line—that the commission was without jurisdiction, &c. The petitioner desires some relief, and suggests in his petition that perhaps the best relief would be to have the Governments of France and the United States agree to an enlargement of the time. I move that the petition be referred to the Committee on Foreign Relations.

The motion was agreed to.

Mr. HOAR. I present a number of petitions quite largely signed by citizens of the United States, praying for the abolition of the Presidency. I judge from the names and the handwriting in which they are written that many of the signers of the petitions must be citizens of foreign birth; but the form of petition indicates that the gentlemen who have prepared it have given a great deal of thought and study to this question, both in the matter of history and the matter of political philosophy; and they set forth the abuses which have existed, or which they believe exist, in the present condition of things. I move that the petitions be referred to the Committee on Privileges and Elections.

The motion was agreed to.

Mr. HOAR presented resolutions adopted by the American Woman's Suffrage Asssociation held at Minneapolis, Minn., in October, 1885, favoring the submission to the State Legislatures of a constitutional amendment abolishing all political distinction on account of sex; which were ordered to lie on the table.

Mr. SEWELL presented a petition of the local assembly of Knights of Labor at Winslow, N. J., and a petition of the local assembly of Knights of Labor at Camden, N. J., praying for the passage of a bill for the restoration of the rate of wages in the Government Printing Office; which were referred to the Committee on Printing.

He also presented a petition of citizens of Philadelphia, praying for the passage of a bill to prohibit the employment of purse-nets or any other device injurious to food-fish by menhaden or other fishermen within 3 statute miles of the Atlantic coast; which was referred to the Committee on Fisheries.

Mr. RIDDLEBERGER presented the petition of John Tyler, jr., of Washington, D. C., praying for the passage of a bill granting him remuneration for services rendered as private secretary to the President of the United States from 1841 to 1845; which was referred to the Committee on Claims.

Mr. PALMER presented the petition of John Donahue, of Emmett, Saint Clair County, Michigan, praying for relief in the matter of title to 40 acres of land patented to him by the Government of the United States; which was referred to the Committee on Public Lands.

He also presented the petition of Cornelia R. Schenck, of Detroit, Mich., widow of Daniel F. Schenck, late captain Company D, Fiftieth Regiment New York Engineer Corps, praying to be allowed a pension; which was referred to the Committee on Pensions.

He also presented a petition of the Knights of Labor of Cheboygan, Mich., praying for the establishment of a Territorial government over the Indian Territory; which was referred to the Committee on Indian Affairs.

He also presented a petition of Lovica Haslett and 34 others, citizens of Capac and Port Huron, Mich., praying for the passage of a joint resolution submitting to the several States an amendment to the Constitution protecting women in the enjoyment of the right of suffrage on equal terms with men; which was ordered to lie on the table.

Mr. INGALLS presented two petitions of citizens of Harper County, Kansas, praying for such legislation as will provide a Territorial government for the Indian Territory and the opening up of the surplus lands there for settlement; which was referred to the Committee on Indian Affairs.

Mr. SABIN presented a petition of citizens of Faribault, Minn., praying for the adoption of a joint resolution for an amendment of the Constitution conferring the right of suffrage on women; which was ordered to lie on the table.

Mr. CAMERON presented a resolution adopted by the Berks County Agricultural and Horticultural Society, of Reading, Pa., in favor of an appropriation of $500,000 for the suppression of pleuro-pneumonia; which was referred to the Committee on Agriculture and Forestry.

He also presented a resolution adopted by the Philadelphia County Medical Society, of Philadelphia, Pa., in favor of the bill now pending before the Senate for the restoration of the National Board of Health; which was referred to the Committee on Epidemic Diseases.

He also presented a resolution of the select and common councils of Philadelphia, in favor of the removal of the walls inclosing the Bridesburg and Schuylkill arsenals, and the naval asylum, and the replacement of iron railings therefor; which was referred to the Committee on Military Affairs.

He also presented a petition of the Homeopathic Medical Society of Philadelphia County, Pennsylvania, praying that an appropriation be made for the National Board of Health; which was referred to the Committee on Appropriations.

He also presented a petition of citizens of Pittsfield, Pa., praying the passage of the bill providing for teaching children the effect of artificial stimulants; which was ordered to lie on the table.

He also presented a petition of local assembly of Knights of Labor of Duke Centre, Pa., and a petition of local assembly of Knights of Labor of Mahanoy City, Pa., praying for the organization of a Territorial form of government over the Indian Territory; which were referred to the Committee on Indian Affairs.

He also presented resolutions of the local assembly of Knights of Labor of South Bethlehem, Pa., protesting against the present interpretation of the eight-hour law as being in the interest of the capitalist and against the laborer, and recommending a restoration of the wages of the employés of the Government Printing Office to what they were prior to March 4, 1877; which were referred to the Committee on Printing.

He also presented a petition of the Steamboat Officers' Protective Association of Pittsburgh, Pa., praying for such legislation as will place the Monongahela slack-water improvement under the charge of the

United States Government; which was referred to the Committee on Commerce.

Mr. MANDERSON presented a petition of Post No. 45, Grand Army of the Republic, of Plattsmouth, Nebr., praying the passage of a bill embodying the recommendations of the national pension committee of the Grand Army of the Republic in regard to pensions; which was referred to the Committee on Pensions.

Mr. SAWYER presented the petition of Mrs. W. F. Nugent and 28 other ladies of Plainfield, Wis., praying for the adoption of a sixteenth amendment to the Constitution of the United States prohibiting the disfranchisement of any citizens on the ground of sex; which was ordered to lie on the table.

Mr. LOGAN presented a petition of Zachariah Sibert, late a private in Company F, One hundred and twenty-ninth Illinois Volunteers, praying to be granted a pension; which was referred to the Committee on Pensions.

Mr. CULLOM presented a resolution adopted by the Master Plumbers' Association of the District of Columbia, remonstrating against any change in the present lien law of the District; which was referred to the Committee on the District of Columbia.

He also presented a resolution adopted by the wholesale and retail fresh-fish dealers of the city of New York, remonstrating against the passage of the bill relating to the importing and landing of mackerel caught during the spawning season; which was referred to the Committee on Fisheries.

He also presented a petition of the Print Cutters' Union of the United States, praying an increase of 15 per cent. on the existing tariff on prints in order that their present wages may be continued; which was referred to the Committee on Finance.

He also presented a petition of citizens of Illinois, praying Congress to protect the settlers upon the tract of land in Northwestern Iowa called the "unearned land grant of the Sioux City and Saint Paul Railroad" by an absolute act of forfeiture; which was ordered to lie on the table.

Mr. JONES, of Nevada, presented a petition of citizens of the United States residents of the town of Reno, in the State of Nevada, praying for the passage of a joint resolution at this session of Congress submitting to the several State Legislatures a proposition to so amend the national Constitution as to protect the women of all the States and Territories in the enjoyment of the right of suffrage on equal terms with men; which was ordered to lie on the table.

Mr. COCKRELL presented a petition of Local Assembly No. 107, Knights of Labor, of Missouri, praying certain legislation in regard to the hours of labor and the compensation of employés at the Government Printing Office; which was referred to the Committee on Printing.

Mr. GRAY presented a petition of citizens of Delaware, praying that a sufficient appropriation be made to complete the improvement of the navigation of Indian River, in Sussex County, Delaware; which was referred to the Committee on Commerce.

Mr. BECK presented the petition of 115 citizens of Wyoming Territory, praying for the continued coinage of the standard silver dollar and for certain other financial legislation; which was referred to the Committee on Finance.

Mr. DAWES presented the petition of George M. Stearns and other members of the bar of Western Massachusetts, praying for the establishing of terms of the United States courts in Springfield, in that State; which was referred to the Committee on the Judiciary.

REPORTS OF COMMITTEES.

Mr. HOAR. I am directed by the Committee on the Library, to whom was referred the bill (S. 1564) for the erection of a monument to the late Ulysses S. Grant, to report it favorably without amendment. I shall endeavor to call up the bill for action at an early day.

The PRESIDENT *pro tempore*. The bill will be placed on the Calendar.

Mr. MORGAN, from the Committee on Indian Affairs, to whom was referred the bill (S. 1101) to provide for allotments of lands in severalty to the Indians residing upon the Round Valley reservation, in the State of California, and granting patents therefor, and for other purposes, reported it without amendment.

Mr. HAMPTON, from the Committee on Military Affairs, to whom was referred the bill (S. 470) for a survey and estimate for a railroad from the mainland to Key West, Fla., and for a canal connecting the same with the Saint John's River, for military and naval purposes, submitted an adverse report thereon, and moved that the bill be indefinitely postponed.

Mr. CALL. I ask that the bill be placed on the Calendar.

The PRESIDENT *pro tempore*. The bill will be placed on the Calendar with the adverse report of the committee.

Mr. HAMPTON. I am instructed by the Committee on Military Affairs to report adversely on the petition of William C. Shimoneck, late a musician in the Third Regiment United States Infantry, asking that he may be retired from the service on pay, and ask that the petition be indefinitely postponed.

Mr. EDMUNDS. The ordinary entry in the Journal should be that the prayer of the petitioner be denied, instead of postponing the petition, I suggest to my friend.

The PRESIDENT *pro tempore*. That order will be made if there be no objection.

Mr. HAMPTON, from the Committee on Indian Affairs, to whom were referred the bill (S. 145) for the relief of James Bainter and the bill (S. 146) for the relief of George S. Comstock, submitted adverse reports thereon, and moved their indefinite postponement.

Mr. MANDERSON. I ask that the two bills just reported from the Committee on Indian Affairs be placed on the Calendar.

The PRESIDENT *pro tempore*. The bills will be placed on the Calendar with the adverse reports of the committee.

Mr. GRAY, from the Committee on Claims, to whom was referred the bill (S. 211) for the relief of Wetmore & Brother, of Saint Louis, Mo., reported adversely thereon.

Mr. COCKRELL. Let that bill be placed on the Calendar.

The PRESIDENT *pro tempore*. The bill will be placed on the Calendar with the adverse report of the committee.

Mr. PIKE, from the Committee on Claims, to whom was referred the bill (S. 472) for the relief of the American Board of Commissioners for Foreign Missions, Rev. Worcester Willey, and Esther Smith, reported it without amendment, and submitted a report thereon.

Mr. SHERMAN, from the Committee on Foreign Relations, submitted a report accompanied by a bill (S. 1568) to authorize Commander John W. Philip, United States Navy, to accept a silver pitcher tendered him by the Government of the United States of Colombia; which was read twice by its title.

Mr. PLATT, from the Committee on Patents, to whom was referred the bill (S. 244) for the relief of Mary F. Potts, reported it with amendments, and submitted a report thereon.

RELATIONS BETWEEN THE SENATE AND EXECUTIVE DEPARTMENTS.

Mr. EDMUNDS. I am instructed by the Committee on the Judiciary, to which was referred in executive session a letter of the Attorney-General, with authority to report in open session, to make a report, concluding with sundry resolutions, which I ask may be placed on the Calendar.

The PRESIDENT *pro tempore*. The Senator from Vermont, from the Committee on the Judiciary, reports certain resolutions. Does the Senator desire to have them read?

Mr. EDMUNDS. No, sir.

The PRESIDENT *pro tempore*. The resolutions will be placed on the Calendar.

Mr. EDMUNDS. The Senator from Alabama [Mr. PUGH] wishes to give a notice in reference to the report.

Mr. PUGH. On behalf of the minority of the committee from which the report has just been made, I desire to state that we knew nothing of the contents of the report until it was read to the committee this morning. The minority desire to prepare a report, in which they will present their views; and to enable them to do so we ask to have until Monday a week within which to prepare the report. We wish to have it now understood that the majority report and the resolutions accompanying it will not be called up for consideration until we get leave to file the minority report, and that the time given us to do so is not to extend beyond next Monday week.

Mr. DAWES. Can not we have the resolutions read so that everybody may see them in the RECORD?

The PRESIDENT *pro tempore*. The Senator from Massachusetts asks for the reading of the resolutions. They will be read.

The Chief Clerk read the resolutions.

The PRESIDENT *pro tempore*. The request of the minority of the committee will be considered as granted, if there be no objection.

Mr. BUTLER. Is there a report accompanying the resolutions?

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

Mr. BUTLER. Will the report be printed?

Mr. EDMUNDS. Certainly; it will be printed under the rule. I ask that the report of the committee, as well as the resolutions which have been read, be printed in the RECORD, as it will be in demand.

The PRESIDENT *pro tempore*. If there be no objection that order will be made.

The report is as follows:

Mr. EDMUNDS, from the Committee on the Judiciary, submitted the following report on the letter from the Attorney-General of the United States declining to transmit to the Senate copies of official records and papers concerning the administration of the office of the district attorney of the southern district of Alabama:

The Committee on the Judiciary, to which was referred a letter from the Attorney-General of the United States declining to transmit to the Senate copies of official records and papers concerning the administration of the office of the district attorney of the southern district of Alabama from January 1, 1885, to January 25, 1886, respectfully reports:

That on the 17th July, 1885, the President of the United States, pursuant to the provisions of section 1768 of the Revised Statutes, suspended George M. Duskin from the execution of the duties of the office of district attorney of said district by an order in the following words:

EXECUTIVE MANSION, *Washington, D. C., July* 17, 1885.

SIR: You are hereby suspended from the office of attorney of the United States for the southern district of Alabama, in accordance with the terms of section 1768, Revised Statutes of the United States, and subject to all provisions of law applicable thereto.

GROVER CLEVELAND.

To GEORGE M. DUSKIN, Esq.,
United States Attorney, Mobile, Ala.

And on the same day, pursuant to the same statute, designated John D. Burnett to perform the duties of such suspended officer in the mean time by a letter of authority in the words following:

GROVER CLEVELAND, *President of the United States of America,*
to all who shall see these presents, greeting:

Know ye, that by virtue of the authority conferred upon the President by section 1768 of the Revised Statutes of the United States, I do hereby suspend George M. Duskin, of Alabama, from the office of attorney of the United States for the southern district of Alabama until the end of the next session of the Senate; and I hereby designate John D. Burnett, of Alabama, to perform the duties of such suspended officer in the mean time, he being a suitable person therefor; subject to all provisions of law applicable thereto.

In testimony whereof I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand at the city of Washington, the 17th day of July, A. D. 1885, and of the Independence of the United States the one hundred and tenth.

[SEAL.] GROVER CLEVELAND.

By the President:

T. F. BAYARD,
Secretary of State.

On the 14th December, 1885, the Senate then being in session, the President nominated the same John D. Burnett to be attorney of the United States for the southern district of Alabama in the place of the said Duskin, suspended, in the following words:

"I nominate John D. Burnett, of Alabama, to be attorney of the United States for the southern district of Alabama, *vice* George M. Duskin, suspended.

"GROVER CLEVELAND."

This nomination was in due course referred to the Committee on the Judiciary.

Since the passage of the act of 2d March, 1867, "regarding the tenure of certain civil offices," it has been the practice of the Committee on the Judiciary whenever a nomination has been made proposing the removal from office of one person and the appointment of another to address a note to the head of the Department having such matters in charge (usually the Attorney-General), asking that all papers and information in the possession of the Department touching the conduct and administration of the officer proposed to be removed and touching the character and conduct of the person proposed to be appointed be sent to the committee for its information. This practice has through all administrations been carried on with the unanimous approval of all the members of the committee, although the composition of the committtee has been during this period sometimes of one political character and sometimes of another. In no instance, until this time, has the committee met with any delay or denial in respect of furnishing such papers and information, with a single exception, and in which exception the delay and suggested denial lasted for only two or three days.

The committee has thus hitherto been enabled to know the character and quality of the administration of the office in charge of the incumbent proposed to be removed as well as the character and quality of the person proposed to be appointed, so far as the papers in the Department could furnish information in regard thereto.

In the instance now particularly under consideration the committee, according to its standing course, on December 26, 1885, through its chairman, addressed a note to the Attorney-General in the same form and asking for the same papers and information that it had been accustomed to do. After sundry delays and explanations it became evident to the committee that it could not by this informal method obtain an inspection of the papers and documents in the Department of Justice bearing upon the subject. It accordingly, on the 25th of January, 1886, reported to the Senate for its adoption a resolution in the following words:

"*Resolved*, That the Attorney-General of the United States be, and he hereby is, directed to transmit to the Senate copies of all documents and papers that have been filed in the Department of Justice since the 1st day of January, A. D. 1885, in relation to the management and conduct of the office of district attorney of the United States of the southern district of Alabama."

which on the next day was adopted by the Senate without a division.

The Attorney-General, on the 1st day of February, 1886, sent to the Senate a communication in the following words:

DEPARTMENT OF JUSTICE, *January* 28, 1886.

The PRESIDENT *pro tempore of the Senate of the United States:*

I acknowledge the receipt of a resolution of the Senate, adopted on the 25th instant in executive session, as follows:

"*Resolved*, That the Attorney-General of the United States be, and he hereby is, directed to transmit to the Senate copies of all documents and papers that have been filed in the Department of Justice since the 1st day of January, A. D. 1885, in relation to the management and conduct of the office of district attorney of the United States of the southern district of Alabama."

In response to the said resolution the President of the United States directs me to say that the papers which were in this Department relating to the fitness of John D. Burnett, recently nominated to said office, having been already sent to the Judiciary Committee of the Senate, and the papers and documents which are mentioned in the said resolution and still remaining in the custody of this Department, having exclusive reference to the suspension by the President of George M. Duskin, the late incumbent of the office of district attorney of the United States for the southern district of Alabama, it is not considered that the public interest will be promoted by a compliance with said resolution and the transmission of the papers and documents therein mentioned to the Senate in executive session.

Very respectfully, your obedient servant,

A. H. GARLAND, *Attorney-General.*

This letter, although in response to the direction of the Senate that copies of any papers bearing on the subject within a given period of time be transmitted, assumes that the Attorney-General of the United States is the servant of the President, and is to give or withhold copies of documents in his office according to the will of the Executive and not otherwise.

Your committee is unable to discover, either in the original act of 1789 creating the office of Attorney-General or in the act of 1870 creating the Department of Justice, any provision which makes the Attorney-General of the United States in any sense the servant of or controlled by the Executive in the performance of the duties imputed to him by law or the nature of his office. It is true that in the creation of the Department of State, of War, and of the Navy it was provided in substance that these Secretaries should perform such duties as should from time to time be enjoined upon them by the President, and should conduct the business of their Departments in such manner as the President should direct, but the committee does not think it important to the main question under consideration that such direction is not to be found in the statute creating the Department of Justice, for it is thought it must be obvious that the authority intrusted by the statute in these cases to the President to direct and control the performance of duties was only a superintending authority to regulate the performance of the duties that the *law* required, and not to require the performance of duties that the laws had not devolved upon the heads of Departments, and not to dispense with or forbid the performance of such duties according as it might suit the discretion or the fancy of the Executive. The Executive is bound by the Constitution and by his oath to take care that the laws be faithfully executed, and he is himself as much bound by the regulations of law as the humblest officer in the service of the United States, and he can not have authority to undertake to faithfully execute the laws, whether applied to his own special functions or those of the Departments created by law, otherwise than by causing, so far as he lawfully may and by lawful methods, the heads of Departments and other officers of the United States to do the duties which the law, and not his will, has imputed to them.

The important question, then, is whether it is within the constitutional competence of either House of Congress to have access to the official papers and documents in the various public offices of the United States created by laws enacted by themselves. It may be fully admitted that, except in respect of the Department of the Treasury, there is no statute which commands the head of any Department to transmit to either House of Congress on its demand any information whatever concerning the administration of his Department; but the committee believes it to be clear that from the very nature of the powers intrusted by the Consitution to the two Houses of Congress it is a necessary incident that either House must have at all times the right to know all that officially exists or takes place in any of the Departments of the Government. So perfectly was this proposition understood before and at the time of the formation of the Consitution, that the Continental Congress, before the adoption of the present Constitution, in establishing a department of foreign affairs and providing for a principal officer thereof, thought it fit to enact that all books, records, and other papers in that office should be open to the inspection of any *member* of Congress, provided that no copy should be taken of matters of secret nature without special leave of Congress. It was not thought necessary to enact that the Congress itself should be entitled to the production and inspection of such papers, for that right was supposed to exist in the very nature of things; and when under the Constitution the Department came to be created, although the provision that each individual member of Congress should have access to the papers was omitted (evidently for reasons that can now be quite well understood) it was not thought necessary that an affirmative provision should be inserted giving to the Houses of Congress the right to know the contents of the public papers and records in the public offices of the country whose laws and whose offices they were to assist in creating.

It is believed that there is no instance of civilized governments having bodies representative of the people or of states in which the right and the power of those representative bodies to obtain in one form or another complete information as to every paper and transaction in any of the executive departments thereof does not exist even though such papers might relate to what is ordinarily an executive function, if that function impinged upon any duty or function of the representative bodies. A qualification of this general right may under our Constitution exist in the case of calls by the House of Representatives for papers relating to treaties, &c., under consideration and not yet disposed of by the President and Senate.

The committee feels authorized to state, after a somewhat careful research, that within the foregoing limits there is scarcely in the history of this Government until now any instance of a refusal by a head of a Department, or even of the President himself, to communicate official facts and information as distinguished from private and unofficial papers, motions, views, reasons, and opinions, to either House of Congress when unconditionally demanded. Indeed the early Journals of the Senate show great numbers of instances of directions to the heads of Departments, as of course, to furnish papers and reports upon all sorts of affairs both legislative and executive.

The instances of requests to the President and commands to the heads of Departments by each House of Congress from those days until now for papers and information on every conceivable subject of public affairs are almost innumerable; for it appears to have been thought by all the Presidents who have carried on the Government now for almost a century that even in respect of requests to them, an independent and co-ordinate branch of the Government, they were under a constitutional duty and obligation to furnish to either House the papers called for, unless, as has happened in very rare instances, when the request was coupled with an appeal to the discretion of the President in respect of the danger of publicity to send the papers if in his judgment it should not be incompatible with the public welfare.

Even in times of the highest party excitement and stress, as in 1826 and 1844, it did not seem to occur to the Chief Executive of the United States that it was possible that any official facts or information existing either in the Departments created by law or within his own possession could, save as before stated, be withheld from either of the Houses of Congress, although such facts or information sometimes involved very intricate and delicate matters of foreign affairs, as well as sometimes the history and conduct of officers connected with the administration of affairs. Thus in 1826, when the Senate thought fit to pass a resolution that in considering whether the United States should be represented in the congress of Panama the Senate ought to act with open doors, unless the publication of the documents referred to in debate would be prejudicial to existing negotiations, and that the President be requested to inform the Senate whether such objection existed to the publication of the documents communicated by the Executive, and, if so, to specify the parts which would for that reason be objectionable. The President replied that all the communications had been made to the Senate in confidence, and proceeded to say: "Believing that the established free, confidential communication between the Executive and the Senate ought for the public interest to be preserved unimpaired, I deem it my indispensable duty to leave to the Senate itself the decision of the question involving a departure, hitherto, so far as I am informed, without example, from that usage, and upon the motives for which, not being informed of them, I do not feel myself competent to decide;" and although in this instance there was no question in regard to the furnishing documents or papers and the question was merely whether the Executive was bound to give an opinion to the Senate in such a case, twenty out of the forty-four Senators present appear to have voted on the yeas and nays for the proposition that the President in such a case was bound to give such an opinion to the Senate. Among those twenty were Senators Benton, Cobb, Dickerson, Hayne, King, Macon, Randolph, Van Buren, and Woodbury, and by a vote of 27 to 16 the Senate declared that it had "the right to publish communications so made and discuss the same with open doors without the consent of the President when, in their opinion, the public interest may require such publication and such discussion."

In 1842 the House of Representatives charged the select committee to inquire into the cause, manner, and circumstances of the removal of one H. H. Sylvester, late a clerk in the Pension Office, with power to send for persons and papers. On the 27th of July, 1842, Mr. Garrett Davis reported to the House upon the subject, stating that the committee had requested the Secretary to furnish for its use a copy of the charges against Sylvester and a copy of the order dismissing him and copies of any other papers in the Department touching his removal. He quotes from the response of the Secretary as follows:

"The letter dismissing Mr. Sylvester was made a public record of the Department, and I therefore transmit a copy of it herewith, agreeably to your request. There is no other paper of the description specified in your request or relating to the subject on the files of this Department, nor is there any in my possession which is not of a confidential character. The faithful discharge of the duties devolving upon heads of Departments frequently renders it of essential im-

portance to preserve confidential communications he has received as such, and private honor as well as public policy forbids that a pledge thus given should be violated."

Everything in the files was produced without question. The House adjourned soon after this report, and no final action was taken upon the subject. This report is so valuable as a discussion of the general questions connected with patronage that the committee think it fit to append it to this report (Appendix B). It will be seen in this instance that there was no attempt on the part of the Secretary to deny the right of the House to have the inspection of all papers in the files of the Department, but he only put himself upon the ground that private and confidential communications that were not on the files of the Department ought not to be disclosed. On the 18th May, 1844, the Senate in executive session adopted a resolution directing the Secretary of the Treasury to communicate whether any and what sums of money had been drawn from the Treasury to carry into effect the orders of the War and Navy Departments made since the 12th April of that year for increasing the military force on the frontiers of Texas, &c. On 28th of same month President Tyler sent a message to the Senate stating that the Secretary had communicated the Senate resolution to him. He then says:

"While I can not recognize this call thus made on the head of the Department as consistent with the constitutional rights of the Senate when acting in its executive capacity, which in such case can only properly hold correspondence with the President of the United States, nevertheless from an anxious desire to lay before the Senate all such information as may be necessary to enable it, with full understanding, to act upon any subject which may be before it, I herewith transmit communications which have been made to me by the Secretaries of War and Navy Departments in full answer to the resolution of the Senate."

In this instance it will be seen that there is no intimation of a denial of the right of either House of Congress in the exercise of its general jurisdiction to have knowledge of papers in and acts of a Department of the Government, but only a claim that when such papers are wanted in the "executive capacity" of the Senate they ought to be called for from the President direct. It must be supposed that President Tyler was ignorant of the fact that such commands to heads of Departments had been made by the Senate continuously from the foundation of the Government down to that time, and that those commands had been obeyed, or else he must have supposed that an unbroken and unchanged practice of the Senate under the Constitution for more than half a century had been under a plainly erroneous impression of its rights not only by itself, but by the Executive Departments of the Government. It would seem to be too clear for argument that whether the Senate chooses to conduct its business with closed doors or open doors is a matter entirely for its consideration and can have no relation to the obligation of the Executive Departments of the Government to respond to its call for papers or information.

On the 22d May of the same year the Senate, on motion of Mr. Benton, requested the President to inform the Senate whether any engagement or agreement had taken place between the President of the United States and the president of Texas in relation to naval or military aid, or any other aid, and, if so, to communicate all the particulars and copies of the same, if in writing, and a copy of all communications on the subject; which information was furnished.

On 28th of May of the same year a similar resolution was passed calling for a copy of the instructions given in 1829 by President Jackson through the Secretary of State to the United States minister at Mexico on the subject of Texas; which was furnished.

On the same 28th of May, 1844, on motion by Mr. Benton, the Senate called on the President for "the whole of the private letter from London, with its date, quoted by the American Secretary of State" in a letter of his to the United States chargés d'affaires in Texas, together with the name of the writer of the private letter. Which information was supplied without protest.

Numerous other instances occurred about the same time of similar requests and similar compliances too numerous indeed to justify insertion in this report.

The fact that the executive Journals of the Senate have only been made public and printed down to the year 1828, and the written Journals since that time are not indexed, makes it difficult to find all the instances of calls on the President and heads of Departments for information and papers that have occurred since that date, but the committee feel safe in stating from the research it has made that the course of the Government has been constant and continuous and unchanged from the beginning until now, and that, in its belief, no instance within the principles and limitations before stated has occurred in which calls for official papers and files addressed either to the President in the form of requests or to the heads of Departments in the form of commands which have not been complied with, but it has sometimes happened where the request to the President was merely a conditional one, leaving it to his discretion whether the papers should be communicated or not, that they have not been communicated.

On the 6th of December, 1866, when there was much irritation existing between the Houses of Congress and the Executive, the House of Representatives adopted a resolution directing the Postmaster-General to communicate to the House information of all the postmaters removed from office between the 28th of July, 1866, and said 6th of December, together with the reasons or causes of such removals, and the names of all persons appointed in their places, &c. This command was, on the 18th of February, 1867, complied with by the Postmaster-General without in the least degree questioning the right of the House of Representatives to have that information.

Two instances occurring during the administration of President Hayes, under circumstances when there would be naturally a disposition on the part of the Executive to stand upon his constitutional rights, may be of interest. On the 9th of January, 1879, the Senate passed a resolution directing the Secretary of the Treasury to transmit charges on file against the supervising inspector-general of steamboats and the papers connected therewith; which was also promptly complied with.

At the same session a similar resolution called for papers on file in the Treasury Department "showing why Lieutenant Devereux was removed from the revenue-marine service," which was also complied with.

But it would seem to be needless to array further precedents out of the vast mass that exists in the Journals of the Houses covering probably every year of the existence of the Government. The practical construction of the Constitution in these respects by all branches of the Government for so long a period would seem upon acknowledged principles to settle what are the rights and powers of the two Houses of Congress in the exercise of their respective duties covering every branch of the operations of the Government, and it is submitted with confidence that such rights and powers are indispensable to the discharge of their duties and do not infringe any right of the Executive, and that it does not belong to either heads of Departments or to the President himself to take into consideration any supposed motives or purposes that either House may have in calling for such papers, or whether their possession or knowledge of their contents could be applied by either House to useful purposes.

The Constitution of the United States was adopted in the light of the well-known history that even ministers of the English Crown were bound to lay before Parliament all papers when demanded on pain of the instant dismissal of such ministers on refusal, through the rapid and effectual instrumentality of a vote of want of confidence. And the Continental Congress had for more than ten years itself governed the country and had control of all papers and records, not by reason of anything expressed in the Articles of Confederation, but by reason of the intrinsic nature of free government. The jurisdiction of the two Houses of Congress to legislate and the power to advise or withhold advice concerning treaties and appointments necessarily involves the jurisdiction to officially know every step and action of the officers of the law and all the facts touching their conduct in the possession of any Department or even in the possession of the President himself. There was no need to express such a power, for it was necessarily an inherent incident to the exercise of the powers granted.

It will be observed that in this instance the call for papers covered a period of more than six months, during which the regular incumbent of the office had been discharging its duties, and also the further period of more than six months, during which the person designated to discharge those duties on suspension of the officer had been acting, and that that person is the one now proposed to be appointed to the place.

It will also be observed that the President has not undertaken to remove the incumbent of the office, but has only, in expressed and stated pursuance of the statutes on the subject, suspended that officer, and that the same statutes expressly provide that such officer shall not be removed without the advice and consent of the Senate and that, if that advice and consent be not given, the incumbent would (unless his regular term of office should have previously expired) at the close of this session of the Senate be restored to the lawful right to exercise its duties. The Senate, then, by this nomination is asked to advise and consent to the removal of the incumbent and to the appointment of the candidate proposed for his place. In exercising its duty in respect of these questions it is plain that the conduct and management of the incumbent is a matter absolutely essential to be known to the Senate, in order that it may determine whether it can rightly advise his removal or rightly leave him to resume the functions of his office at the end of its session, as well as whether the candidate proposed has in the exercise of the office under his designation so conducted himself as to show that he is competent and faithful. Indeed it may be stated with entire accuracy that even in the case of a vacancy in an office and the proposed filling of such vacancy it is important for the Senate to know the previous condition and management of the office, the state of its affairs; whether there have been cases of misconduct or abuse of powers, the embezzlement of money, and indeed all the circumstances bearing upon its administration, in order that it may judge of the suitableness of appointing a particular person to take up its duties with reference to the difficulties that may exist in its affairs, the state of the accounts, and everything concerning its administration, so as to measure the fitness and competency of the particular candidate to meet the emergencies of the case.

It appears from the table herewith submitted (Appendix A) that out of about fourteen hundred and eighty-five nominations sent to the Senate during the first thirty days of this session, that is from the first Monday in December, 1885, to the 5th of January, 1886, six hundred and forty-three were nominations of persons proposed to be appointed in the place of officers suspended and proposed to be removed (and of whom it is known that some are soldiers), and in respect of whom the action of the Senate in advising and consenting to the proposed appointment would effect a removal and in respect of whom the failure of the Senate to advise and consent to such removals and appointments the effect would be to restore them to the possession of their offices at the end of the session except in cases in which the terms of some of them should have previously expired.

Is it not desirable and necessary to the proper performance of its duties and in every aspect of the public interest that the simple facts in regard to what the conduct of these officials as well as in regard to what the conduct of the persons designated to perform their duties has been should be made known to the Senate? Have these suspended officials or any considerable number of them been guilty of misconduct in office or of any personal conduct making them unworthy to be longer trusted with the performance of duties imposed upon them by law? If they have, it would seem to be clear that every consideration of public interest and of public duty would require that the facts should be made known, in order that the Senate may understandingly and promptly advise their removal, and that the most careful scrutiny should be had in respect of selecting their successors, as well as in respect of providing better means and safeguards by legislation for administering the laws of the United States.

Such information, it would seem, the Executive is determined the Senate shall not possess, for the alleged reason that it might enable the Senate to understand what circumstances connected with the faithful execution of the laws induced the President to exercise the discretion the statute confers upon him to suspend them and ask the Senate to unite with him in their removal from office. A similar result would follow in respect of the knowledge of any and every step in the transactions of the Government; for instance, the President, as Commander-in-Chief of the Army, has as large discretion as he has in the suspension of civil officers, but on the theory suggested by the Attorney-General both the President and the Secretary of War would be justified in refusing to either House of Congress copies of papers and documents relating to the administration of the Department of War and the disposition of the troops, &c., for the reason that, the facts being disclosed, the two Houses of Congress might be enabled to comprehend the reasons and motives actuating the Executive in his conduct as Commander-in-Chief.

Reduced to its simplest form the proposition would be that neither the President nor the head of a Department is bound to communicate any official papers to either House of Congress which might draw into question in the minds of its members or of the people the wisdom or fairness of his acts. But the committee is of the opinion that in matters of this nature the Senate has little concern with the reasons or motives either of the heads of Departments or of the Executive, but it has large concern that its own reasons and grounds of action should rest upon and be drawn from the solid truth. The Senate, if it does its duty and preserves the independence that belongs to it, must act upon its own reasons and judgment and not upon those of the President, however valuable they may be. If the truth regarding the conduct of these officials and designated persons were known, the question for the Senate would be not what were the reasons or motives of the Executive, but whether the facts themselves, as they took place, would furnish it with sufficient reason for giving or withholding its advice and consent to the proposed changes.

Another view of the matter is not, as the committee thinks, without large importance to the public interest at this time. The President, in his last annual message and in connection with the subject of removing the ordinary administration of the laws and the selection of public agents from the arena of mere party politics, stated:

"I am inclined to think that there is no sentiment more general in the minds of the people of our country than a conviction of the correctness of the principle upon which the law enforcing civil-service reform is based. In its present condition the law regulates only a part of the subordinate public positions throughout the country. It applies the test of fitness to applicants for these places by means of a competitive examination, and gives a large discretion to the commissioners as to the character of the examination and many other matters connected with its execution. Thus the rules and regulations adopted by the commission have much to do with the practical usefulness of the statute and with the results of its application.

"The people may well trust the commission to execute the law with perfect fairness and with as little irritation as is possible. But of course no relaxation of the principle which underlies it, and no weakening of the safeguards which surround it can be expected. Experience in its administration will probably suggest amendment of the methods of its execution, but I venture to hope that we shall never again be remitted to the system which distributes public positions purely as rewards for partisan service. Doubts may well be entertained whether our Government could survive the strain of a continuance of this sys-

tem, which upon every change of administration inspires an immense army of claimants for office to lay siege to the patronage of Government, engrossing the time of public officers with their importunities, spreading abroad the contagion of their disappointment, and filling the air with the tumult of their discontent.

"The allurements of an immense number of offices and places exhibited to the voters of the land, and the promise of their bestowal in recognition of partisan activity, debauch the suffrage and rob political action of its thoughful and deliberative character. The evil would increase with the multiplication of offices consequent upon our extension, and the mania for office-holding, growing from its indulgence, would pervade our population so generally that patriotic purpose, the support of principle, the desire for the public good, and solicitude for the nation's welfare, would be nearly banished from the activity of our party contests, and cause them to degenerate into ignoble, selfish, and disgraceful struggles for the possession of office and public place.

"Civil-service reform enforced by law came none too soon to check the progress of demoralization.

"One of its effects, not enough regarded, is the freedom it brings to the political action of those conservative and sober men who, in fear of the confusion and risk attending an arbitrary and sudden change in all the public offices with a change of party rule, cast their ballots against such a chance.

"Parties seem to be necessary, and will long continue to exist; nor can it be now denied that there are legitimate advantages, not disconnected with office-holding, which follow party supremacy. While partisanship continues bitter and pronounced, and supplies so much of motive to sentiment and action, it is not fair to hold public officials, in charge of important trusts, responsible for the best results in the performance of their duties, and yet insist that they shall rely, in confidential and important places, upon the work of those not only opposed to them in political affiliation, but so steeped in partisan prejudice and rancor that they have no loyalty to their chiefs and no desire for their success. Civil-service reform does not exact this, nor does it require that those in subordinate positions who fail in yielding their best service, or who are incompetent, should be retained simply because they are in place. The whining of a clerk discharged for indolence or incompetency, who, though he gained his place by the worst possible operation of the spoils system, suddenly discovers that he is entitled to protection under the sanction of civil-service reform, represents an idea no less absurd than the clamor of the applicant who claims the vacant position as his compensation for the most questionable party work.

"The civil-service law does not prevent the discharge of the indolent or incompetent clerk, but it does prevent supplying his place with the unfit party worker. Thus in both these phases is seen benefit to the public service. And the people who desire good government, having secured this statute, will not relinquish its benefits without protest. Nor are they unmindful of the fact that its full advantages can only be gained through the complete good faith of those having its execution in charge. And this they will insist upon."

This highly important and valuable official communication in the presence of six hundred and forty-three suspensions from office would seem to lead to the conclusion that this number of the civil officers of the United States selected to be suspended and removed had been so derelict in the performance of their functions or guilty of such personal misconduct as to put them in the category of unfaithful public servants deserving dismissal by the President and the Senate and the condemnation of their countrymen. In such a state of things we think that the common sense of justice and fair play that is so much prized, as we believe, by the people of the United States would require that in some way this large body of men should have an opportunity to know the substance of their alleged misdoings in order that they may either admit their guilt or, denying it, explain their conduct, or show that the accusations against them were selfish and wicked pretexts, and set up for the mere purpose of obtaining their suspension and ultimate dismissal from office in order that others less capable and worthy might at once receive the honors and emoluments of their places. It is known to every Senator that, so far as the Senate has had to do both with removals and appointments, it has for a great number of years been its practice, when any officer or person was before it for removal or appointment against whom any serious accusation has been made which would, if true, influence the action of the Senate in the case, to cause the person concerned to be informed of the substance of the complaint against him and give him an opportunity to defend himself; and it is also known that at this very session a very considerable number of instances of that kind have occurred and are daily occurring. If the Senate is proceeding upon a false principle in such instances, it is high time that its course in these respects should be reversed, and that hereafter it should act upon such accusations without any knowledge other than that derived from the accusers, and leave the victims of such injustice to console themselves with the reflection that all parties are now engaged in an effort to reform the Government.

Why should the facts, as they may appear from the papers on file, be suppressed? Is it because that, being brought to light, it would appear that malice and misrepresentation and perjury are somewhat abundant, or merely that faithful and competent and honorable officers have been suspended and are proposed to be removed, under the advice and consent of the Senate, in order that places may be found for party men because they are party men or are the special objects of party favor?

How does it happen in this time of suggested reform and purer methods in government that for the first time it is thought important that the historic and administrative facts relating to the official and personal conduct of officers of the United States should be withheld and that the administration of the Government should proceed with a secrecy and mystery as great as in the days of the Star Chamber?

The high respect and consideration that the Senate must always have for the executive office would make it reluctant to adopt either theory. But at present the impenetrable veil remains, and as the committee is unable to suggest any other solution of the riddle, it must leave it until this veil is lifted and the operations of the Government shall again be known.

In this state of things the committee feels it to be its clear duty to report for the consideration of the Senate and for adoption the following resolutions, namely:

Resolved, That the foregoing report of the Committee on the Judiciary be agreed to and adopted.

Resolved, That the Senate hereby expresses its condemnation of the refusal of the Attorney-General, under whatever influence, to send to the Senate copies of papers called for by its resolution of the 25th of January and set forth in the report of the Committee on the Judiciary as in violation of his official duty and subversive of the fundamental principles of the Government and of a good administration thereof.

Resolved, That it is, under these circumstances, the duty of the Senate to refuse its advice and consent to proposed removals of officers the documents and papers in reference to the supposed official or personal misconduct of whom are withheld by the Executive or any head of a Department when deemed necessary by the Senate and called for in considering the matter.

Resolved, That the provision of section 1754 of the Revised Statutes declaring—

"That persons honorably discharged from the military or naval service by reason of disability resulting from wounds or sickness incurred in the line of duty shall be preferred for appointments to civil offices, provided they are found to possess the business capacity necessary for the proper discharge of the duties of such office ought to be faithfully and fully put in execution, and that to remove, or to propose to remove, any such soldier whose faithfulness, competency, and character are above reproach and to give place to another who has not rendered such service is a violation of the spirit of the law and of the practical gratitude the people and Government of the United States owe to the defenders of constitutional liberty and the integrity of the Government."

All of which is respectfully submitted.

GEO. F. EDMUNDS.
JOHN J. INGALLS.
S. J. R. McMILLAN.
GEO. F. HOAR.
JAMES F. WILSON.
WM. M. EVARTS.

APPENDIX A.

The following statement will show the number of suspensions by the President of the United States as indicated by the executive nominations delivered to the Senate during the first thirty days of the present session, being from the first Monday in December, 1885, to January 5, 1886, both dates inclusive:

Whole number of messages received during the time	1,485
The judiciary:	
Chief-justices of Territories	3
Associate justices of Territories	7
United States district attorneys	28
United States marshals	24
Total	62
Finance:	
Assistant treasurer	1
Superintendent of Mint	1
Coiner of Mint	1
Assayer of Mint	5
Melter and refiner	2
Collectors internal revenue	61
Total	71
Director of Mint (removed)	1
Commerce:	
Collectors of customs	45
Appraisers of merchandise	20
Surveyors of customs	12
Consuls	57
Consuls-general	5
Examiners of drugs, &c	4
Naval officers of customs	3
Supervising inspectors of steam-vessels	5
Total	151
Public lands:	
Surveyors-general	7
Receivers public money	20
Registers land offices	24
Principal clerk of surveys General Land Office	1
Total	52
Territories:	
Governors Territories	2
Secretaries Territories	2
Total	4
Indian affairs:	
Indian inspectors	3
Indian agents	13
Total	16
Post-Offices and Post-Roads:	
Postmasters	278
Foreign Relations:	
Secretaries of legations	3
Pensions:	
Pension agents	6
Grand total of suspensions	643
Grand total of removal	1

APPENDIX B.

[House Report No. 945, Twenty-seventh Congress, second session. Removal from office of Henry H. Sylvester. To accompany Senate bill No. 549. July 27, 1842; laid upon the table.]

Mr. Garrett Davis, from the select committee appointed on the subject, made the following report:

The select committee charged by the House to inquire into "the cause, manner, and circumstances of the removal of Henry H. Sylvester, late a clerk in the Pension Office, with power to send for persons and papers, and to report by bill, resolution, or otherwise," have performed the duties assigned to them, and beg leave to report as follows:

Mr. Sylvester having been removed by Hon. John C. Spencer, Secretary of War, your committee thought it was proper to notify him of their proceedings, and therefore directed its chairman to inform him of the readiness of the committee to receive any communication which he might desire to make to it, to summon and take the testimony of any witnesses he might wish to have examined, and to invite him to attend its meetings. In reply, the honorable Secretary informed the chairman that he did "not desire to make any communication to the committee, or to have any witnesses summoned by it, or to attend its meetings."

The committee then made a request in writing of the Secretary to furnish for its use "a copy of the charges preferred against Henry H. Sylvester; also a copy of the order or letter dismissing him from office, and copies of any other papers in the Department touching his removal."

In his response the Secretary says: "The letter dismissing Mr. Sylvester was made a *public record* of the Department, and I therefore transmit a copy of it herewith agreeably to your request. There is no other paper of the description specified in your request, or relating to the subject, on the files of this Department, nor is there any in my possession which is not of a confidential character." "The faithful discharge of the duties devolved upon the heads of Departments frequently renders it of essential importance to *preserve* as confiden-

tial communications made and received as such, and private honor as well as public policy forbids that a pledge thus given should be violated."

This reply of the honorable Secretary evinces somewhat more of interest in this proceeding; and, though he argues his positions with great earnestness, your committee are constrained to protest against them, as unjust, impolitic, and immoral. What are they, but that the secret charges of concealed informers, however false and calumnious in fact, and from whatever selfish, impure, and dishonorable motives made, even after they have effected the nefarious purpose of removing a faithful officer, who, indeed, may be above all exception, officially and personally, are still of so important and sacred a character that "private honor as well as public policy" forbids that they should be revealed to a committee of the House, raised for the purpose of investigating the cause of the removal of the *particular officer*.

Are we under a despotism, where the best officers of the Government are to be struck down—by, they know not whom, and for, they know not what? And does the honorable Secretary imagine that he is clothed with the authority and executing the functions of a Fouché? That the House of Representatives—the grand inquest of the nation, invested by the Constitution with the power to impeach every officer of the Government, and consequently to supervise all their official acts—is to be told, by a Secretary, that the causes and information upon which he bases his official conduct are of too much public interest and of too confidential a character to be disclosed to it? And this, too, when such information may be unmitigated falsehood, and when this official action involves the oppression of a subordinate and malversation in office. The committee do not doubt the power and the right of Congress, and of the House of Representatives, to rend the veil that covers these transactions in the Executive Departments, to explore their most hidden recesses, and to drag to the light, and hold up to the nation every such case, in all its revolting deformity of untruth, tyranny, and corruption; but it preferred the position assumed by the Secretary should remain undisturbed, that its enormity might be the more striking, when examined in connection with the facts and circumstances attending the removal of Sylvester.

The copy of the letter dismissing Sylvester, as transmitted by the Secretary of War to the committee, is as follows:

"WAR DEPARTMENT, *April* 9, 1842.

"SIR: From and after the 10th instant your services as a clerk in the office of the Commissioner of Pensions will be dispensed with.

"Your obedient,

"JOHN C. SPENCER.

"Mr. HENRY SYLVESTER."

The committee then proceeded to take the testimony, in writing, of sundry witnesses, which accompanies this report, and the substance of which is: That on Wednesday, the 6th of April last, Mr. Spencer summoned Sylvester to appear before him, upon the charge that he had, on the Monday succeeding the confirmation, by the Senate, of the nomination of Powell to the coasulship to Rio de Janeiro, in a public company expressed his belief that the gamblers had bribed the Secretary of State to procure the nomination of Powell.

Sylvester denied the truth of this charge, and added that this imputation upon Mr. Webster had been the subject of general remark and conversation in this city. Whereupon Mr. Spencer observed to Sylvester that he had nothing further at present, and if he should have thereafter Sylvester should hear from him again. On the succeeding Saturday Sylvester was informed by a messenger in the Department that the Secretary had sent to the Pension Office for him after office hours the preceding evening. He immediately went to Mr. Spencer's office and was informed that he was out. Sylvester returned in about two hours and requested the chief clerk to inform Mr. Spencer that in obedience to the message sent him he was in attendance. The chief clerk stepped into the Secretary's room, and after a few minutes returned and informed Sylvester that the Secretary did not wish to see him, and thereupon handed him the letter by which he was dismissed from his place. It is proven that on the preceding Sunday morning Powell's appointment and the slander against Mr. Webster in connection with it were the topics of conversation among several persons, of whom Sylvester was not one, and early the next morning [Monday], to use the expressive phrase of a witness, "were in the mouth of everybody."

Sylvester having learned that Hon. Daniel Webster had procured his dismissal, upon the allegation that he had made or indorsed the calumny against him in relation to the nomination of Powell, and being informed by a friend that the President had said if he would satisfy Mr. Webster he should be reinstated or otherwise provided for, wrote a letter to Hon. Mr. Bates, of the Senate, in which he denied ever having made this immputation against Mr. Webster, and averring that, on the contrary, he had several times, and whenever he had conversed upon the subject, defended the Secretary of State against it. He procured written statements from four gentlemen, showing that such had been his exculpation of Mr. Webster, in conversation with them, severaly, the day preceding and the day when he was said to have made the charge; and he procured Mr. Bates to wait on Mr. Webster and present to him as well those statements as his own letter to Mr. Bates. Mr. Webster declined to read these papers, and expressed his full belief in the truth of the information, which he said he had received, that Sylvester had made the charge against him.

The committee have examined Sylvester, and he swears that he never made, nor intended to make, any such imputation against Mr. Webster, but, on the contrary, upon the faith of information which he had obtained, he repeatedly, and whenever he spoke upon the snbject, defended him against it, and *all improper* conduct in relation to the nomination of Powell.

William A. Williams proves that on the Sunday morning succeeding the confirmation by the Senate of Powell he and several others were expressing their surprise at the nomination, and some one having remarked that "Mr Webster knew how it was done," Sylvester denied that Mr. Webster had anything to do with the nomination.

George W. Crump, chief clerk in the Pension Office; John T. Cochran, a clerk in the War Department, and Henry M. Morfit, esq., prove, that early on the next day (Monday), being the day on which Sylvester was said to have used the language concerning Mr. Webster for which the Secretary of War had arraigned him, in separate conversations with each of them, Sylvester had expressly exonerated and defended Mr. Webster against this charge.

Upon a deliberate consideration of this branch of the testimony, your committee are altogether satisfied that Sylvester was innocent of having made or indorsed the calumny against Mr. Webster. His explicit denial and the evidence he adduced, and which established reasonably the negative, ought to have satisfied both Mr. Spencer and Mr. Webster that he was guiltless; and his dismissal by the Secretary of War, for this cause, and in the manner of it, was unjust, capricious, and oppressive treatment.

As an officer, Sylvester was experienced and capable, assiduous, and faithful; as a man, he was modest, respectful, honorable, and moral; as a political partisan, he was neither noisy, obtrusive, nor intolerant. In all these points he might well be held up as an example to his superiors in place. The testimony by which his high personal and official character is sustained is abundant and most satisfactory. It is given by General Eaton, a former Secretary of War; by General Parker, chief clerk in the War Department; by Colonel Edwards, the Commissioner of the Pension Bureau, and by Crump, Cochran, Rice, and Evans, clerks of the War Department. These men have known Sylvester long and intimately, and, at the peril of their places, in their testimony they do him justice, though some of them seemed to feel that, for this cause, they too might be victimized. They all know full well that the most perfect knowledge and attentive performance of the duties of their offices, the greatest fidelity to the Government and the country, the most respectful deportment to their superiors, and the utmost rectitude of conduct and character, when connected with any degree of independence of political sentiment, however quietly and unobstrusively maintained, give no assurance of continuance in place. Your committee know no portion of the American population which is more oppressed and enslaved in will and spirit than the subordinates in the Executive Departments; none among whom there is more mental suffering, arising from a constant dread of being visited with the petty proscription of some small tyrant, "clothed with a little brief authority," by which they and their families are to be deprived of their support. It was the duty of Mr. Spencer, and would have been his pride had he been animated by sentiments of justice and magnanimity, to have protected such a subordinate as Sylvester.

It would seem quite improbable that the avowed cause, denied and refuted as it was, upon which the two Secretaries professed to act, could have rendered the ire of Mr. Webster against Sylvester so implacable. He attributes the deep resentment of the Secretary of State to these transactions. The brother-in-law of Sylvester (the Hon. Mr. Hubbard, of New Hampshire) became the security of Mr. Webster, some few years since, to one of the banks in this city, for upward of $3,000; and during the last summer, with a view to meet a part of the debt, Mr. Hubbard drew upon Mr. Webster for a sum of money in favor of Sylvester, and requested him to collect and apply it according to instructions. Sylvester undertook this commission for his kinsman, and, by note, advised Mr. Webster that he held such a draft.

In reply, the honorable Secretary of State requested to see Sylvester upon this subject at his office. The latter attended accordingly, and yet a second and a third time, before he could obtain an interview. Mr. Webster then evinced his displeasure by discourteous and uncivil conduct, neither responding to the ordinary salutation on the part of Sylvester, nor asking him to take a seat. Some time afterward Mr. Hubbard inclosed Sylvester another draft for a small amount on Mr. Webster, and importuned him to collect it. Declining to expose himself again to such treatment as he had previously received from Mr. Webster, Sylvester indorsed it and inclosed it in a note to him with a request of payment, but never heard afterward of the draft or the money. Sylvester communicated these facts to Mr. Hubbard; and in December last he was directed by him to hand Mr. Webster's note over to Mr. Morfit, an attorney, for collection, with a proposition that if Mr. Webster would pay $1,000 the remainder might run for a specified time, otherwise suit to be brought upon it. An arrangement was at length adjusted by which Mr. Webster was to pay $1,000 on the 1st of January last at the Commercial Bank of Boston, and he accordingly drew for that amount in favor of Hubbard: but he neither had nor placed any funds in bank to meet his paper, and at maturity it was dishonored. Sylvester says that he spoke freely of these matters; and of this, he doubts not, Mr. Webster was informed.

But whatever other reasons may have operated in the removal of Sylvester, it is not to be doubted that the ordinary one of making a place for a political friend and partisan had its full force. His successor is Mr. F. H. Davidge, whose name had been before the President for an appointment since the 4th of March, 1841. John B. Jones, editor of the Madisonian, proves that Mr. Davidge had been writing for his paper, and that some of his contributions were on hand when he received this appointment and were afterward inserted; but that the President then requested him to dispense with the further services of Mr. Davidge as a writer for the Madisonian, which he did. Here is the mode by which office-seekers qualify themselves for places under this administration. They come to this city and have their names thrown before the President for an appointment; they commence writing for the Madisonian, under his surveillance, and, after having gone through the proper probation and established their *fitness* for *office* by inditing stupid panegyrics upon the President and coarse ribaldry upon the majority in Congress to be published in the *court journal*, are duly installed into place. Is such the purpose for which the offices of this Government were created, and such the principle upon which they are to be filled? What becomes of the message of the President, and of his proclamation through the Secretary of State against the interference of all office-holders in politics? Where is the potency of his emphatic quotation to them forbidding active partisanship, "Thus far thou comest, but no further?" Mr. Davidge entered a novice into the Pension Bureau, and merely performs a portion of the duties which had been previously done by another clerk, Evans; and the only result of his labors is to relieve Evans of an occasional press of business; yet he receives a salary of $1,400, and Evans but $1,200. It appears, also, that a son of Mr. Davidge has received a clerkship in one of the Departments.

Mr. Madison, in his speech in the House of Representatives in 1789, on the power of removal from office by the President, says: "The danger then consists merely in this—the President can displace from office a man whose merits require that he should be continued. What will be the motives which the President can feel for such abuse of his power, and the restraints to prevent it? In the first place he will be impeachable by this House, before the Senate, for such an act of malversation; for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high place." The committee concur fully in the soundness of Mr. Madison's opinion of the responsibility of the President for such an abuse of power, and they do not doubt that this principle applies to all officers of Government who are invested with the discretion of removing others. They believe that the honorable John C. Spencer has been guilty of this official malversation, in displacing Sylvester, and they would not hesitate to recommend to the House to impeach him before the Senate, but that he is in some degree excused by similar abuses, which have so often occurred in the administration of the executive department during the last thirteen years.

But the case of Sylvester is another of the numerous instances which warn us of the enormity and the danger of suffering the President and his Departments to wield this formidable power unchecked, and without the least effective responsibility. It, with hundreds of others of equal atrocity, cries aloud to Congress to interpose a remedy, as well to prevent a vast mass of individual oppression, as to uphold purity in the administration of the Government and the public liberty. The practice of treating all the offices of this great Government as "the spoils of victory," and, with the rise and fall of contending parties, the ejection of a large multitude of experienced, honest, and capable incumbents, to make room for needy mercenaries, who entered the political conflict without any principle or love of country, but impelled wholly by a hope of plunder, is the greatest and most threatening abuse that has ever invaded our system. It makes the President the *great feudatory* of the nation, and all offices *fiefs*, whose tenure is *suit and service* to him. It is because all those *fiefs* are at his sovereign will, to be confirmed or granted anew after each Presidential election, that the whole country is kept perpetually convulsed by that oft-recurring and all-absorbing event.

Suppose the successful candidate for this high office had as many real estates diffused over this Union as there are offices of Government, those estates producing annually a revenue equal to the salary of each office, and he had the power to bestow and reclaim them at pleasure, would not the possession by the President, of such vast means of operating upon the will and controlling the actions of an immense number of the people of this country, scattered everywhere over it, fill all with a dread apprehension of the overthrow of our institutions and of popular liberty? The President has all this tremendous power, in fact, and in the much more dangerous form of bestowing public offices, according to the provisions of the Constitution and laws, seemingly for the exclusive good

of the people and to conduct the necessary operations of the Government. The extent to which it is liable, and, in truth, has been abused, some of the most powerful minds which the country has ever produced have delineated with a vigor and vividness that must strongly impress the most careless.

In 1826 Mr. Benton made a report to the Senate, embracing, in part, this subject, which ought to be carefully read by every American. In that paper we find this powerful passage: "The King of England is 'the fountain of honor;' the President of the United States is the source of patronage. He presides over the entire system of Federal appointments, jobs, and contracts. He has power over the 'support' of the individuals who administer the system. He makes and unmakes them. He chooses from the circle of his friends and supporters, and may dismiss them, and upon all the principles of human actions, he will dismiss them as often as they disappoint his expectations. There may be exceptions, but the truth of the general rule is proved by the exception. The intended check and control of the Senate, without new constitutional or statutory provisions, will cease to operate. Patronage will penetrate this body, subdue its capacity of resistance, chain it to the car of power, and enable the President to rule as easily and much more securely with than without the nominal check of the Senate.

"If the President himself was the officer of the people, elected by them and responsible to them, there would be less danger from this concentration of all power in his hands; but it is the business of statesmen to act upon things as they are, and not as they would wish them to be. We must look forward to the time when the public revenue will be doubled; when the civil and military officers of the Government will be quadrupled; when its influence over individuals will be multiplied to an indefinite extent; when the nomination of the President can carry any man through the Senate, and his recommendation can carry any measure through the two Houses of Congress; when the principle of public action will be open and avowed—the President wants my vote, and I want his patronage; I will vote as he wishes, and he will give me the office I wish for. What will this be but the government of one man? And what is the government of one man but a monarchy? Names are nothing. The nature of a thing is in its substance, and the name soon accommodates itself to the substance." "Those who make the President must support him. Their political fate becomes identified, and they must stand or fall together. Right or wrong, they must support him," &c. All this was prophecy then, it is now history.

In the year 1835 Mr. Calhoun took up the subject of executive patronage generally, and submitted to the Senate a measure for its reduction, accompanied by a most elaborate and able report. Upon this branch of the subject he says:

"It is only within the last four years that removals from office have been introduced as a system; and, for the first time, an opportunity has been afforded of testing the tendency of the practice, and witnessing the mighty increase which it has given to the force of executive patronage, and the entire and fearful change, in conjunction with other causes, it is effecting in our political system. Nor will it require much reflection to perceive in what manner it contributes to increase so vastly the extent of executive patronage.

"So long as offices were considered as public trusts, to be conferred on the honest, the faithful, and capable, for the common good, and not for the benefit or gain of the incumbent or his party, and so long as it was the practice of the Government to continue in office those who faithfully performed their duties, its patronage, in point of fact, was limited to the mere power of nominating to accidental vacancies or to newly created offices, and would, of course, exercise but a moderate influence either over the body of the community or over the office-holders themselves; but when this practice was reversed—when offices, instead of being considered as public trusts, to be conferred on the deserving, were regarded as the spoils of victory, to be bestowed as rewards for partisan service—it is easy to see that the certain, direct, and inevitable tendency of such a state of things is to convert the entire body of those in office into corrupt and supple instruments of power, and to raise up a host of hungry, greedy, and subservient partisans, ready for every service, however base and corrupt. Were a premium offered for the best means of extending to the utmost the power of patronage; to destroy the love of country, and to substitute a spirit of subserviency and man-worship; to encourage vice and to discourage virtue; and, in a word, to prepare for the subversion of liberty and the establishment of a despotism, no scheme more perfect could be devised; and such must be the tendency of the practice, with whatever intention adopted, or to whatever extent pursued."

The remedy proposed, both by Mr. Benton and Mr. Calhoun, to reduce this inordinate power, was to pass a law repealing the section of the act of 1820 which limited the appointment of certain officers to four years; and also requiring the President, when he removed any officer, to lay the cause of his removal, at the time of nominating his successor, before the Senate.

Mr. Webster supported this measure of Mr. Calhoun's in a speech of unsurpassed ability, in which he said:

"I concur with those who think that, looking to the present, and looking also to the future, and regarding all the probabilities of what is before us, as to the qualities which shall belong to those who may fill the Executive chair, it is important to the stability of Government and the welfare of the people, that there should be a check to the progress of official influence and patronage. The unlimited power to grant office and to take it away gives a command over the hopes and the fears of a vast multitude of men. It is generally true that he who controls another man's means of living controls his will. Where there are favors to be granted there are usually enough to solicit for them; and when favors once granted may be withdrawn at pleasure, there is ordinarily little security for personal independence of character. The power of giving office thus affects the fears of all who are in and the hopes of all who are out. Those who are out endeavor to distinguish themselves by active political friendship, by warm personal devotion, by clamorous support of men in whose hands is the power of reward; while those who are in ordinarily take care that others shall not surpass them in such qualities or such conduct as is most likely to secure favor. They resolve not to be outdone in any of the works of partisanship. The consequence of all this is obvious. A competition ensues, not of political labors, not of rough and severe toils for the public good, not of manliness, independence, and public spirit, but of complaisance, of indiscriminate support of Executive measures, of pliant subserviency, and gross adulation. All throng and rush together to the altar of man worship, and there they offer sacrifices and pour out libations till the thick fumes of their incense turn their own heads, and turn also the head of him who is the object of their idolatry.

"Sir, we can not disregard our own experience. We can not shut our eyes to what is around us and upon us. No candid man can deny that a great, a very great change has taken place within a few years, in the practice of the executive government, which produced a corresponding change in our political condition. No one can deny that office of every kind is now sought with extraordinary avidity, and that the condition, well understood to be attached to every office, high or low, is indiscriminate support of Executive measures, and implicit obedience to Executive will. For these reasons, sir, I am for arresting the further progress of Executive patronage if we can arrest it. I am for staying the further contagion of this plague."

This extract is fraught with momentous truths, and some of the gravest of them are enforced by the present political position of the intellectual giant who gave them utterance. When he illustrates them, not less by his own lamentable example than by the graphic vigor with which he has stated them, who can refuse to give heed to the solemn lesson which they teach?

Mr. Clay also gave the same measure his earnest support, and, in the course of his argument on the occasion, he said: "We can now deliberately contemplate the vast expansion of Executive power, under the present administration, free from embarrassment. And is there any real lover of civil liberty who can behold it without great and just alarm? Take the doctrines of the protest and the Secretary's report together, and, instead of having a balanced Government, with three co-ordinate departments, we have but one power in the State. According to these papers, all officers concerned in the administration of the laws are bound to obey the President. His will controls every branch of the administration. No matter that the laws may have assigned to other officers of the Government specially defined duties; no matter that the theory of the Constitution and the law supposes them bound to the discharge of those duties according to their own judgment, and under their own responsibility, and liable to impeachment for malfeasance; the will of the President, even in opposition to their own deliberate sense of their own obligations, is to prevail, and expulsion from office is to be the penalty of disobedience!"

"The basis of this overshadowing superstructure of Executive power is the power of dismission, which it is the object of one of the bills under consideration somewhat to regulate, but which, it is contended by the supporters of the Executive authority, is uncontrollable. The practical exercise of this power during this administration has reduced the salutary co-operation of the Senate as approved by the Constitution in all appointments to an idle form. What avail is it that the Senate shall have passed upon a nomination if the President at any time thereafter, even the next day, whether the Senate be in session or vacation, without any known cause, may dismiss the incumbent? Let us examine the nature of this power. It is exercised in the recesses of the Executive mansion, perhaps upon *secret* information. The accused officer is not *present or heard*, nor confronted with the witnesses against him, and the President is judge, juror, and executioner. *No reasons* are assigned for the dismission, and the public is left to conjecture the cause. Is not a power so exercised essentially a despotic power? It is adverse to the genius of all free government, the foundation of which is responsibility. Responsibility is the vital principle of civil liberty, as irresponsibility is the vital principle of despotism. Free government can no more exist without this principle than animal life can be sustained without the presence of the atmosphere. But is not the President absolutely irresponsible in the exercise of this power? How can he be reached? By impeachment? It is a mockery."

How is this corrupting and tremendous power to be bridled? All the great men who advocated the measure of Mr. Benton and Mr. Calhoun, whilst they maintained it would effect much good, conceded it would be a very inadequate remedy. In the opinion of your committee, a more effective one would be, for Congress to pass a law repealing the limitation to office under the law of 1820, and requiring all officers having the power to dismiss a subordinate to furnish each person removed from office with the cause, in writing; and also to report forthwith the name of the officer, and the cause of his removal, to the President; and that the President, at the ensuing session of Congress, report to each House a full list of all officers removed since the preceding session, with the causes, severally, of their removal; and, also, that the Senate assert and maintain its constitutional right to concur or to refuse to concur in the removal of every officer to whose nomination it has advised and consented. As to the first branch of this proposition, there can be no doubt of the power of Congress to establish it by law. The second section of the second article of the Constitution provides: "But the Congress may by law vest the appointment of such inferior officers as they think proper, in the President, in the courts of law, or in the heads of Departments."

If Congress were to pass, as it has passed, many such laws, thus vesting the appointment of inferior officers, it could prescribe a particular mode for their removal, and any other conditions that might be thought proper. The justice and sound policy of *that condition* is undeniable. All offices are created exclusively for the convenience and benefit of the people; and, whilst none belong to the incumbent, certainly none belong the incumbent of *any other office*. No removal should ever take place except when the *public weal* requires it; and whenever and wherever such is the state of the fact, there is a specific cause why it is so. If there be no such cause, no removal ought to be made, as, independent of its generally dangerous and corrupting tendency, it might be both unjust to the individual officer and detrimental to the public service. There might be no cause, and yet one might be falsely assumed; wherefore, the officer exercising this power ought to be required to set forth to the person dismissed the ground of the proceeding, that he, knowing its truth or its falsehood, might have an opportunity to arraign his superior for an abuse of power, both before the country and Congress. All such cases ought to be reported to Congress, that it might know how a power which it had authorized was executed, and that it might correct and punish its perversion.

Why should there be any secrecy in these matters? Secrecy is not an element of our system—its great and fundamental law is public opinion; and how can this be wisely and justly formed, when the facts which are necessary to enlighten it are concealed as "*state secrets*." It is only falsehood and corruption, wrong and oppression, that are sought to be wrapped in darkness; the officer who means and acts well dreads not the sunlight! There may be rare cases where secrecy in the removal of public officers would promote the public good, but the mischief and immorality inseparable from such a system will preponderate a thousand fold.

The clause repealing the section of the act of 1820 which limits the appointment of certain officers to four years, it is also believed, will be of great practical utility. All those officers at the termination of that period are, by operation of law, removed for the President, without any act on his part; and he may commit the greatest improprieties in filling the vacant places, without incurring any liability for the displacement of faithful public agents. This regulation swells considerably his power, as it makes a great many vacancies with the certainty of the returning year, and subjects the incumbents more inexorably to his will than if the exertion of the power of removal was a preliminary operation. Such repeal would, besides, add somewhat to the permanency and certainty of the tenure by which office would be held; and such tenure should at least be as certain and permanent as the fidelity and fitness of the officer.

But warped from some of its most essential and fundamental principles, as our Government has been, by the vast accession to the power of the Executive, the only mode by which it can be demonarchized is to return to that great conservative principle of the Constitution, that the President by his single action can not permanently and absolutely displace any officer. He is made the depository of the *executive power, and the whole executive power of our Government*—not an indigested and vague executive power—not that of France, or of England, of Russia, or of Turkey, of this age, or of any past one, but as it is defined, established, organized, and circumscribed by our own Constitution; and he can not, without usurpation, wield one particle more. Our fathers conceived and fabricated their own edifice of government; they mixed and compounded different principles, but they made the structure complete after its own order. The ideas attached to the phrases "legislative powers," "executive power," and "judicial power," as used in our Constitution, are unique, and their significance is only to be learned correctly as they are taught in that instrument.

There are certain powers of our Government that are purely *legislative*, others pure *executive*, and others purely *judicial;* and there are certain other powers that belong to *neither* of those classes; and because they are to be exercised by one of the departments, or a branch thereof, does not make them legislative, executive, or judicial. The House of Representatives may impeach officers of the Government; and, when the electors fail to elect the President, is to choose that officer, and yet neither of these acts is of a legislative character. The President, by and with the advice and consent of the Senate, is clothed with

the full appointing power. The function of the Senate to approve or reject the President's nominations is not legislative; nor is it executive in our system, because, to be so, it must appertain to the *President*. Neither is the act of nominating to office an executive power, or, indeed, of *itself, any power;* it is merely a constitutent, an element of a power, to be furnished by the agency of the President, as the other constitutent is to be produced by the action of the Senate. If the President's nomination be rejected, nothing has been effected by it; both must concur and combine to constitute a power, a faculty in the business of the Government.

From these plain principles it is apparent that theoretical constructions of the provisions and powers of our Constitution, by analogies drawn from other governments, are very liable, as they have led to great errors; and, as a general rule, it is much safer to construe our Constitution of itself, and by itself, especially as it is a government, not of original and plenary, but of delegated and limited powers. Though the power of appointment in our peculiar system is given conjointly to the President and the Senate, yet their action is separate and independent, and each equally necessary to effect the result. The "advice and consent" of the Senate is as indispensable as the nomination of the President to fill an office.

The Constitution is wholly silent upon the subject of removals from office, except by impeachment; and if another and more summary mode of displacing a faithless or incompetent officer is necessary and proper to secure a due execution of the laws, the position might be very plausibly assumed, that *the mode* would involve an implied legislative power, and was therefore vested in Congress. This position would be strongly supported by quoting from the Constitution: "Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the *Government* of the United States, or in *any department* or *office* thereof." But the more general opinion seems to be, that the power of appointment implies and carries along with it the power of removal. That *a* power to create imports *the* power to destroy, may be assumed to be a general truth, both in logic and philosophy; and this principle would lead directly to the conclusion that the power of appointment and removal are blended, but for the clause in the Constitution before quoted. However, the committee will not further controvert the general judgment on this point.

It is believed that there are but few statesmen or jurists in our country but who concede that an officer can not be constitutionally removed by the President without the concurrence of the Senate, and that practice and pretty general acquiescence alone sanction the contrary doctrine. In the case of Hennen *ex parte*, the Supreme Court have decided that Congress had authorized the United States district courts to appoint their clerks, and, "in the absence of all *constitutional provision* or *statutory regulation*, it would seem to be a sound and *necessary* rule to consider the power of removal as incident of the power of appointment." The judgment of the court consequently was that the district court could at pleasure remove its clerk. Here is a recognition of the general principle by the highest judicial tribunal of the nation; and it is strictly applicable to the question now under examination, because there is no clause in the Constitution, except that which establishes and regulates the power of appointment, from whence a power of removal in any mode except by impeachment can be deduced.

In the execution of this auxiliary power of removal, it would be just as logical for the Senate to contend for an exclusive right to remove from office as that the President should; for either to do so would be equally paradoxical. The power which is implied and incidental must be congruous with the express and the principal power; and it is absurd to say that though both the President and the Senate must combine, by distinct and independent operation, to effect a certain act, yet that *he*, in the exercise of a faculty only inferred from what he *is expressly* authorized to do, may, the next hour and at all times afterward, reverse and abrogate the joint act of himself and the Senate. The political effect would be yet more preposterous. The Senate is expressly established by the Constitution as a check upon the President in the execution of the appointing power. If the power of removal be accorded to him absolutely and exclusively, it practically destroys this restraint, and the power *expressly* conferred upon the Senate becomes to be expunged by the *implied* power of the President. Whenever an officer refused to submit to his will, and to carry out his culpable objects, or, from any cause, was obnoxious to him, he would immolate him by his own stern fiat; and the utmost the Senate could do would be to force him to nominate a succession of his favorites and tools. The framers of the Constitution did not do their work after this manner.

The connection between the President and the Senate, in the appointing power, continues in all its forms, whether express or incidental. So, if the Constitution had required the approval of the House of Representatives, also, of the President's nominations to office, the power of removal would have been incidental to the President and the two Houses of Congress, and all would necessarily have to concur to dismiss an officer. The implied power is to the principal and express one what the shade is to the substance: when the latter exists in a duplicate form the former can not be single, but is stamped with and represents the perfect figure of the thing which gives it existence. We are examining what the Constitution is, not what it ought to be; and yet, with the construction which we give it, we are prepared to maintain that it is exactly what it should be.

It was during the first session of the first Congress under our Constitution that a legislative construction was given to that instrument, which vested the power of removal in the President alone. Such members of the convention as were then in Congress were equally divided on this (then new) question. Washington was the man to whom the power was to be accorded or denied. The Senate was equally divided, and its decision was rendered by the casting vote of the *Vice-President;* whilst the majority in the House was not large. The pure minds of those who maintained the position that this was an executive power, and belonged to the President exclusively, could not conceive the flagitious abuse that has since marked its exercise; and if, after all the impressive admonition of subsequent experience, the men who established that unfortunate heresy could be recalled from the tomb, to consider the question now for the first time, it is impossible to doubt that they would settle it differently.

The considerations then urged in support of the position that this power was appendant to the President alone, are mainly those of *convenience, expediency, necessity;* and the strength of the argument, embracing constitutional law, the sound sense of the case, and a safe policy, are clearly on the other side of the question. Under every administration previous to 1829, except that of Mr. Jefferson, it was a dormant power, as no other President, in eight years, exceeded twelve removals, and all were for cause which the Senate would probably have deemed sufficient, and which were therefore silently ratified by the country. Even Mr. Jefferson removed but about forty officers in his two terms, and the reason why the people did not manifest a greater repugnance to his exercise of this power was that much the larger number of the offices of Government were held by his political opponents.

In 1829, a wary and keen-sighted party thought it could descry, that this power was about to be exerted by the existing administration, for the proscription of political opinions; and then its constitutional authority was boldly and justly denied. This construction was given in a speculative form in 1789; it was never practically asserted until 1801, and only for a brief season and to a very limited extent. So soon as it was deliberately examined by the generation of men who succeeded those by whom it was originally made, upon the presumption that it was about to become an active administrative power, the weight of the highest reason and of the most erudite attainments of the whole country decided against it. That decision is still unreversed and in full force; so that this anomalous and unconstitutional power has not the sanction of general acquiescence to sustain it.

Your committee concede that where the constitutionality of a power is doubtful, and yet it is highly expedient and proper that it should exist, and it has been exerted by successive Congresses, approved and confirmed by the other departments of the Government, and ratified and sustained by the people, all this concurring must be considered as conclusive of the question. But where a power, like the one now controverted, has only been prospectively considered and recognized, and long before any case for its exercise had arisen, the weight of authority for and against it being, then, nearly an equipoise, the power itself not being necessary for a due administration of the Government, but tending irresistibly to its corruption, the destruction of its checks and balances, and the overthrow of popular liberty, your committee are far from thinking that it is entitled to the consideration due such a sanction; on the contrary, they have no hesitation in recommending its unconditional and immediate renunciation.

They will now proceed to fortify their general position of hostility to this power by the weight of some of the greatest men which our country has ever produced. Mr. Benton, in his report before quoted from, says: "It is no longer true that the President, in dealing out offices to members of Congress, will be limited, as supposed in the Federalist, to the inconsiderable number of places which may become vacant by the ordinary casualties of death and resignations: on the contrary, he may now draw, for that purpose, upon the whole entire fund of the executive patronage. Construction and legislation have effected this change.

"In the first year of the Constitution, a construction was put upon that instrument, which enabled the President to create as many vacancies as he pleased, and at any moment he thought proper. This was effected by yielding to him the *kingly prerogative* of dismissing officers without the formality of trial. The authors of the Federalist had not foreseen this construction; so far from it, they had asserted the contrary, and arguing logically from the premises, 'that the dismissing power was appertinent to the appointing power,' they had maintained, in No. 77 of that standard work, that, as the consent of the Senate was necessary to the appointment, so the consent of the same body would be equally necessary to his dismission from office. But this construction was overruled by the first Congress which was formed under the Constitution; the power of dismission from office was *abandoned* to the President alone; and, with the *acquisition* of this prerogative alone, the *power* and patronage of the Presidential office was instantly increased to an indefinite extent," &c.

Mr. Webster's speech in favor of the bill reported by Mr. Calhoun is among the most cogent and powerful emanations of his mighty mind. In a series of unanswerable arguments, he assaults and overthrows this exclusive power of the President to dismiss from office, and concludes: "On the whole, sir, with the diffidence which becomes one who is reviewing the opinions of some of the ablest and wisest men of the age, I must still express my own conviction that the decision of Congress, in 1789, *which separated* the power of removal from the power of appointment, was founded on an erroneous construction of the Constitution, and that it has led to great inconsistencies as well as to great abuses, in the subsequent, and especially in the more recent, history of the Government.

"I think, then, sir, that the power of appointment naturally and necessarily includes the power of removal, where no limitation is expressed, nor any tenure but that at will declared. The power of appointment being conferred on the President and Senate, I think the power of removal went along with it, and should have been regarded as a part of it and exercised by the same hands. I think, consequently, that the decision of 1789, which implied a power of removal separate from the appointing power, was erroneous.

"But I think the decision of 1789 has been established, and recognized by subsequent law, as the settled construction of the Constitution; and that it is our duty to act upon the case accordingly for the *present*, without *admitting* that Congress may not, if necessity shall require it, *reverse* the decision of 1789. I think the Legislature possesses the power of *regulating the condition, duration, qualification*, and *tenure of office*, in all cases, where the Constitution has made *no express provision* upon the subject."

Mr. Clay also controverts this noxious interpolation of the Constitution with extraordinary force of argument, and, after having made a luminous analysis of the precedent by which it was established, he denies that it is conclusive, and adds: "A precedent established against the weight of argument, by a House of Representatives greatly divided, in a Senate equally divided, under the influence of a reverential attachment to the Father of his Country, upon the condition that, if the power were applied, as we know it has been in hundreds of instances recently applied, the President himself would be justly liable to impeachment and removal from office; and which, until this administration, has never, since its adoption been thoroughly examined or considered." Mr. Clay gave Mr. Calhoun's bill his hearty support, and he prepared an amendment and gave notice of his intention to offer it, which provided, in substance, that the President should exercise the power of removal only in concurrence with the Senate; when the Senate was not in session, he might suspend an officer, but was required to communicate the fact, together with the cause, to the Senate at its next session, and unless that body concurred, the suspended officer to be *ipso facto* reinstated in his place.

In the opinion of the committee, this proposition of Mr. Clay comprehends the true exposition of the Constitution. The President is exclusively invested with the appointing power, to fill all vacancies happening during the recess of the Senate, the duration of the appointment being limited by the termination of its ensuing session. If the power of removal is incident to, attendant upon, and correspondent with, the power of appointment, it would follow that the President, during the recess of the Senate, would be authorized to exercise a correlative power of removal. As his appointments, made at such times, would determine and expire at the end of the ensuing session of the Senate, so his removals or suspensions from office would be operative only for the same period; and, unless the Senate also agreed to the dismissal of the officer, he would, by operation of the constitutional principle, be fully reinstated in his place. While the Senate was in session, the President could not displace any more than he could appoint an officer, but would have to state his decision to remove, together with the cause, to the Senate; and unless it advised and consented thereto, no removal would ensue.

This construction, it is believed, is in strict conformity both to the letter and the spirit of the Constitution, and would bring back the administration of the Government to its true principles. It would tend greatly to reduce the colossal power of the President, and to restore to the other departments their just constitutional weight and independence. It would not impair the necessary energy and efficiency of the executive branch, or obstruct in any considerable degree the proper responsibility to which inferior officers ought to be held. For faithlessness, incompetency, or any other cause, the President could suspend; and the reasonable presumption is, that whenever it was right that the officer should be permanently displaced, the Senate would ratify his act. Some inconvenience would no doubt be produced by this practice—a bad officer might be occasionally continued in place longer than would be compatible with the public interest—the Senate might have more business thrown upon it; but with all its inconveniencies, even if the sessions of the Senate were thereby made perpetual, it would be incomparably preferable to existing things. The one would introduce only transient and minor evils, the other is certainly bringing on the subversion of our whole system of constitutional liberty.

But there would be other beneficial consequences of the utmost importance. A great appreciation in the character of our public officers, particularly in the inferior grades, would ensue. From the degradation of physical and moral servitude they would rise to the dignity of free and independent thought, opinion,

and action; they would exchange the trembling uncertainty of a ceaseless dread of the oppression of bad men for a reasonable assurance that qualifications, fidelity, and decorum in office, would enable them to maintain their places. The President and the Senate would become what the Constitution intended they should be—mutual checks—and both would then be subject to a proper responsibility at the bar of public opinion, and be required to justify every case of removal. This would be a valuable immunity to inferior officers.

When this reform should have had time to operate, and to produce its legitimate fruits, there would not be a great many cases in which it would be necessary to exercise the power of removal. The subordinate being no longer subject to the tyrant's law—the uncontrolled will of one man—he would begin to feel too much security and cherish too much self-respect to play the parasite and the pander. Rising with the consciousness that he now belonged to the country, and not to his official superior, patriotism and a sense of duty would take the place of supple hypocrisy and venal man-worship. Occupying a position to mark official malfeasance, both above and below him, each officer would be a sentinel on his associates, because he would know that he would be rewarded, and not dismissed and punished, for the revelation of their delinquencies. Officers exercising the power of appointing to inferior places, not being able to reduce their nominees to the condition of minions, would at length begin to feel the promptings of a sense of duty and a regard for their own fame, and look for moral and business qualities.

The infamous spoils system, with all its abhorrent and demoralizing concomitants, would be overthrown. The Presidential election—that moral volcano which breaks forth periodically in its terrible eruptions, and in the intervals keeps the whole country heaving and tossing in wild commotion—would be tamed of that excited and convulsive energy which menaces the overthrow of social order; for it is this power of removal, enabling the President at will to reclaim and regrant fifty thousand places, and thus to sway the hopes and the fears of at least four times that number of men, diffused over the whole confederacy, which has rendered the Presidential election not the most sober, well-considered, and well-purposed act which this great people perform, but one general and wild conflict of passion, venality, corruption, and violence.

The past assures us of what would be the future state of things if the principle that an officer is only to be removed for sufficient cause should be again established. Under Washington, Madison, Monroe, and the two Adamses it fully obtained, and there was hardly occasion to exert it once on the average during each year of the administration of these Presidents; and yet, in those better days of the Republic, the superiority of the officers of the Government over those of this day, in capability, fidelity, and virtue, is most striking. The people were then neither better, nor wiser, nor more patriotic, nor more devoted to business than now, nor were our general condition and circumstances more favorable to the preservation of public and private virtue in Government agents. It is the degenerate and demoralizing "spoils principle" which has contributed more than any other cause to defile our whole system, and is precipitating us so rapidly upon premature decay and ruin; and we must expel it if we would save our free and glorious institutions.

The present predicament of the Executive power affords no argument against the truth of the positions we have assumed. The President came fortuitously into office without a party, and not himself occupying the position of a party leader. Repudiating both the party which had elevated him to the Vice-Presidency and that which had opposed his election, he attempted the irrational and impossible task of building up for himself a third one. This was an impossibility, because the two antagonist parties constitute the entire people, their cohesion having been established by years of affiliation upon distinct and well-contested systems of measures, and because the President himself is very far from being a man who, under the most favorable circumstances, could gather together and form a party. The gigantic executive power of the Government is at at this time as near an abstraction, an ideality, notwithstanding the ill-concerted and desperate attempts to make it practically effective, as it is possible to be; but its very repose and inertion will cause it, when aroused and directed by a capable man, to act with renovated vigor. The present conjuncture is most propitious for its reduction. The relaxation of party prejudice and intolerance in a very sensible degree, a calmer and more impartial view of principles, measures, and men, and the total inability of the present incumbent to interpose any obstacle, except by the exercise of the veto, all seem to allure Congress now to attempt this great reform.

Mr. Tyler was a member of the Senate when Mr. Calhoun introduced his measure, and his name is found among the majority of that body which voted for it. His public position has been distinctly that of an advocate for the diminution of Executive power. In his address to the people of the United States, on entering upon the discharge of the duties of the Presidential office, we find the following passage: "In view of the fact, well avouched by history, that the tendency of all human institutions is to concentrate power in the hands of a single man, and that their ultimate downfall has proceeded from this cause, I deem it of the most essential importance that a complete separation should take place between the sword and the purse. No matter how or where the public moneys shall be deposited, so long as the President can exert the power of appointing and removing at his pleasure the agents selected for their custody, the Commander-in-Chief of the Army and Navy is in fact the treasurer. A permanent radical change should therefore be decreed."

The patronage incident to the Presidential office, already great, is constantly increasing. Such increase is destined to keep pace with our population, until, without a figure of speech, an army of office-holders will overspread the land. The unrestrained power exerted by a selfish, ambitious man, in order either to perpetuate his authority or to hand it over to some favorite as his successor, may lead to the employment of all the means within his control to accomplish his object. The right to remove from office, while subjected to no just restraint, is inevitably destined to produce a spirit of crawling servility with the official corps, which, in order to uphold the hands which feed them, would lead to direct and active interference in elections, both State and Federal, thereby subjecting the course of State legislation to the dictation of the chief executive officer, and making the will of that officer absolute and supreme. I *will*, at a proper time, invoke the action of Congress upon this subject, and shall readily acquiesce in the adoption of all proper measures which are calculated to arrest these evils, so full of danger in their tendency. I will remove *no incumbent* from office who has faithfully and honestly acquitted himself of the duties of his office, except in such cases where such officers have been guilty of an active partisanship, or by secret means, the less manly, and therefore the more objectionable, has given his official influence to the purposes of party, thereby bringing the patronage of the Government into conflict with the freedom of elections.

In his message to Congress at the commencement of the extra session, he again takes up the same subject and treats it thus: "The power of appointing to office is one of a character the most delicate and responsible. The appointing power is ever more exposed to be led into error. With anxious solicitude to select the most trustworthy for official station, I can not be supposed to possess a personal knowledge of the qualifications of every applicant. I deem it therefore proper, in this most public manner, to invite, on the part of the Senate, a just scrutiny into the character and pretensions of every person whom I may bring to their notice in the regular form of a nomination for office. Unless persons every way trustworthy are employed in the public service, corruption and irregularity will inevitably follow. I shall, with the *greatest cheerfulness*, acquiesce in the decision of that body, and, regarding it as wisely constituted to aid the Executive department in the performance of this delicate duty, I shall look to its "consent and advice" as *given only* in furtherance of the best interests of the country. I shall also, at the earliest proper occasion, *invite* the attention of Congress to such measures as, in my judgment, will be best calculated to *regulate and control* the Executive power, in reference to this vitally interesting subject.

In his message at the beginning of the present session, he again presents this subject, thus: "I feel it my duty to bring under your consideration a practice which has *grown up* in the administration of the Government, and which I am deeply convinced ought to be corrected. I allude to the exercise of power which *usage, rather than reason*, has vested in the President, of removing incumbents from office, in order to substitute others more in favor with the dominant party. My own conduct, in this respect, has been governed by a conscientious purpose to exercise the removing power only in cases of unfaithfulness or inability, or in those in which its exercise appeared necessary in order to *discontinue* and *suppress* that spirit of active partisanship, on the part of holders of office, which not only withdraws them from the steady and impartial discharge of their official duties, but exerts an undue and injurious influence over elections, and degrades the character of the Government, inasmuch as it exhibits the Chief Magistrate as being a party, through his agents, in the secret plots or open workings of political parties.

"In respect to the exercise of this power, nothing should be left to discretion which may safely be regulated by law; and it is of high importance to restrain, as far as possible, the stimulus of personal interests in public elections. Considering the great increase which has been made in public offices in the last quarter of a century, and the probability of further increase, we incur the hazard of witnessing violent political contests, directed too often to the single object of retaining office by those who are in, or obtaining it by those who are out. Under the influence of these convictions, I shall cordially concur in any constitutional measure for regulating, and, by *regulating, restraining* the power of removal." These are just and sensible views, mixed up with a profusion of fine promises, and the country may hope for something from Mr. Tyler when he proceeds to redeem these promises.

In conformity to the opinions herein set forth, your committee ask leave to report the subjoined resolutions, and a bill providing for the repeal of the limitation of four years to the appointment of certain officers, by the act of Congress of 1820; and that, whenever an officer is dismissed, he shall be furnished, by the authority dismissing him, with the cause thereof, in writing: and in every case where the dismission may be made by any other officer or officers than the President, it shall be his or their duty forthwith to report to the President the name of the officer so removed, together with the cause of the removal; and the President to report to both Houses of Congress, at its next session, all such cases, with the cause of the removal of each officer:

Resolved, That the Hon. John C. Spencer, Secretary of War, in having removed Henry H. Sylvester, late a clerk in the Pension Office, is properly chargeable with injustice and oppression toward the said Henry H. Sylvester, and of culpable abuse of his authority as Secretary of War.

Resolved, That both Houses of Congress, and especially the House of Representatives, as the grand inquest of the nation, have a constitutional right at all times to free access to the Executive Departments of the Government for the examination of all papers therein, whether regarded by the head of the Department as public or as private and confidential; and, also, to copies of all such papers, from the officer or officers having their custody, as either House may require.

Resolved, That the power of removal from office is not expressly conferred by the Constitution, but that it is incidental to and derivable from the power of appointment, and is consequently to be exercised by such officers and branches of the Government as are invested by the Constitution and laws with the power of appointment; that a power of removal belongs neither to the President nor the Senate exclusively, but to both conjointly, and as incidental to the separate agency of each in appointing to office; that as the President is clothed by the Constitution during the recess of the Senate with the full appointing power to all vacancies occurring during such recess, his appointment to continue until the end of the ensuing session of the Senate, so he may during such recess exercise the incidental and correlative power of removal, to have effect for the same time, and at the next ensuing session of the Senate it is his *constitutional duty* to lay before that body the names of all officers whom he may have removed during its preceding vacation, *together with the cause, specifically, of the removal*; and if the Senate do at that session advise and consent to such removal the said officer is thereupon absolutely and permanently displaced, otherwise he is, by the operation of the Constitution, at the end of said session, reinstated in his office, with all its rights and privileges; and where the President during the session of the Senate decides to remove an officer it is his duty under the Constitution to communicate the name of such officer to the Senate, with the specific cause for his removal; and unless that body advise and consent to the removal of such officer no removal whatever takes place, and he continues in his office as though there had been no such proceeding against him.

The undersigned, a member of the committee appointed on the case of Henry H. Sylvester, concurs in the report of the majority of said committee, so far as it is a statement of the facts and circumstances attending the removal of said Sylvester; and he also concurs in the first resolution submitted by the majority. But, although he finds much to approve in the residue of the report of the majority, and with pleasure bears his testimony to the great force and ability with which it is drawn, he dissents from it in the main, and also from the two remaining resolutions and the bill recommended by the majority to the House. And particularly does he dissent from the third and last resolution in the report of the majority; regarding it as asserting a principle which, if carried out in practice, would virtually vest the entire power of appointment to and removal from office in the Senate, and in fact the whole executive power of the Government, a result which, in his belief, the framers of the Constitution never contemplated; which is against the contemporaneous exposition given to that instrument, and which would, in effect, constitute the Senate the supervisor and dictator of the Executive, and end in that concentration of power in one branch of the Government which the faithful and vigilant patriot has ever feared and sought to avoid. The undersigned might go into an elaborate argument to sustain his views in relation to the subjects submitted by the majority, but he at present contents himself with the simple expression of his opinion, and his dissent from that part of the report, and the resolutions, and bill of the majority, to which he has above referred.

EDMUND BURKE.

BILLS INTRODUCED.

Mr. ALDRICH introduced a bill (S. 1569) establishing additional life-saving stations on the sea and lake coasts of the United States; which was read twice by its title, and referred to the Committee on Commerce.

He also introduced a bill (S. 1570) granting a pension to Mary Ann Vars; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

He also introduced a bill (S. 1571) granting a pension to Abbie M. Hay; which was read twice by its title, and referred to the Committee on Pensions.

Mr. CAMERON introduced a bill (S. 1572) to amend an act entitled "An act to provide a building for the use of the United States circuit and district courts of the United States, the post-office, and other Government offices at Williamsport, Pa.," and making an additional appropriation therefor; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

He also introduced a bill (S. 1573) to increase the appropriation for the erection of the public building at Reading, Pa.; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

He also introduced a bill (S. 1574) for the relief of Snowden and Mason; which was read twice by its title, and referred to the Committee on Claims.

He also introduced a bill (S. 1575) fixing the positions of assistant astronomers at the United States Naval Observatory, and for other purposes; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Naval Affairs.

Mr. DOLPH (by request) introduced a bill (S. 1576) for the relief of Col. James C. Duane; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Claims.

Mr. DAWES introduced a bill (S. 1577) to amend the third section of an act entitled "An act to provide for the sale of the Sac and Fox and Iowa Indian reservations in the States of Nebraska and Kansas, and for other purposes," approved March 3, 1885; which was read twice by its title, and referred to the Committee on Indian Affairs.

Mr. VAN WYCK (by request) introduced a bill (S. 1578) for the erection of a public building at Cheyenne, Wyo.; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

Mr. COLQUITT introduced a bill (S. 1579) to provide for the suppression of the traffic in intoxicating liquors in the District of Columbia; which was read twice by its title, and referred to the Committee on the District of Columbia.

Mr. HAWLEY (by request) introduced a bill (S. 1580) for the relief of Maj. James Belger; which was read twice by its title, and referred to the Committee on Military Affairs.

He also introduced a bill (S. 1581) granting a pension to Gertrude K. Lyford; which was read twice by its title, and referred to the Committee on Pensions.

Mr. SABIN introduced a bill (S. 1582) for the relief of Alpheus R. French, pensioner No. 193391; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced a bill (S. 1583) fixing compensation of United States marshals and deputies, and for other purposes; which was read twice by its title, and referred to the Committee on the Judiciary.

Mr. PALMER introduced a bill (S. 1584) for the relief of Cornelia R. Schenck; which was read twice by its title, and referred to the Committee on Pensions.

Mr. INGALLS (by request) introduced a bill (S. 1585) to compensate Mr. Benjamin Smith for services in the Union Army; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced a bill (S. 1586) granting a pension to Marie Hollander; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced a bill (S. 1587) in relation to the trustees of the Reform School of the District of Columbia; which was read twice by its title, and referred to the Committee on the District of Columbia.

Mr. PLUMB introduced a bill (S. 1588) granting a pension to John C. Adams; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

Mr. RIDDLEBERGER introduced a bill (S. 1589) for the relief of J. W. Carpenter, pay-inspector United States Navy; which was read twice by its title, and referred to the Committee on Naval Affairs.

He also introduced a bill (S. 1590) for the relief of John Scott; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. HALE. By request I introduce a bill; I am in no way committed to its provisions.

The bill (S. 1591) to amend an act entitled "An act to authorize a retired-list for privates and non-commissioned officers of the United States Army who have served for a period of thirty years or upward," approved February 14, 1885, so that the same shall apply to the United States Navy; was read twice by its title, and referred to the Committee on Naval Affairs.

Mr. TELLER introduced a bill (S. 1592) to change the limit of appropriation for the public building at Denver, Colo.; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

Mr. HOAR introduced a bill (S. 1593) to increase the pensions of soldiers, sailors, and marines who have been totally disabled; which was read twice by its title.

Mr. HOAR. I introduce the bill by request, but from an examination I am satisfied it ought to pass. I move that the bill be referred to the Committee on Pensions.

The motion was agreed to.

Mr. BOWEN introduced a bill (S. 1594) providing for a new basis for the circulation of national banks, and for other purposes; which was read twice by its title.

Mr. BOWEN. In introducing the bill I desire to say that it changes the present basis of the issue of notes to national banks, withdraws national-bank note circulation entirely, and substitutes United States notes on a basis of gold, silver, and bonds, one-third of each, with power to change the bonds into gold and silver at the option of the association. The banks under this bill will receive $1,000 in circulation for every $700 of coin and bonds, and as further security for the circulation a statutory lien is created on the general assets of the bank.

I will say further that the bill covers quite a number of questions, some of which have been discussed during the session, and that I should like to have the bill laid on the table, in order that at some future day I may call it up and by the consent of the Senate address the Senate on the subject.

The PRESIDENT *pro tempore*. The bill will lie on the table awaiting the motion of the Senator from Colorado.

Mr. COCKRELL introduced a bill (S. 1595) for the erection of a public building at Sedalia, Mo.; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

Mr. MAHONE introduced a bill (S. 1596) to confirm to Emile Guerin and Cheri P. Major title to certain lands; which was read twice by its title, and referred to the Committee on Private Land Claims.

Mr. MILLER, of New York, introduced a bill (S. 1597) for the erection of a public building at Yonkers, N. Y.; which was read twice by its title, and referred to the Committee on Public Buildings and Grounds.

Mr. MORRILL introduced a joint resolution (S. R. 46) accepting from William H. Vanderbilt and Julia Dent Grant objects of value and art presented by various foreign governments to the late General Ulysses S. Grant; which was read twice by its title, and, with the accompanying papers, referred to the Committee on the Library.

PAPERS WITHDRAWN AND REFERRED.

On motion of Mr. CAMERON, it was

Ordered, That the petition and papers of W. H. Whiting be taken from the files and referred to the Committee on Military Affairs.

Ordered, That the papers in the case of Mrs. Mary G. Shott be taken from the files and referred to the Committee on Pensions.

On motion by Mr. MORRILL, it was

Ordered, That the papers with Senate bill No. 719, Forty-eighth Congress, first session, be taken from the files and referred to the Committee on Finance.

On motion of Mr. WILSON, of Iowa, it was

Ordered, That the papers in the case of "the American Grocer" be withdrawn from the files and referred to the Committee on Post-Offices and Post-Roads.

SALE OF LIQUOR NEAR SOLDIERS' HOME.

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

Resolved, That the Committee on Military Affairs be, and it hereby is, instructed to inquire into the expediency of providing by law against the sale, furnishing, or keeping of intoxicating drinks in the near vicinity of the Soldiers' Home, in the District of Columbia, and that said committee report by bill or otherwise.

I should like to call the attention of the Committee on Military Affairs specially to this subject. Anybody who drives out of this town at any time, or rides or walks, will find the Soldiers' Home full of a large number of the old, broken-down soldiers of the United States, whom we are trying to make happy and comfortable there, surrounded by a cordon on every side—I believe really on every side and on every road—of dramshops, where these poor old fellows are tempted in and all their money gotten away from them, and they get too much stimulant and are frequently robbed on their way back. I should like to have the Military Committee consider (as we have in many of the States and in many cities in respect of public schools and other institutions) the propriety of seeing if we can not remove those temptations a little farther away

The resolution was considered by unanimous consent, and agreed to

COAST AND GEODETIC SURVEY REPORT.

Mr. MANDERSON submitted the following concurrent resolution; which was referred to the Committee on Printing:

Resolved by the Senate (the House of Representatives concurring), That there be printed 3,000 extra copies of the report of the Superintendent of the Coast and Geodetic Survey, showing the progress made in said survey during the year ending June 30, 1885, for distribution by said superintendent.

MICHAEL J. HEWSTON.

Mr. LOGAN. I ask that the bill (S. 329) to increase the pension of Michael J. Hewston, which was reported adversely yesterday, I think, or the day before, be placed upon the Calendar. The Senator from Tennessee [Mr. JACKSON] made the report, I think. I was not in the Chamber at the time.

The PRESIDENT *pro tempore*. If there is no objection the order by which the bill was indefinitely postponed will be reconsidered, and the bill will be placed on the Calendar with the adverse report of the committee.

SAINT LOUIS AND SAN FRANCISCO RAILWAY.

The PRESIDENT *pro tempore*. If there are no further "concurrent or other resolutions" the Calendar is now in order.

Mr. DAWES. I call for the regular order.

Mr. MAXEY. I ask the unanimous consent of the Senate to proceed to the consideration of Senate bill 91, Order of Business 201. I beg to state to the Senate, after a service of eleven years, it is a very rare thing

that I ask a favor of this kind. The bill is simply for the extension of time of a railroad which could not be built within the time prescribed by the original act on account of the stringency of the times. It was reported favorably by the Committee on Railroads, and at the suggestion of the Senator from Indiana [Mr. HARRISON] was referred to the Committee on Indian Affairs; and I am authorized by that committee to say that the passage of the bill will be approved by it. I ask unanimous consent that we proceed to consider the bill.

The PRESIDENT *pro tempore*. Pending the consideration of Order of Business 52, the bill (S. 184) for the relief of Pearson C. Montgomery, of Memphis, Tenn., which is the first bill in order on the Calendar, the Senator from Texas moves that the Senate proceed to the consideration of the bill (S. 91) to amend an act entitled "An act to grant a right of way for a railroad and telegraph line through the lands of the Choctaw and Chickasaw Nations of Indians to the Saint Louis and San Francisco Railway Company, and for other purposes."

Mr. PLUMB. While this is no doubt a very proper bill, at the same time——

The PRESIDENT *pro tempore*. The Chair must remind the Senator from Kansas that the motion is not debatable under the rules.

Mr. PLUMB. I shall object to taking up the bill now out of order for reasons which I think I can state to the satisfaction of the Senate.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from Texas to proceed to the consideration of the bill indicated.

The question being put, there were on a division—ayes 19, noes 9; no quorum voting.

Mr. MAXEY. I hope that I shall have no trouble about this matter. I have already stated that the bill was reported favorably——

Mr. INGALLS. If this question is to be debated, it is fair that both sides should be heard.

The PRESIDENT *pro tempore*. The Chair must remind the Senator from Texas that the motion is not debatable. On a division no quorum has voted.

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

The yeas and nays were ordered.

Mr. HOAR. Will the Chair be kind enough to state the question again? Several Senators have just come in.

The PRESIDENT *pro tempore*. Pending the regular order, which is the Calendar, the Senator from Texas [Mr. MAXEY] moves to proceed to the consideration of the bill (S. 91) "to amend an act entitled 'An act to grant a right of way for a railroad and telegraph line through the lands of the Choctaw and Chickasaw Nations of Indians to the Saint Louis and San Francisco Railway Company, and for other purposes.'"

The Secretary will call the roll.

The yeas and nays were taken.

Mr. SAWYER. I am paired with the Senator from Delaware [Mr. SAULSBURY] on all questions.

Mr. COCKRELL. I desire to state that my colleague [Mr. VEST] is detained at home by illness, and will not be able to be present to-day.

The result was announced—yeas 31, nays 13; as follows:

YEAS—31.

Beck,	Eustis,	McPherson,	Sabin,
Blackburn,	George,	Manderson,	Sewell,
Brown,	Gibson,	Maxey,	Spooner,
Butler,	Gorman,	Morgan,	Teller,
Call,	Gray,	Palmer,	Van Wyck,
Cockrell,	Hampton,	Payne,	Voorhees,
Coke,	Harris,	Pike,	Wilson of Md.
Conger,	Kenna,	Pugh,	

NAYS—13.

Aldrich,	Frye,	Logan,	Wilson of Iowa.
Allison,	Hale,	McMillan,	
Chace,	Hoar,	Morrill,	
Edmunds,	Ingalls,	Platt,	

ABSENT—32.

Berry,	Dolph,	Jones of Nevada,	Riddleberger,
Blair,	Evarts,	Mahone,	Saulsbury,
Bowen,	Fair,	Miller of Cal.,	Sawyer,
Camden,	Harrison,	Miller of N. Y.,	Sherman,
Cameron,	Hawley,	Mitchell of Oreg.,	Stanford,
Colquitt,	Jackson,	Mitchell of Pa.,	Vance,
Cullom,	Jones of Arkansas,	Plumb,	Vest,
Dawes,	Jones of Florida,	Ransom,	Walthall.

So the motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill (S. 91) to amend an act entitled "An act to grant a right of way for a railroad and telegraph line through the lands of the Choctaw and Chickasaw Nations of Indians to the Saint Louis and San Francisco Railway Company, and for other purposes." It proposes to amend so much of section 5 of the act approved August 2, 1882, which requires that "within one year from the date of the acceptance of this act by said company as herein provided, the said company shall file with the Secretary of the Interior a map showing the definite location of its line of road and telegraph as designated in the first section of this act, and shall complete the said road and telegraph through the lands of said nations within the further period of one year," that the time within which the road and telegraph line is required to be completed shall be extended two years from the date of the passage of the present act.

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

Mr. BERRY. I desire to make a motion.

Mr. VAN WYCK. Let me ask a question for information.

Mr. BERRY. I yield.

Mr. VAN WYCK. Did the act referred to in the bill just passed originally provide any grant of land through this territory?

Mr. MAXEY. No.

Mr. VAN WYCK. Nothing of that kind?

Mr. MAXEY. Nothing.

KANSAS AND ARKANSAS VALLEY RAILROAD.

Mr. BERRY. I move that the Senate proceed to the consideration of Senate bill 1484. I wish to say in regard to this matter that this was the first bill reported by the Committee on Railroads relative to a railroad in the Indian Territory.

The PRESIDENT *pro tempore*. The Chair must remind the Senator that on a motion to proceed to the consideration of a bill at this time debate is not in order.

Mr. BERRY. I move to proceed to the consideration of Senate bill 1484. I thought the Senator from Texas was allowed to speak on his motion.

The PRESIDENT *pro tempore*. The Chair called the attention of the Senator from Texas in the same way. The Senator from Arkansas moves to proceed to the consideration of Order of Business 191, being Senate bill 1484.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill (S. 1484) to authorize the Kansas and Arkansas Valley Railway to construct and operate a railway through the Indian Territory, and for other purposes.

Mr. CONGER. I ask for the reading of the report in that case.

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

The Chief Clerk read the following report, submitted by Mr. DAWES February 15, 1886:

The Committee on Indian Affairs, to whom was referred the bill (S. 90) "to grant to the Kansas and Arkansas Valley Railway the right of way through the Indian Territory, and for other purposes," have considered the same, and submit the following report:

In the passage by Congress on the 5th of July, 1884, of the act "to grant to the Gulf, Colorado and Santa Fé Railway Company a right of way through the Indian Territory, and for other purposes" and also the act "to grant a right of way through the Indian Territory to the Southern Kansas Railway Company, and for other purposes," Congress asserted the right to make such grant without the consent of the Indians through whose territory such railways were authorized to construct their roads. The committee, therefore, without waiving individual opinion upon the right of Congress to make such grants without the consent of the Indians, have considered that question settled by Congress, and have not deemed it of any practical value to consider it here. They have considered the question whether there is any public exigency for the construction of the railroad contemplated in this bill, and what are the provisions proper for securing to the Indians through whose territory it is to be constructed such protection to their rights and compensation for their property taken as will be fair and just.

The railroad contemplated by this bill leads from Fort Smith, in the State of Arkansas, across a small portion of the reservation belonging to the Choctaws, and a considerable distance through that belonging to the Cherokees, in a northwesterly direction to the Southern line of Kansas, at or near Arkansas City, with a branch designed to make connection with existing railroads at or near Coffeyville, in the State of Kansas. The length of the road from Fort Smith to the Kansas line, at or near Arkansas City, is 245 miles; and of the branch to Coffeyville, 70 miles. The line will form a direct connection between the railroad system of Kansas and that of the Southwest and make a direct and shorter line from the headwaters of the Colorado to New Orleans and the Gulf States. These two systems of railway are now separated for want of this connecting link. With it a most important through line from the Upper Missouri to the Gulf would be completed.

The road is proposed by an association formed under the laws of the State of Arkansas by responsible men, able to build the line and directly interested in both the upper and lower connections. It seems to the committee to be not only a very important link in this great system of railways, but to be also in the hands of such responsible men as will be sure to build and run it in the manner that will most contribute to the advancement of the public interest.

The committee have endeavored to guard in the best way possible the interest of all parties in the Indian Territory likely to be affected by the construction of this railway. The bill provides, in case of failure to make amicable settlement with any occupant of lands through which the road may pass, that the amount of damage shall be determined by three disinterested referees, to be appointed, one by the President, one by the tribe to whom such occupant belongs, and one by the railroad company, with an appeal to the United States district court at Fort Smith, Ark., or at Wichita, Kans., by either party feeling aggrieved by the award of the referees.

The bill also provides for a stipulated sum of $50 per mile to be paid to the tribe of Indians for the right of way through their land, and the right of appeal to the courts at Fort Smith, Ark., and Wichita, Kans., by the tribe if they shall not be satisfied with this sum. The bill also provides for the payment of an additional sum of $15 per annum for each mile of railway during the continuance of the railway, to be paid to the tribe in conformity with treaty stipulations on the part of the United States. There are provisions also in the bill for proper police regulations and the protection of the Indians of the Territory under the non-intercourse laws.

In the opinion of the committee the rights of the Indians and the public are as well guarded as it is possible to protect them by enactment, and the bill contains a provision that Congress may at any time amend, add to, alter, or repeal the provisions of the bill itself.

The committee therefore recommend the passage of the bill in a new draught.

Mr. PLATT. I should like to know something more about this bill. It may be all right so far as the Indians are concerned, but I want to know whether it is right so far as the people of the United States are concerned. I should like to know something about the charter which has been granted to this railroad company. I should like to know how far the road is to extend through Government land or the land of the Indians. I should like to be assured that there is to be no overcapitalization of this railroad company. I should like to be assured that

it is not to be built on bonds sold to the public by various representations which turn out to be worth a great deal less than they have been represented to be. In other words, I should like to be assured that the Government is now, when it grants a right to a railroad, to inaugurate the principle that that railroad shall be built for cash or its equivalent. I think that three-quarters of the financial trouble which this country now has upon it, that three-quarters of the discontent of the laboring people of this country and the poor people of this country, arises from the way in which railroad building and construction has been managed in the past; and for myself I do not, as a member of the Senate, propose to sit and vote for any more railroad charters, rights of way, or anything of the kind until I am assured that a different style of railroad building is to be the rule in the future from what it has been in the past.

We are asked here this morning to grant a right of way through Government land or Indian land to a railroad company which is chartered by the State of Arkansas. We know nothing about that charter, nothing about the provisions of it, nothing as to how it is to be built, nothing as to who is to build it, nothing as to whether it is to parallel a line already existing and finally to be consolidated with it. We know nothing indeed of this railroad enterprise except that it has been chartered by the State of Arkansas, and that we are asked to consent that it shall go through the Indian Territory. It may be all right; but for one I can not legislate without having some more information than is contained in the report of the committee or anything that has been laid before us.

The Senator from Massachusetts has no doubt looked to the right of the Indians, but I think somebody ought to look to the rights of the people in connection with this road.

Mr. DAWES. Mr. President, the questions which the Senator from Connecticut [Mr. PLATT] raises are pertinent questions and are proper to be answered, and the Committee on Indian Affairs have endeavored to answer them in the report which has been read at the desk. The Senator, of course, listened to that report, but it does not seem to have satisfied him.

I would say in reference to this bill that there are two systems of roads, one ending at Fort Smith, Ark., which is on the southeastern border of the Indian Territory, and the other on the north, stopping at the southern line of Kansas and the northern line of the Indian Territory. These two systems stop at these lines of the Indian Territory; and if this road is built a distance of two hundred and seventy-odd miles it will make a through line from all the northwestern region, reaching as far as the Upper Missouri River and from all through the State of Kansas through this line of two hundred and odd miles in the Indian Territory, to connect with the southern system of roads at Fort Smith, Ark., which lead to New Orleans and the Gulf and all through that region of country.

Upon the map it looks like a most important link of railway, and as affording an outlet in the southern direction for all the produce of that vast region of country. I think no one looking at the map or having any acquaintance with the country can doubt the importance of such a link.

The committee were satisfied also of the fact that this was a corporation organized under the laws of the State of Arkansas, with which the Senator from Arkansas, who is on the committee, is more familiar than myself, and I leave him to state the terms of the charter. It is in the hands of the men who have built both ends of the line, this long system at the north and another system at the south. There can be no association better able to build this road than the association which asks this permission to go through the Indian Territory. That they desire to build the road in good faith must be assumed in the absence of any suggestion to the contrary, and in the fact that they are very largely investors in the roads at both ends of this connection, which will be vastly increased in benefit to them as well as in benefit to the public if this road be constructed.

The conditions upon which it is proposed to take this right of way from the Indians without their consent are provided for in the bill, under the idea that Congress has committed itself and has settled the question of the right of eminent domain as it is called, the right to take property for railroad purposes from this Indian Territory, as the States have a right to take it through the States for the same purpose. The endeavor of the bill is to take care of the rights of the Indian with as much solicitude as similar rights are taken care of in the States under these circumstances. In my own State care has been taken. We have a general railroad law there; and very much after the manner of taking land for railroad purposes in my own State are the provisions inserted in this bill for settling the damages to the Indians for this right of way, with this difference: the bill enacts that they shall have $50 a mile for this right of way and an annual tax of $15 a mile as long as the road runs. That is to make it certain that they shall have what in the opinion of Congress is a fair price; and then it is provided in the bill that if the Indians are not satisfied with this $50 a mile they can go to the courts and in precisely the same manner that men go to the courts in all the States, so far as I have been made acquainted with their laws, and get, if they can, a larger sum.

Then the Indians are protected under the non-intercourse law from anybody on the 200-feet strip of land thus taken from entering there and erecting shops for the sale of liquor or anything of that kind. They preserve their police laws over this whole territory. The railroad people have only the right to use it for railroad purposes and for no other.

If it is conceded in the outset that the Government of the United States has the right to take the lands for public uses of this kind, I think that the other provisions of the bill should be satisfactory to those who are the most solicitous for the welfare of the Indians and for their rights.

Mr. PLATT. May I inquire how much of this system of railroads is in the State of Arkansas and how much in the State of Kansas?

Mr. DAWES. This particular corporation itself that is to construct this road, as I understand, begins at Fort Smith, Ark., and ends at the Kansas line. So this is a corporation for the purpose of building this road, but although a separate organization, it is in the hands and for the purposes of the two main lines at each end of this road; so that, as I understand, this particular corporation has no road in either of those States of itself, except that the corporators themselves are corporators in the other roads.

Mr. PLATT. What I want to get at is this: What system does this belong to? I hear a great deal about railroad systems in these days.

Mr. INGALLS. The Atchison, Topeka and Santa Fé.

Mr. PLATT. I think that ought to be satisfactory. We hear about the Vanderbilt system, and the Wabash system, and the Gould system.

Mr. DAWES. I did not mean by "system" any set of railroads owned by any particular man or men, for I do not know who own these railroads. I only know or think I know that here is a great "system" of roads—I mean by that here are roads, substantial roads, lying along a region of country which it appears to me from the map and from a very little personal knowledge—not worth much to me—to be of great importance to the commerce of the country. That is what I meant.

Mr. PLATT. I should like to make another inquiry. This report says:

> The line will form a direct connection between the railroad system of Kansas and that of the Southwest and make a direct and shorter line from the headwaters of the Colorado to New Orleans and the Gulf States.

How much will the line be shortened over the present existing line?

Mr. DAWES. I am unable to state, but I should think it would be two or three hundred miles around that corner of the Indian Territory to reach from Coffeyville or Arkansas City on the line of Kansas to Fort Smith, Ark.

Mr. JONES, of Arkansas. The only road covering the section of country contemplated by the report would be by Saint Louis and from Saint Louis up, and would be a very much greater distance than that suggested by the Senator from Massachusetts. The building of this connection across the corner of the Indian Territory would shorten the route from the western part of Kansas and from all the Northwest to the mouth of the Mississippi River and all the Gulf ports several hundred miles. I have not made the calculation, but it must amount to from five to seven hundred miles in all.

Mr. DAWES. If the Senator from Connecticut will give me his attention, the points on the Kansas line are as if here at my finger, and Fort Smith, Ark., is here [indicating]. This road proposes to go across the hypotenuse, instead of around the two sides of a right-angled triangle.

Mr. VAN WYCK. I do not understand from the Senator from Massachusetts how many lines are proposed to pass through the Indian Territory.

Mr. DAWES. This bill has reference only to a single line with a branch, striking several branches of the Atchison, Topeka and Santa Fé road, which runs down through Kansas as my fingers run here [indicating], striking different points and running out toward the Pacific. Two of those branches of the Atchison, Topeka and Santa Fé road it proposes to strike by going across this corner of the Indian Territory.

Mr. VAN WYCK. But how many other roads are proposed through the Indian Territory; how many such bills are pending?

Mr. DAWES. As to that there are a great many bills pending. I think there are ten or eleven bills pending. The committee have reported only two of them.

Mr. VAN WYCK. They have not acted on the others?

Mr. DAWES. The committee have not acted on any others. The committee, if I may be allowed to express the opinions of the committee, do not propose to authorize any body of men to go through that Territory under the idea of a railroad where the connections are not such as to promote permanently and to an appreciable extent the commerce of the country; but the committee assume that Congress in the action taken heretofore is committed to the assertion of the power of eminent domain over this Territory, so that it shall not lie between great lines of railway reaching from the Gulf of Mexico to the great Northwest; that where there is such a railway on both sides of this Indian Territory stopped by this Territory from a continuous line, the demands of commerce are such that it will be impossible, if it was undertaken, to prevent its going through this Territory; and it is wisdom on the part of Congress and it is prudence on the part of the Territory itself to see to it that such railroads are properly authorized and constructed.

Mr. VAN WYCK. I did not understand that from the Senator from Massachusetts there was any response to one portion of the suggestion of the Senator from Connecticut. He has answered that part relating to the protection of the Indians, but I did not understand—if I heard it I fail to remember it—that there was any response to the suggestion as to the protection of the remaining portion of the people of the United States in the allowance of this right to this road against adding stock and bonds as indebtedness of the road beyond the actual cost of its construction. I did not hear whether anything was done by the committee on that branch of the subject.

Mr. DAWES. The committee have undertaken to protect the public in reference to rates, both on passengers and freights, and have made stipulations in the bill that the railroad is obliged to conform to, and have also taken care that no rights shall be vested, no property shall be so vested that Congress can not at all times modify and control the law; but as to the particular question of issuing bonds, &c., the Senator from Arkansas can give better than myself the exact condition of the corporation.

Mr. VAN WYCK. I rise to offer an amendment. I move, in section 4, at the end of line 23, to insert:

And provided further, That mortgages and stock issued by said company shall not exceed the actual cost in money of building and equipping said road.

Mr. JONES, of Arkansas. This railroad company was chartered under the general law of the State of Arkansas, under which all the roads constructed in the State have been built, and which has been from time to time amended as seemed to be required by the best interests of the public at large.

For my own self, I imagine that when bonds are to be sold by this company they will be put on the market like other bonds, and purchasers will be required to take care of themselves as they would in the case of the purchase of the bonds of any other railroad company.

As to what amount of money will be required for the construction of the road, I presume no company could undertake to tell in advance. The gentlemen who compose this company are the large stockholders in the Arkansas Valley Railroad, a railroad which runs entirely across my State from Fort Smith down the line of the Arkansas River, to the Mississippi, making a connection there with links to various ports on the Gulf coast. Others, stockholders connected with the Atchison, Topeka and Santa Fé road, which touches the northern part of the Indian Territory, are largely interested in an outlet for their system of railroads, and wish anen tire route for the commerce of that country to the mouth of the Mississippi River. These are chiefly interested in the completion of this road.

It seems to me that Congress would act unwisely in attempting to hamper them in the exercise of an ordinary business discretion in negotiating bonds and getting the money on them for the purpose of building the road. These gentlemen may or may not have money enough in their vaults to build the road without borrowing. I do not know about that, but they are reputable gentlemen, capitalists of high standing. They are in no sense speculators. They are gentlemen who have been connected with great enterprises, and against whom and against whose methods there has been, so far as I know, never a word alleged.

I know the people of my State are deeply interested in the construction of this railroad. It is not the interest of the company alone, but it is the interest of all the people that they shall have shorter and more direct commercial connection with the people of the Northwest than they are now compelled to have by going around by Saint Louis.

It seems to me that the adoption of the amendment suggested by the Senator from Nebraska would be unwise and impolitic, and so far as I am concerned I shall vote against it. This bill is properly guarded in every respect, so far as I can see, and has been carefully considered. The general law, as I stated a while ago, of the State of Arkansas is applicable to this charter as to all other charters obtained in that State, and I do not know of any particular shortcoming in the law. It corresponds with the general railroad laws of other States in every particular, so far as I know. The provisions for taking care of private property are carefully secured in this bill, and it seems to me there is no good reason why the bill should not pass as it has been reported by the Senator from Massachusetts.

The PRESIDENT *pro tempore*. The question is on the amendment proposed by the Senator from Nebraska.

Mr. PLUMB. The Senator from Nebraska must know that the amendment would not accomplish any purpose such as he has in view. Such a provision was in the constitution, or certainly in the law, of the State of Texas, as it is in other States; but when the Texas Pacific Railway was built the contract was let to a contract company, and bonds were issued for the price of the contract. I state this merely as current history, and I have no doubt it is true. In that way the law was evaded by making a contract to build the road for more than it could be built for, but it was one of those things into which no inquiry could practically be made, because the question of cost is a very indefinite one, and it is not everybody who will contract to build a railroad. My granger friend from Nebraska would not feel himself prepared to take a contract to build four or five hundred miles of railroad in as many days; it requires very much capital.

The Senator from Connecticut has some doubt about this business. It is very true, as he says, that there have been great evils in regard to the building of railroads growing out of the fact that they have been built in unnecessary places and bonded to an extent which was entirely unreasonable. I beg leave to say, generally speaking, that the people whom he represents, and not the people of the West, have had great profit out of that class of transactions. The people of the Western country have been desirous for the building of roads, but the money must necessarily come from New England and New York. The people of the West have generally been willing to pay the price, and I can say, I think without any fear of successful contradiction, that there was no particular modesty on the part of New England people in fixing the price for which they would build these railroads, and so they have put on first-mortgage bonds and second-mortgage bonds and income bonds, and first-preferred stock and second-preferred stock and common stock, and so on, &c., in such a way that the burden on the people of the West has been remarkably heavy. I should have hoped that we at least might have been permitted to say something about that first, rather than to have the beneficiaries of that sort of transaction reproaching us with it.

Seriously, Mr. President, the addition of 150 miles of railroad to the 125,000 miles now built and in operation in the United States is not going to disturb the labor market a great deal, nor any other market. It is going to put no very great burden on any laboring man or poor man, but will give him a little more opportunity to labor and to get the money for his labor. Unless we can extend our jurisdiction pretty generally over the United States in such a way as to control the railroad building over a very large area of country, what little we can do in the Indian Territory in stopping building there would not have very much effect either on the labor market or the market for steel or other railroad supplies.

If the Senator from Connecticut is going into the labor question on this bill, I hope he will not give us a homeopathic dose, but that he will embrace within the purview of his operations for the purpose of affecting the labor question the entire railroad system of the United States, and make a drive at all the railroad building everywhere to meet the views which he has expressed on this occasion, and not keep the Indian Territory as an example of what he would like to do when it will have no effect in the direction in which he seeks to arrive at results.

Mr. PLATT. Mr. President, I do not want to discuss this matter on the question of whether New England has done this thing or that thing, or whether the West has done this thing or that thing. I want to discuss it on broader principles. I do not want to discuss it specifically with regard to any labor movement. I want the Senate for once to understand, if it is possible, that the time has come in the history of this Government when it ought not to allow fictitious railroad building any longer, where it can control the matter. By fictitious railroad building I mean fictitious capitalization.

If people in my section have put bonds on the market and sold them and built roads after that fashion so that they have cost two or three times as much when they are represented by capital as they ought to have cost in fact, and thereby an additional burden, a triple burden, is laid on all the people of the United States, or at least all who have occasion to support the railroads, and that embraces pretty much all the people—I am not here to defend the people of my section.

I do, however, believe that this subject is a wider and a broader and a deeper subject than the Senator from Kansas seems to think it is. I have no desire to stop the building of a railroad in the Indian Territory; but now when the first opportunity occurs after I have examined this question carefully, as I have through the past summer, I am called upon to act in my place as a Senator, I am desirous that the Senate shall stop in what it has been doing heretofore.

We can not regulate this matter of railroad building in the States. If a State chooses to charter railroad companies in such a way that the proprietors can in building their road capitalize it for twice, three, or four times as much as it ought to be capitalized for, so that if any dividends are paid they are to be paid upon a capital twice, three, or four times as large as the public ought to pay dividends upon—if the States choose to do that the Congress of the United States can not interfere. If it could I would be glad to extend the action of Congress over all the future railroad building of this country. I would be glad if it were in the power of Congress by an enactment which we might pass here to have it provided that hereafter no railroad should be capitalized for more than its actual fair cost to build. I believe that no measure would so protect the people in their interest as such a measure. But we can not do it. We can not interfere with railroad building in the States. But when we are asked to grant a right to a railroad company, I think it is not only our privilege but it is our duty to understand how that railroad is to be built, whether there is a necessity for it, whether it is to be built with cash or bonds and unpaid stock, and what is to be the probable effect upon the people who have to support that railroad.

If I choose to reply to the Senator from Kansas in the way in which he replied to me, I might intimate that the people of Connecticut had had some experience with Arkansas railroads, and that they have not gotten very rich out of that experience either.

Mr. PLUMB. What railroads?

Mr. PLATT. Arkansas railroads. But I do not wish to discuss this

subject in any such temper or on any such plane. I have sent to the Library and obtained the statutes of Arkansas. I have had but a moment's time to look at them, but I find this: I find that any number of persons, five or more, may associate, and as soon as stock of a thousand dollars per mile of the railroad intended to be built shall be subscribed in good faith they may organize, and then they have at some future time to make a certificate that they have paid in 5 per cent. of that subscription. I may be mistaken in the examination of these laws, but if I am not, all the cash subscription ever required of stockholders in that railroad is 5 per cent. upon $1,000 a mile, or $50 a mile. If I understand—and I have had but a moment's time to examine them—the laws of Arkansas under which this road is to be built, the only provision for the payment of any money for the building of the road is $50 a mile. What is to be the result? Bonds are to be put on the market; prospectuses are to be issued setting forth the great advantages of this railroad; capitalists are to be invoked to sell its bonds; people will take them if they have not learned too dearly by the experience of the past, as probably they have not, at a high rate. The road will be built by the contractors for the bonds (except such of them as may be sold for cash) and for the stock of the road; and what is the inevitable result? That this road, in bonds, in stock, and in watered stock, will represent when it comes to be constructed and put in operation twice or three times the amounts for which it ought to have been built.

This little road perhaps is not of much consequence; but the assent of the Government to that principle is of immense consequence. I have learned this by an examination during the past summer upon the Committee on Interstate Commerce, of which the distinguished Senator from Illinois [Mr. CULLOM] is chairman. I have learned by that investigation how deeply this question interests the country. Of the entire capitalization of the railroads of this country it is estimated that more than half is fictitious. What does that mean? It means that the great railroad tax which the people of this country pay from year to year and from day to day is double what it ought to be in this country.

I am not standing here in any narrow sense to advocate the claims of labor and laboring men. I trust my reputation in the Senate is too well established for anybody to suppose that I am a demagogue.

Mr. HOAR. I should like to ask my honorable friend from Connecticut if, in the very interesting statement he has just made, he means to say that the investigation of the committee of which he was a member showed that the capital of the railroads, the dividend-paying capital, was more than half fictitious, so that the railroads were earning a percentage upon fictitious stock equal to their actual cost?

Mr. PLATT. The statement I made was this, and it is backed up in Poor's Manual, that taking the entire capitalization, bonds and stock, of this country it is double—I do not speak accurately, but I speak in general terms—it is double the cost or the value of these roads.

Mr. HOAR. That I understood.

Mr. PLATT. Now let me go a little further. I will answer that question.

Mr. HOAR. The Senator added that it followed from that statement that the burden of the people in supporting these railroads, paying them freights and fares, was doubled.

Mr. PLATT. It may not follow exactly; but if the Senator will take any railroad in Massachusetts and study its history, I think he will scarcely be able to find one in which there is not fictitious capitalization, by which I mean a capitalization over and above any cost of the road and over and above any fair valuation of the road. It is the rule of railroad building and railroad operation in this country.

Mr. HOAR. I do not like to interrupt the Senator too much, but I wish to say that while I entirely sympathize with his general views on this subject, and while there never has come up a railroad charter through the Territories in this or the other House for the last fifteen years to my knowledge in which I have not endeavored to insert clauses, sometimes successfully and sometimes unsuccessfully, for this security, I think the Senator does injustice to the railroad system of Massachusetts, which is very carefully guarded. There have been, especially in one conspicuous instance and in one or two less conspicuous instances, cases of watering the stock of those railroads; but as a rule the law of railroad construction in Massachusetts has been the actual paying in in cash of the capital stock of the roads, secured by very strict legislation, the absolute sinking by the original builders of a road of its entire original cost, and sometimes that has been repeated more than once in the loss of interest before there was any dividend on stock.

Mr. PLATT. I see that my time has almost expired, Mr. President. I was drawn into this discussion on the moment. I can give facts and statistics which are a great deal more valuable than any statements which I might make upon recollection. Possibly the Senator from Massachusetts is right, but I think he will find when he comes to examine the statistics that in all the roads there is what is called watered stock. I have been drawn into this discussion without preparation and without thought. I have been drawn into it in this way. Here is a proposition to grant a railroad a right of way through the Indian Territory. It is taken up ahead of a hundred other cases which are entitled to preference on the Calendar. I have had no opportunity to examine it and examine the laws of the State of Arkansas except as I could examine them here at my desk; but I assume if there was any such haste as made it necessary to take this up when a hundred other cases stood ahead of it which were entitled to preference, there was at least reason why it should be examined somewhat carefully.

Mr. VAN WYCK. Mr. President——

The PRESIDING OFFICER (Mr. CHACE in the chair). It is the duty of the Chair to inform the Senator from Nebraska that the morning hour has expired. The Chair lays before the Senate the unfinished business, being the bill (S. 194), to aid in the establishment and temporary support of common schools.

SAINT LOUIS AND SAN FRANCISCO RAILWAY COMPANY.

Mr. VAN WYCK. If the Senator from New Hampshire will for one moment allow me, I desire to enter a motion to reconsider the vote whereby the Senate passed this morning the bill (S. 91) to amend an act entitled "An act to grant a right of way for a railroad and telegraph line through the lands of the Choctaw and Chickasaw Nations of Indians to the Saint Louis and San Francisco Railway Company, and for other purposes." I do it for the purpose of having both these bills put on the same platform; and if this matter should have been considered in the bill hastily passed, I desire that an opportunity shall be offered to consider it and apply the same principle to that as to this.

The PRESIDING OFFICER. The motion to reconsider will be entered.

AID TO COMMON SCHOOLS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 194) to aid in the establishment and temporary support of common schools.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from Virginia [Mr. MAHONE].

Mr. MAHONE. I wish to modify the amendment I offered yesterday.

The PRESIDING OFFICER. The modification will be read.

The CHIEF CLERK. The proposed amendment is in section 3, line 14, to strike out all after "schools" down to and including the word "schools," in line 15, as follows:

> The number of white and the number of colored common schools

And to insert in lieu thereof:

> The number of white and colored children of the school age prescribed by this act for each county and city as given by the census of 1880, and the number of children, white and colored, of such school age attending school, the number of schools in operation in each county and city, white and colored, the school term for each class, the number of teachers employed, white and colored, male and female, and the average compensation paid such teachers.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from Virginia as modified.

Mr. RIDDLEBERGER. I should like to have it reported again, as I understand it is not the same amendment which was presented yesterday.

The PRESIDING OFFICER. The amendment will be read again.

The Chief Clerk read the amendment of Mr. MAHONE.

Mr. BLAIR. I am very glad the Senator from Virginia has modified his amendment, as the modification relieves it of the only objection I had to it last night. It simply calls for matter which is available through the census and through the reports of the superintendents of education of the various States. I see no objection to the amendment as it is now proposed.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Virginia [Mr. MAHONE].

The amendment was agreed to.

Mr. PLUMB. I desire to call attention to the provisions of section 6. That section is in these words:

> SEC. 6. That the money appropriated and apportioned under the provisions of this act to the use of any Territory shall be applied to the use of common and industrial schools therein by the Secretary of the Interior.

That makes the Secretary of the Interior the sole arbiter, the only person qualified to perform any act in regard to the distribution or use of this money, under which he may employ teachers; he may build school-houses; he may employ general agents or special agents of his Department. In other words, he may take all that money for any purpose which he considers germane to the educational interests of any Territory, and there is no power to prevent or to limit in any way the exercise of any discretion that he may see fit to use. I think that that whole section is really an anachronism; that is to say, I think the explanation of the Senator from Massachusetts yesterday showed fairly that the committee, if its attention had been called to it, would have stricken it out. It is not necessary to the purpose of the bill at all, because section 10, which is the one that was referred to yesterday, provides generally for the distribution of the money in the States and Territories; and the sixth section ought to have been stricken out, but the Senate voted otherwise. I now, therefore, move an amendment in order to take this power away from the Secretary of the Interior and put it where it belongs, by striking out all the words in line 4 and inserting "under the direction of the Legislature thereof," so that the Legislature of the Territory shall have the same power with reference to this money which is given by other portions of the bill to the Legislatures of the several States.

I think there can be no objection to this, because certainly it will not be claimed that the Secretary of the Interior ought to organize an educational bureau for the States or the Territories in his Department and carry on all the minutiæ of education in these remote communities, without any reference to the local desire, or without any reference to the local authorities.

Mr. BLAIR. This matter was debated a little yesterday, and I supposed it was settled. The vote was substantially upon the question whether the Secretary of the Interior should have control of the expenditure of this money within the Territories, and, as the Senator has said, the motion to strike out the section was decided in the negative by the Senate. I would restate for a moment the strong reasons, as it seems to me, for retaining this power in the hands of the Secretary of the Interior.

In the Territory of New Mexico and in the Territory of Utah it would be very difficult to insure the application of these funds through the local Legislature to the equal benefit of common schools. If this money should fall into the hands of a Mormon Legislature it is quite apparent that it would hardly be applied to the support of the common schools which are being built up in the Territory of Utah against Mormon influence, for the purpose, so far as they may have influence, of the counteraction of the system of polygamy. I think it is true that we shall have to rely very largely, perhaps as largely as upon any other influence or power whatever, on the common schools, the effect of education properly conducted on the rising population in the Territory of Utah, for the spread of a sentiment which will result in the extinction of that crime.

In the Territory of New Mexico also, which will receive under this act between $700,000 and $800,000 in all, there are reasons equally conclusive why the control of this money should be kept in the hands of an authority which sympathizes with the general purposes of this act, charged, of course, to carry the money to the children generally, and to insure to them, against any adverse influences, local or otherwise, the advantages of a common-school instruction.

So far as the other Territories—Wyoming, Dakota, Montana, Washington, and Idaho—are concerned, it is not a matter of any particular importance, because their Legislatures would of course appropriate this money in substantially the same way that the Secretary of the Interior, would be likely to do so at least; and yet we have retained in this section the feature of industrial education, and if anything is to be done in these rising commonwealths to plant that system of instruction within their borders, it would be better that there should be a central power here at Washington to direct the expenditure which might go in several of the Territories to industrial education.

In any view of it that may be adopted it seems to me that the previous action of the Senate is wise, and it ought not to be interfered with. The section should stand as it now is.

Mr. TELLER. I should like to ask the Senator from New Hampshire how much of an industrial school he supposes he could establish in Utah with the magnificent sum of $9,942 the first year and the second year about $14,000?

Mr. BLAIR. I think that amount of money, properly expended, would do a great deal toward giving instruction in some of the industrial arts in particular schools, or possibly toward the establishment of a school, if there should be suitable co-operation on the part of the people, which the bill contemplates in all cases. That might be worth a great deal. A little money goes a great way sometimes.

But that is not the point so much as it is that whatever goes to the Territory of Utah, whatever goes to the Territory of New Mexico, should go to the common school or to the industrial school if it be thought best; and I do not think, if we pay this over to the control of the Legislature of New Mexico, it will be of very much advantage to the common non-sectarian schools, and it certainly would not be wise to trust a dollar to the expenditure of a Mormon Legislature.

Mr. TELLER. I think that the Senator from New Hampshire is not as conversant with the condition of the Territories as he is, perhaps, with that of New Hampshire and some of the other sections of the country. As I said yesterday, there is not to my knowledge—and I have a pretty thorough knowledge of the Western Territories—and there has not been in that Western country an industrial school at any time; and what is more, there is no necessity for an industrial school, unless it is for the education of Indians, and I am sorry to say I do not know of any that are being conducted in the Territories for that purpose, to any considerable extent at least, and this does not apply to that class of schools.

Mr. BLAIR. The question is whether the money shall be taken out of the control of the Secretary of the Interior and given to the Legislature.

Mr. TELLER. I understand that, but that is one of the arguments the Senator uses why it ought not to be put under the control of the Legislature of the Territory, that the Secretary of the Interior might desire to establish industrial schools in the Territories. He may desire to do so, but he will find no money under this bill to do it if he does so desire, and he will find no subjects for his school. There is not any portion of the face of the earth that needs an industrial school so little as do the free Territories of the Northwest, New Mexico included. The people there can find enough to do. They have got a virgin land, they have got wealth untold in the natural advantages of the country and the soil, and if they desire to follow trades they do not have any trouble. That is not the place where you need industrial schools; you do not want them, can not get them under the bill, and if you had millions of money you could not induce those people to patronize such schools to any considerable extent.

Now, as I understand the purpose of this bill, if it is anything at all it is to stimulate and assist the struggling communities who are anxious to do more than their financial ability will admit, and the Senator proposes in all these Territories that the Secretary of the Interior, if he sees fit, shall run one class of schools and the government of the Territory shall run another. Why, Mr. President, there are counties in these Territories that pay more money every year for the support of education than a whole Territory will get under this bill. It is a mere pittance they are getting; it amounts, as I said yesterday, practically to nothing. Neither does it in other sections that are not Territories. Take the State of Colorado. I believe the amount she will get in eight years would be $129,783. The first year it would be $11,798. It is not enough to make any perceptible difference with the educational facilities in that section of country.

If this money is to be of any value at all, the little pittance that is doled out must go into the treasury of the State or Territory, and the local authorities must control it. If you should give a million dollars a year to the Territories it might be used under the direction of the Secretary of the Interior to some advantage, though I do not believe it would. I do not believe it could be possibly used by the Secretary of the Interior with the discretion and with the judgment that it would be used by the Territorial authorities of these Territories; and it seems to me that nobody ought to object to the Territorial Legislature determining as to the disposition of this money. Let them determine it through their executive officers appointed for the purpose.

I do not know that you should make a bad rule for all the Territories simply because there is a condition of affairs in Utah that may be objectionable. I know one thing; I know that in Utah they have maintained schools for many years and that they pay a large amount of money for them. I have no doubt they teach the Mormon doctrines in their schools. I think the prevailing doctrine would be likely to be taught in any community where nine-tenths of the people worshipped in one manner. I think if nine-tenths of a community were Episcopalians or Methodists or Baptists or Quakers there would be teachers in the schools of those denominations, and there would be a Quaker education or a Baptist education, whichever denomination predominated to such a great extent. It is not unusual; it is not astonishing; and if they do take in some heresies with their education it is better they should have it with those heresies, which they would get anyhow, than not to have the education at all. The attempt, then, to have the Secretary of the Interior distribute this money as he may, in some other method than that agreeable to the people of the Territory, will be simply to throw it away.

Mr. BLAIR. The Senator has spoken in so many directions and so little to the point of the amendment that I feel almost the necessity of saying a word to recall the Senate to the real issue, which is simply whether the Secretary of the Interior shall distribute these amounts in the Territories in his discretion or whether the Legislatures of the Territories shall perform that function.

The Senator says he has no doubt that if it goes to the Legislature of the Territory of Utah it will go to give instruction to Mormonism. The whole amount that will be contributed to the enlargement of the borders of that institution, according to the Senator's suggestion, if his desire is to be complied with, in the course of the next eight years would be $109,363.10. If the Secretary of the Interior distributes that money it will go to the maintenance of a system of schools under what are known as Gentile influences, which Congregational, Presbyterian, Methodist, Baptist, Catholic religious societies are assisting in maintaining in that Territory. It will have a little tendency to break down the institution known as Mormonism, so far as it has any influence at all.

In the Territory of New Mexico, to which I have already alluded as one that will receive under the provisions of this bill between seven and eight hundred thousand dollars—$708,220.88, to be accurate—it has been a matter of complaint for many years on the part of the superintendent of education and those interested in the establishment of the common schools proper, not connected with or under the influence of any religious organization or any sectarian institution, that it was impossible to maintain the common schools by the local action. If this amendment should prevail between seven and eight hundred thousand dollars would be substantially placed at the disposal of those who maintain a certain class of religious schools, when section 2 of the bill prohibits the payment of any of this money to the maintenance of schools of a sectarian character. To give control of the fund that goes to New Mexico to anybody likely to take it save the Secretary of the Interior, would be to appropriate that amount to the maintenance, in practice at least, of sectarian schools.

I have received many letters and strong representations from that Territory from time to time, the most recent of which is a letter that

I will now read, written to me by the superintendent of schools of one of the counties of the Territory.

LAS VEGAS, N. MEX., *January* 13, 1886.

SIR: I have just mailed to your address a copy of my annual report as superintendent of schools for San Miguel County, New Mexico. My object in so doing is, that it may throw some light on the condition of the newly organized public schools of this country and aid in the passage of your educational bill, for which we all so heartily pray. Our school population is quite large, but thinly distributed over a large area of country, and not being a State, the lands set apart for school purposes are of no use to us at present, hence the great disadvantage under which we now labor. Again hoping your educational bill may become law during this Congress,

I am, honorable sir, your obedient servant,

W. G. KOOGLER,
Superintendent of Schools.

Hon. HENRY W. BLAIR,
United States Senator.

I hope that this section may not be changed. I care very little about the word "industrial," as I said yesterday, but the power should remain with the Secretary of the Interior.

Mr. TELLER. The Senator who has this bill in charge, and who is the father of it, announces unequivocally that the purpose of this bill is to maintain in certain portions of the country sectarian schools. I am astonished at that, for I had supposed the bill proceeded upon an entirely different idea.

Mr. BLAIR. I have made no statement of that kind.

Mr. TELLER. Certainly the Senator did.

Mr. BLAIR. The Senator misunderstood me. I said the amount provided for Utah would go to the system of common schools, to the maintenance of which various religious societies made contributions.

Mr. TELLER. The honorable Senator knows very well that the schools to which he referred are sectarian schools. They are church schools supported by the churches and not by law. He proposes now that the Secretary of the Interior shall appropriate this money in Utah for the purpose of supporting schools which he knows that at least nine-tenths of the children will not attend. He proposes also that in the Territory of New Mexico, where it happens that the great bulk of the people are Roman Catholics, other schools shall be there maintained of the same character, I suppose.

Mr. BLAIR. The Senator is laboring under a mistake.

Mr. TELLER. I am not laboring under any mistake. That is the logic of the Senator's statement.

Mr. BLAIR. The Senator——

Mr. TELLER. I decline to be interrupted. The Senator has had a great deal of time and he can speak again after I conclude.

That is the logic of the Senator's position, that the Territory of New Mexico is not to have charge of this fund, that it is to be taken in charge by somebody outside of the Territory, because the Territory of New Mexico, controlled by a certain class of religionists, is not capable and competent to take charge of the educational interests in that Territory.

Mr. President, I am free to admit that in the Territory of New Mexico, settled largely by people of the Latin race, people who have not such a love for learning and for liberty as the Anglo-Saxon, there has been very little done in the way of education; but I had supposed that this bill was for the purpose of inciting and stimulating the legislative department of that Territory to do better and greater things in the cause of education; but now, if I understand the Senator aright—and I am bound to suppose that he means just what he says—these schools are to be outside of that authority, there are to be two systems of schools in the Territory of New Mexico, two systems in the Territory of Utah, two systems in the Territory of Montana, in Idaho, and in other regions, if the Secretary of the Interior is not satisfied with the management and the condition of the public schools. We have the power, undoubtedly, to do that. I have no doubt we could establish separate national schools in all the Territories. Nobody doubts that. Whatever may be the power in the States, we may do it in the Territories; but is it wise to do it? Certainly not with the pittance that this bill gives.

I think these States and Territories should be put on an equal footing. If you trust the States you ought to trust the Territories. They are but embryo States, and it will not do to say that the class of people in charge and control, a religious body in either or in all the Territories, will not carry out the act in good faith. You might say the same thing of people in other sections of the country. It has been doubted whether it will be carried out in good faith in other sections. The Senator proceeds upon the theory, as I understand, and so do all the friends of the bill, that you must trust the people and must submit to them and depend upon their honesty to carry out the provisions of this law. I am in favor of applying to the Territories exactly the same rule which is applied to the States. They are but embryo States, soon to be States in fact, and most of them are as well governed and as well managed and the people as capable of good and great things as they are in the States. They are not dependencies of ours, to be treated as Great Britain treats her dependencies. They are part and parcel of our own people, with the same aspirations, the same hopes, and the same influences dictating and guiding them, and I think, if I except New Mexico, there can be no complaint made of the Territories with reference to the educational facilities that they are giving to their own people.

Mr. BLAIR. I want to say one word. The Senator from Colorado does know—I assume that he knows it because he has been Secretary of the Interior—that there are two classes of schools in Utah and New Mexico to-day, and he undoubtedly does know that if this matter is placed in the hands of the Legislatures of these two Territories all that goes to Utah will go to Mormonism, and all or probably all that goes to New Mexico will reach the parochial instead of the common schools by indirection. I undertake to say that it is no disparagement of the inhabitants of the Territories, no misrepresentation of the general wish of the population in the Territories, those two at least, that this money should be used in such a way as to promote the cause of non-sectarian common schools. If this section stands as it is, that result will be attained. If the money is put in the hands of the local Legislature, it is very certain what the result will be in a portion of the Territories.

Mr. PLUMB. I did not suppose there would be the slightest objection to this amendment, and it seems to me now that the Senator from New Hampshire has obscured his usual good judgment by his determination to keep this bill exactly as it came from the committee, in some way committing himself to its terms without due regard, I think, for its substance. I do not believe that anybody would ever have seriously proposed that the entire subject of education in a Territory should be committed to the Secretary of the Interior.

The Senator makes some point about Utah and about New Mexico. I think the point in regard to New Mexico is entirely wide of the mark. But take Utah. Should Dakota, with one-half a million people, with fully 600,000, be punished because of the delinquency of the people of Utah? How about the Territory of Washington with 150,000 people, and the Territories of Wyoming and Montana, and so on? It seems to me that the Territory of Washington ought to appeal to my friend, because in Washington they have female suffrage; and does he want to take away from the virtuous and recently enfranchised women of Washington Territory the right to control the common-school system of that great area?

Mr. President, there is no limit on the power of the Secretary of the Interior under this provision. It may be used—I do not say that it would be so, but it might be used—for very improper purposes in connection with the administration of affairs in a Territory. It might be made, in the hands of an indifferent or unscrupulous Secretary of the Interior, a very powerful political weapon. Who is to limit the exercise of his discretion? How many superintendents may he appoint for schools? How many special agents? How many books of a certain kind may he buy? There is absolutely no limit to what he can do under the provision of this section, and I appeal to the Senators on the Democratic side of this Chamber who are actively aiding the passage of this bill because its passage gives to their States great sums beyond the proportion which they pay into the national Treasury in the shape of taxes, if they want a power of this kind committed to the Secretary of the Interior, whether he be a Democrat or whether he be a Republican.

If the people of the Territory of Dakota can be trusted to vote money to be paid by the tax-payers, who elect the Legislature, for the purposes of schools as well as for all other purposes of government—if they can be trusted in fact with all or nearly all the great functions of legislation, why can they not be trusted to expend the little pittance they will get—only a few thousand dollars a year—a mere bagatelle compared with that which the Legislature levies on the people of that Territory for the same purpose? Take even Utah. So long as we commit to the people of Utah the power of local self-government, the erection and care and maintenance of schools, and the levy of taxes for all other purposes connected with that government, except payment of the Federal officials, why can we not trust them also with the expenditure of a small sum of money annually to be derived from the national Treasury for the purposes of education?

Mr. President, if there is to be an exception made, why not say that we except Utah and provide some other method of distribution in regard to that Territory? Why take these great commonwealths of Dakota and Montana and Washington and New Mexico, having population enough to be admitted to this floor and being equipped in all essential particulars as well for the performance of the functions of self-government as the people of any State in this Union, and say that they shall not have the same control over money that comes from the Federal Treasury that Louisiana and Arkansas and Alabama and Indiana have; but that in their case it shall be committed to the Secretary of the Interior, who may build school-houses and employ teachers and buy school-books and intrude his personality into every single thing that concerns the schools, notwithstanding the fact that a portion of them may be kept up by taxes levied by the people of the Territories themselves?

If anything were lacking to show that there is some undercurrent, some hidden purpose in connection with this bill, if it does not make itself apparent on the face of it it is the strenuous advocacy by the Senator from New Hampshire of this most outrageous provision. Nothing could be more insulting to the people of these Territories than this provision, nothing could be wider apart from that which is due to them, and nothing could be a more unusual and unwise deposit of power than to give to the Secretary of the Interior this authority to intrude himself into the affairs of these different commonwealths in regard to this sacred cause of education without any attempt to limit his discretion.

The time has been when if a provision of this kind appeared in a bill proposed for action here every Senator who sat on one side of the Chamber would have said that it was simply intended for a political purpose, and was done for the purpose of putting the Territories of the United States into direct relations with the party then controlling the Government. It would have been said freely that such was the purpose and that it could have been the only purpose for inserting such a provision as that in this or any other bill. I make no such charge; but I say that the fact that these words are here, and that the suggestion that the Legislatures of these Territories shall have power to control this money is resisted by the putative father of this bill, is to my mind abundant evidence that he has something concealed which, if it were known, would make the bill a little less palatable than it is now.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from Kansas [Mr. PLUMB].

Mr. DOLPH. I have not been present during all the debate on this bill, but if there have been no amendments made to it, I do not see how this amendment helps it very much.

If Senators will refer to the last clause of section 4, they will find that it is provided that this money "shall be paid over to such officers as shall be authorized by the laws of the respective States and Territories to receive the same." There is an express provision as to what shall be done with this money when it is drawn from the Treasury, an express provision that it shall be paid over to the officer of the State or Territory who is charged with the disbursement of funds for the support of schools.

Then when we come to section 6, and in contradiction of the provision which I have quoted from section 4, section 6 provides that this fund "shall be applied to the use of common and industrial schools" in the Territories by the Secretary of the Interior.

Then we come to section 10, and we find a provision that the fund "shall be used only for common schools, not sectarian in character, in the school districts of the several States and Territories."

Then, passing to section 11, we find that it is provided that "no second or subsequent allotment shall be made under this act to any State or Territory unless the governor of such State or Territory shall first file with the Secretary of the Interior a statement, certified by him, giving a detailed account of the payments or disbursements made of the school fund apportioned to his State or Territory and received by the State or Territorial treasurer or officer under this act."

Taking all four of these sections together, each one contradicts the other as to the manner in which the fund shall be disbursed. Now the Senator from Kansas proposes to make a new provision contradicting all these others, proposing that this fund in the Territories shall be applied under the direction of the Legislature, so that if that should be incorporated in this bill and the bill should become a law we shall have a provision that this money shall be paid over to the officer in the Territory charged with the disbursement of school funds, the treasurer or school superintendent, and then we shall have another provision that in the Territories it shall be disbursed by the Legislature, then another provision that the governor shall make a report of the manner in which the funds have been disbursed which have been turned over by the General Government to the Territorial treasurer or superintendent of schools or other officer charged with the disbursement of school funds! So it seems to me that instead of making this bill harmonious, it is made still more contradictory by this amendment.

It seems to me that we must either leave this fund appropriated for the Territories to be disbursed by the Territorial officers elected and qualified for that purpose or it must be disbursed by the Secretary of the Interior. Both can not do it. It ought to be disbursed the same as the fund is required to be disbursed in the States. It ought to be apportioned between the various counties of the State or Territory and between the various school districts in the county in accordance with the number of children of school age in those districts and in those counties. There is no other satisfactory rule for the disbursement of this money which can be adopted which can be enforced by the Secretary of the Interior or by Congress after the bill is passed.

But I do not see any provision in the bill that is adapted for that purpose. Suppose this money is to be disbursed in the Territories by the Secretary of the Interior and to be divided between common schools and industrial schools. As I said yesterday, so far as I know industrial schools are not established and maintained under any general law providing for their maintenance and their support. How is the Secretary of the Interior to divide this fund between common schools and industrial schools? Is his decision not to be subject to review or is his apportionment not to be controlled by law? Is it to be arbitrary, according to his own discretion? May he give 99 cents on every dollar of money appropriated for a Territory to industrial schools and the balance to common schools?

I can not see how such a method can be put in force, how it is practicable to make a division of this fund under any such loose provision as that. I think the money which is appropriated should be appropriated to the States and Territories in accordance with some rule to be prescribed in the act itself; it should be apportioned between the various counties and school districts in accordance with some rule to be prescribed in the act, and not according to the discretion of any executive officer. There ought to be a suitable provision in the bill for retaining any future installments of the money proposed to be appropriated in case there is a failure to divide the money and to expend it according to the provisions of the bill.

In regard to Alaska Territory, as I said yesterday, I do not think that Alaska is a Territory within the meaning of this act. I see the Senator from Indiana [Mr. HARRISON] present, the chairman of the Committee on Territories, who reported the Alaska bill of last year; and as I recollect, either in the report or in his remarks, he said, "We have not called this a Territory; we have called it a District," and the suggestion was made that it would not come within the category of the other Territories of the United States. If it is intended that the bill shall apply to Alaska, I think there ought to be a special provision for it, and in due time I shall offer an amendment for that purpose, making it applicable to Alaska. Then the proportion which Alaska receives ought to be disbursed by the Secretary of the Interior, and it ought to be disbursed for industrial schools, because those are the principal schools that are in force there, and it ought to be disbursed in the same manner as other appropriations which have been made for schools in Alaska or which shall hereafter be made for that purpose; and Alaska ought to be made an exception to the States and all the other Territories. As I said, when the opportunity comes I shall offer an amendment to that effect in regard to Alaska Territory.

So far as the pending amendment is concerned, it only seems to me to put another contradictory statement in the bill by providing that the Legislature shall determine the expenditure of this money, whereas in another portion of the bill it is provided that it shall be paid over to the Territorial officers appointed by law.

Mr. PLUMB. As I understand the position of the Senator from Oregon, I think he is entirely wide of the mark. Section 4 provides for the deposit of this money. It does not provide for its expenditure at all. Section 6 provides that the money shall be actually applied by the Secretary of the Interior. Whether he shall confide it to the officers of the Territory with whom the money may be deposited or otherwise is one of those things that he himself may probably decide; but there is nowhere any provision authorizing any officer of a Territory to expend this money except it may be directed by the Legislature of the State or Territory.

Mr. DOLPH. Would it be any more an application of the money for the Secretary of the Interior to pay it over to the Territorial treasurer than it would be an application of the money for the Secretary of the Interior to pay it over to the treasurer of a State authorized to receive it? Is what is intended in section 6 by the application of this money to the schools by the Secretary of the Interior simply that it shall be paid over to an officer of the State? I think not.

Mr. PLUMB. I do not know that I understand the purpose of the Senator's question; but in section 6 the Secretary is directed to apply the money to the use of the common and industrial schools. That is an absolute provision which gives him control of the money, in the school-house, if necessary, in the detailed expenditure of it for all the purposes of schools. Is not that so?

Mr. DOLPH. That is so; but could he control that detailed expenditure of money after he had paid it over under another section to the treasurer of the Territory, after it had passed out of his power?

Mr. PLUMB. But suppose he should refuse to apply it to industrial schools. Section 10 does not provide for industrial schools at all. Suppose the Secretary of the Interior simply says then, "I will exercise that power about which there can be no controversy whatever; it is my right to apply it to industrial schools; I shall not give it to the common schools of Dakota, but I shall give it to a superintendent whom I shall employ, and a teacher whom I shall employ, and I will provide industrial-school houses, and so on, and set up agencies of my own in those Territories;" what would prevent his doing that?

Mr. DOLPH. If the Senator will permit me, perhaps I have not made myself plain as I had intended to do. Section 4 provides that the Secretary of the Interior shall pay over this money. He does not control the distribution of it. He simply makes requisition on the Secretary of the Treasury, who draws his warrant on the Treasury, and receives the money, and the Secretary of the Interior pays it over to "such officers as shall be authorized by the laws of the respective States and Territories to receive the same." Then the money is out of his possession. It is beyond his control if he complies with this section.

Mr. TELLER. Who does control it? That is the question.

Mr. DOLPH. It will be controlled by the State or Territory.

Mr. TELLER. Through its Legislature, would it not? The details under the bill are to be directed by the Legislature.

Mr. DOLPH. Yes; they are either already provided or will hereafter be provided.

Mr. TELLER. Then what is the objection to having this contradictory provision stricken out of section 4 and put in words which shall express the idea the Senator from Oregon seems to be in favor of?

Mr. DOLPH. The two sections are entirely contradictory. One or the other should go entirely out of the bill. The Senate has voted down the amendment to strike out section 6. I suppose, therefore, that it has determined, if it does not reconsider that vote, that this money

shall be expended under the discretion of the Secretary of the Interior. If that is the purpose, the latter clause of section 4 ought to be stricken out, because, as I say, it is contradictory, flatly so, of the provision in section 6.

Mr. PLUMB. It is true the Senate voted that they would not strike out that section, but that is no reason why the section itself should not be amended so as to be in harmony with the general idea of the bill. The Senator from New Hampshire says that it is the affirmative purpose of himself, as the author and finisher of this measure, to have this money controlled by the Secretary of the Interior whenever in his judgment he thinks it can be properly applied in the Territories. That is the issue I meet. He explained at great length why it might not be proper in some cases to commit the expenditure of this money to the Legislature of a Territory. I say as against the commission of this authority to the Secretary of the Interior; that is, as between him and the Legislature of any Territory, I am in favor of the Legislature that has charge of this matter under the laws of the Territory.

Therefore I think this section should be amended in such a way that there may be the same system, the same power of control, the same discretion in regard to a matter in which those people are far more interested than the Secretary of the Interior and which is committed to the people of the several States.

The PRESIDENT *pro tempore*. The question is on the adoption of the amendment.

Mr. DOLPH. I ask to have it reported again.

The PRESIDENT *pro tempore*. The Secretary will report the amendment.

The CHIEF CLERK. In section 6, line 4, it is proposed to strike out the words "by the Secretary of the Interior" and insert "under the direction of the Legislature thereof;" so as to read:

That the money appropriated and apportioned under the provisions of this act to the use of any Territory shall be applied to the use of common and industrial schools therein under the direction of the Legislature thereof.

The PRESIDENT *pro tempore*. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. TELLER. In section 2, line 3, after the word "persons," I move to insert "including Indians."

Mr. BLAIR. Let me ask the Senator whether there is any such enumeration of Indians as it would be necessary to have?

Mr. TELLER. I do not think there would be any trouble in finding out how many Indians could read and write.

Mr. BLAIR. Suppose you say "Indians, the number of which shall be ascertained" in some way. There is no enumeration of them, is there? Is there such an enumeration in the census as would be necessary?

Mr. TELLER. When the amendment is reported I will state how it can be done.

The PRESIDENT *pro tempore*. The amendment will be reported.

The CHIEF CLERK. In section 2, line 3, after the word "persons," it is moved to insert "including Indians;" so as to read:

That such money shall annually be divided among and paid out in the several States and Territories in that proportion which the whole number of persons, including Indians, in each who, being of the age of ten years and over, can not write, bears to the whole number of such persons in the United States; such computation shall be made according to the census of 1880.

Mr. TELLER. In reply to the Senator from New Hampshire, I will say that there will be no practical difficulty in determining the number of Indians who can read and write. The census very likely would not show that, but there is a fair presumption that none of them can read and write. However, the Department is in possession of such data that there would be no difficulty in selecting them through the names of those who are attending the schools. I think there would be no practical difficulty in carrying out the provision.

Mr. BLAIR. Does the Senator understand that action in regard to the Indian population in the language he proposes in his amendment, would occasion no confusion in the general distribution based per capita or upon the illiteracy as shown by the census?

Mr. TELLER. I do not think it would occasion any trouble at all. I think that the Indians ought to be included in the provisions of the bill, and I have moved the amendment with a view of subsequently amending the bill so as to include the Indian Territory. The Senator from Oregon has indicated his intention to make the bill include Alaska. There would be no trouble in determining the number of people in Alaska who can not read or write, for it is the whole body of the Indian population there.

Mr. BLAIR. What about the number of the various tribes?

Mr. TELLER. There is a census of the tribes, and if the Department should proceed upon the theory that every Indian of ten years or upward was ignorant of the art ot writing and reading it would not be far out of the way; it would be an inconsequential error.

Mr. BLAIR. If it would not occasion any difficulty or technical obstruction in administration there would be no objection to the amendment, so far as I am concerned. I should be glad to see the Indian population in the Indian Territory and elsewhere included, but I should not like to have anything incorporated in the bill that is going to interfere with the general basis of distribution, so that it could be said that the amount due to any State or to the States generally could not be definitely ascertained, and therefore the bill would be inoperative. I think the Senator should put his amendment in such a form as would obviate a difficulty of that kind, and if he will do so for one I shall be very glad to assent to it.

Mr. TELLER. I do not believe there is any practical difficulty in it at all.

Mr. BLAIR. It can easily be obviated by drawing such an amendment as I have suggested.

Mr. TELLER. I do not think it necessary, and I do not see how I could draw an amendment more comprehensive than the one I have offered.

Mr. GEORGE. I should like to ask the Senator from Colorado for information if the United States does not make provision for the education of Indians under United States authority, and is it not a fact that the Indians within the limits of the States in their tribal relations are not under the jurisdiction of the States? If those questions are to be answered, as I suppose they ought to be answered, how can the States or the Territories undertake to dispose of this money in educating the Indians?

Mr. ALLISON (in his seat). We educate them specially.

Mr. TELLER. I hear a Senator say in an undertone, "We educate them specially." I deny it.

Mr. GEORGE. How is that?

Mr. TELLER. We do not do that.

Mr. ALLISON. We pretend to do it.

Mr. TELLER. We "pretend to." That is the word to apply.

Mr. GEORGE. But is not the subject of Indian education under the control of the United States?

Mr. TELLER. It is under the control of the United States. This is not the occasion for me to go very extensively into the question of how far the Government of the United States has done its duty with reference to the Indians.

Mr. HAWLEY. May I not ask the Senator whether the United States has not failed as badly in teaching the Indians as the States have failed in teaching the white people? The theory of the bill is that the States have failed in teaching their own white people.

Mr. TELLER. So far as that is concerned there is not a State or Territory, New Mexico and Utah not excepted, but what has done its duty better by its people than the United States has done its duty, if it is a duty at all, to educate the Indian children.

Mr. GEORGE. I can not hear the Senator.

Mr. TELLER. It is not my fault. I am talking as loud as I can. I will repeat what I said for the benefit of the Senator from Mississippi.

Mr. GEORGE. I wish you would, because I should like to hear what you are saying.

Mr. TELLER. I say it is true that the Government of the United States pretends to educate the Indian children, but there is not a State or Territory (including New Mexico and Utah, which have perhaps the poorest educational facilities of all) but what has furnished to its people better educational facilities than the Government of the United States has furnished to the class that it pretends to educate.

I understand the objection made by the Senator from Mississippi is that the State has no control over the education of Indians, and therefore the Indians ought in no wise to be included in this estimate. It is true the States do not have such a control, and yet by the provisions of the bill if the Indians choose to avail themselves of the privilege all the schools of the States must be open to the Indians. If the Indians living in the vicinity of a white school choose to go to the white school and the people of the State or Territory accept a dollar of this money then they can not shut their doors against the Indian children. And that is the place to give the Indian children an education. If you could put the Indian population of school age side by side with an equal number of white boys and white girls for a year you would accomplish much more in the way of their education than you will in many years by the system we pursue.

The great obstacle to the education of the Indian is the fact that he does not speak our language. The Indian children who come in contact with white children readily learn the English language.

I do not know that any of the States accepting this appropriation would refuse, but I think they would be compelled, if the Indians were in their neighborhood, to open their school doors to them; and when we are adopting a system here of stimulating and urging on the school system of the States and Territories I do not see why we should leave a very large class of people entirely beyond the pale of the law.

That is one of the objections I have had to the bill. As I said to the Senator from New Hampshire in the beginning, the bill ought to have contained a systematic provision for the education of the Indians. On account of the sporadic way in which we make appropriations here and there and now and then for the Indians, with a few in school to-day, a few more to-morrow, and less the next day, the money has been largely wasted and thrown away. The appropriation of a million dollars has done but very little in that way; and although there has been some progress in the last four or five years and a great number of Indians have been put in schools who were not in schools before, there has been but very little done compared with what ought to be done by

the General Government with reference to the education of the Indians.

I should like to have offered to the bill a provision that I refrained from offering because the Senator who has it in charge thought it would injure the bill, and I have no disposition to injure the bill, although I am free to say that I think it is a very crude and unsatisfactory bill. I am not at all satisfied with its provisions; I am not at all satisfied with the scheme. It seems to me that the bill has been thrown together in a disjointed and inharmonious way; there is no harmony in the several provisions, and I do not believe that it will accomplish quite as much as it ought for the money that is to be expended. I regret that the Senator who has it in charge seems determined that nobody shall be heard, that he seems to think the wisdom of this body must reside in the Committee on Education and Labor, and resents the attempt to do what I think would improve the bill from time to time, as if it was an attack upon the bill itself.

Mr. GEORGE. Will the Senator allow me to interrupt him?

Mr. TELLER. Certainly.

Mr. GEORGE. I am not now a member of the Committee on Education and Labor, but I desire to say on behalf of that committee that the bill as now reported from them is not the bill originally framed by that committee, but it is the bill framed by them, reported to the Senate, and by the Senate amended and passed. Is not that a fact?

Mr. BLAIR. I did not understand the Senator's remark.

Mr. GEORGE. I said that the bill as it now appears, from the report of the committee, is not the bill originally framed by the committee, but it is the bill as reported by the committee and amended and passed by the Senate.

Mr. BLAIR. It represents the best that the Senate could do after three weeks of hard labor in the Forty-eighth Congress. It is the best that the ablest and most enlightened and best educated gentlemen on this side of the Chamber not upon the Committee on Education and Labor could do, and the best that could be done by the Democratic side of the Chamber. I presume it is a crude bill, but notwithstanding it was the best the Senate was able to accomplish after three weeks of hard labor.

Mr. GEORGE. I desire the Senator from New Hampshire to answer if it is not the fact that the bill as now reported from the Committee on Education and Labor is in the exact shape in which the bill was passed by the Senate in the Forty-eighth Congress?

Mr. BLAIR. Certainly, except as to the words in the thirteenth section, which were stricken out, and the amendment which has just been adopted. This was as well as the Senate could do. But it ought to be taken into account always that the Senator from Colorado was not a member of the Forty-eighth Congress, and it may still be an exceedingly crude bill. No such bill as this could have gone through when he was a member of Congress!

Mr. TELLER. Yes, it was my misfortune to be out of the Senate when this remarkable production was passed.

Mr. BLAIR. It was the misfortune of the Senate, not of the Senator. The Senator is too modest altogether.

The PRESIDENT *pro tempore*. The Senator from Colorado has the floor.

Mr. TELLER. It was my misfortune not to be a member of the Senate when this wonderful bill was passed.

Mr. PUGH. Mr. President——

The PRESIDENT *pro tempore*. Will the Senator from Colorado yield to the Senator from Alabama?

Mr. TELLER. I will yield in a moment. I have never been a member of the Committee on Education and Labor, but this is a question that I have given some little attention to. I spent some of the best years of my life as a public teacher. I have had considerable experience in the matter of education, common-school and otherwise. I thought I knew something about the educational systems of the different States. I had made some suggestions from time to time with reference to this subject in another department of the Government, and I thought I could properly, without hurting the feelings of the sensitive members of that committee, criticise a bill which they now disclaim having any responsibility for. They now say it is not their bill, that it is somebody else's bill, and its paternity they are prepared now to deny. I do not very much wonder that they do not want to father the bill. I said before that it was crude and unsatisfactory to the friends of the cause of public education. I do not believe that on this side of the Chamber or on the other a single member of this body can be found who will say that it is satisfactory to him in its details.

If the Senate had botched the bill, if I may use the term, in the last Congress, of which I had the misfortune not to be a member, why should not the committee, when the bill went back to them again, have put it in a proper shape? Why do we organize committees? Is it so essential that $77,000,000 must be taken out of the public Treasury, that a bill ill-prepared to accomplish the purpose for which we can alone be justified in passing it comes here because they say they can not pass any other bill? I did not suppose that a committee governed themselves by what they might be able to get the Senate to pass. I supposed that the bill was sent to the committee to be perfected and put in shape to accomplish an end, and if it does not accomplish the end (and the members of the committee are now prepared to admit that it does not fully), they ought not to have brought it here. Now I will answer the question of the Senator from Alabama.

Mr. PUGH. I desire to say that the bill now before the Senate is in many particulars materially different from the bill originally reported from the committee. The amendments made in the Senate were, as stated yesterday by the chairman, in pursuance of a decision in the Republican caucus. The amendments made in the Senate were made against the vote of members of the committee on this side of the Chamber, but the bill as it passed the Senate with those amendments was not so variant from the structure of the original bill in principle and in substance but that I felt bound to accept it and to vote for it, as I did. However, there was a very great difference between the bill reported by the committee and the bill which passed the Senate.

Mr. TELLER. I thought the Senator from Alabama wanted to ask a question. I do not object to the interruption, however.

Mr. MILLER, of New York. If it does not interrupt the Senator from Colorado, I should like to ask him a question in regard to his proposed amendment, prefacing that with a statement. As a member of the Committee on Education and Labor which has prepared this bill, for one I do not object to the Senator from Colorado or any other Senator offering all the amendments and suggestions which may occur to him for the benefit of the bill. There is no pride on my part that the bill shall not be changed. The bill met with my general approval as it came from the committee, and it has not been so materially altered by amendments in the Senate but that it still meets with my approval. I think the Senator from Colorado is mistaken when he says that the bill in its present form, or in the form which it is likely to come to, does not meet with the general approval of the educational people of the whole country. So far as I have been able to learn I think it does meet with their approval. It is possible that there may be inaccuracies in it, and that in some of its details it may not be as perfect as it should be. Nevertheless, I believe it will go very far toward producing the results which have been sought for by this appropriation of $77,000,000.

As to the amendment proposed by the Senator from Colorado, I fail to see wherein he expects to improve the bill by the adoption of the amendment. Perhaps I do not understand fully his purpose in offering the amendment, but if it be to bring about a condition of affairs under the bill by which a larger percentage of the money shall go to the various Territories, then I think his amendment instead of securing that object will defeat it and will send less money to the Territories than would go there if the bill were left in its present shape. May I ask the Senator if that was his object?

Mr. TELLER. That was not my object, Mr. President. I will say now——

Mr. MILLER, of New York. If the Senator will tell us what the object of his amendment is I then may be able to reply to him. I have misconceived the object.

Mr. TELLER. I do not know that it is absolutely necessary that the Senator should reply to my statement.

Mr. MILLER, of New York. As a member of the Senate and as a member of the committee that presented the bill I suppose I have a perfect right to defend the bill; and I have also, I presume, a perfect right to ask the Senator the object of his amendment or what his reasons are for offering it.

Mr. TELLER. Certainly. Now, when we get down to the fact, it is exactly as I stated it to be. The bill now before the Senate is substantially the bill reported by the committee. Whether it is right or whether it is wrong, the committee sent it here and said, "This is the bill we want you to pass." This is the bill that they have so sturdily resisted any attempt to amend, upon the theory that the bill was as perfect as it could be made, I suppose.

The Senator from New York wishes to know whether I want to help the Territories, whether I want to get more money for the Territories. I am free to say that I have not any interest in the Territories whatever with reference to this bill; and so far as the State that I represent in part on this floor is concerned you may strike it out of the bill, if you choose, and I shall not change my vote on the bill nor my opinion of the bill. Colorado is not asking any assistance from the General Government for her schools. If we vote this money, we vote it because there is in this country a class of people who are uneducated and the States declare that they are unable to educate them. Whether we believe that is a fair statement or whether we do not, the fact remains that States fail to educate their children, and because they do not provide school facilities for all their children we have proposed for the last four or five years in some way to grant national aid temporarily for the purpose of inciting and encouraging the States. It was proposed, when I was a member of this body before, that it should be done by donating the proceeds of the public lands and that certain moneys arising from other sources should be given for this purpose. For that I voted, and that I supported not only with my vote but with my voice.

I want to vote for a bill that will accomplish the purpose, for two reasons. The first is that I hold it is not proper to vote out a great

amount of money in a case where it is doubtful whether the object will be accomplished. I want the money which is voted for the support of common schools in this country to support the common schools; and I think we have a right to insist that a bill brought here shall be so perfect that at least there is a fair presumption that the good sought by the appropriation will be obtained.

Now I shall answer a little further. I proposed this amendment, as I said, to be followed, if agreed to, by others. We have a Territory called the Indian Territory. We have thousands of Indian children there who are not having an opportunity presented to them for an education by the Indians, who probably, in some of the tribes, are abundantly able to educate their children. We are not having it done by the Government. I know of but one single tribe that has made suitable and proper preparation for the education of its children, and certainly nobody will pretend that the Government of the United States has done anything of that kind in this country.

I believe that this bill ought to go back to the Committee on Education and Labor, and that the committee ought to go to work and put these disjointed sections in harmony one with another. Here we find that the Secretary of the Interior is in one instance to distribute the money and in another the State is to distribute it. We find that this is for the support of non-sectarian schools, and then the chairman rises and tells us that it is the purpose and object of a provision of the bill to use it for sectarian schools in at least two of the great Territories of the country. I do not propose myself to vote a dollar for any sectarian school, although it may be a school of the faith in which I was brought up and educated. I propose to vote any amount of money that may be fairly and honestly expended, as far as the wealth and condition of the country will justify it, in supporting a public common school where all the children will have the same opportunity of getting an education in the rudimentary branches.

If this amendment is accepted I propose to follow it by others. I do not know that it is very material to the subsequent amendments whether this amendment is adopted or not. You may leave out the Indian Territory with its large number of people, and you may assert that they are better able to educate their children than the people of Louisiana, or Mississippi, or Arkansas, or Colorado, if you choose. I do not believe it; and I do not see why the Committee on Education and Labor did not include all classes and all kinds of people who live in this country.

Mr. MILLER, of New York. Mr. President, I shall be very glad to join hands with the Senator from Colorado in perfecting this very imperfect and disjointed bill, as he calls it; but it seems to me, if this amendment is adopted, it will be still more disjointed and imperfect than it now is.

The bill did not undertake to deal with the difficult question of the education of Indian children. That has been provided for, and is being provided for, from year to year by special laws, and special schools have been established for them. It has not been left for the Territorial governments, or any of the State governments even, to do that work. It has been provided for by liberal appropriations in the past; and while much of the work may not have been successful, yet I believe there is a great advance for good in the education of the Indians of our common country. Therefore it was left out.

If the object of the Senator from Colorado in adding the words "and Indians" was thereby to bring a larger proportion of the amount of money to the Territories and then to impose upon them the duty of educating the Indian children found within their borders—if it would produce that result and it should be thought wise that the education of Indian children should be committed to the Territorial authorities in each Territory and that the Federal Government should give up any direct control or action upon that matter, I might be disposed to go with him; but if this amendment is adopted it will result in giving a less amount of money to each Territory in which the Indians are found than will go to it under the bill as it now stands. Certainly I suppose that the Senator from Colorado does not desire to produce any such result as that.

This apportionment is to be made under the census of 1880, and the money is to be apportioned in the proportion which the whole number of persons in any State or Territory over ten years old who can not write bears to those over the age of ten who can not write in the whole country. While the census of 1880 may show in a general way the number of Indians in any particular State or Territory, it does not show, I think, nor does it attempt to show at all, how many of them can not read or write. Therefore, if an apportionment comes, for instance, to the Territory of Utah and the Indians are added, and they are 250,000, the number of people in that Territory who can not write are a fixed number under the census of 1880, and that number will not be at all increased by the number of Indians being added to the whole number of persons. Therefore the amount of money coming to Utah under the bill, if the amendment is added, would be decreased materially instead of being increased, unless you provide in the bill that the whole number of Indians shall be held to be illiterate or that they shall all be held to be unable to write.

If such an amendment as that were added to it, then of course it would increase the amount of money which would go to the Territory of Utah, which I have taken as an illustration; but if left as it is now proposed, it certainly would result in decreasing the amount of money which would come to any particular Territory or State in which the Indians are enumerated. So I think it is much better to leave the section upon that question as it now stands.

Mr. DAWES. I agree with the Senator from New York in this matter. I am not quite certain that his premises are correct when he states that the Indians who can not write are not enumerated in the census tables. If he is correct in that, then certainly if the amendment is adopted the Territories will get less money. I am not certain about that; but if they are included and the money is apportioned upon them, then there will be some obligation upon the Territory or State to interfere and take the management of the Indian schools upon themselves. The Government of the United States will be carrying on schools, and the general superintendent of Indian schools will have one set of schools or one policy in teaching the Indians, while the State or Territory will have its own policy and its own method; and when compulsory education, if that bill should pass, shall apply to the Indians in a Territory or a State and not be the policy of the State itself, or if the school age adopted by the United States as applicable to the Indians shall differ from that adopted under the State laws, there is confusion, conflict, friction.

I think that inasmuch as the United States takes upon itself the work of educating the Indians in another system, it is not quite well for us also to undertake to get the United States into this system with these appropriations. The United States will excuse itself from appropriations for the Indian under the Indian schools of which they have control themselves just to the extent that they contribute here, or the attempt will be made, and those not earnest and sincere and liberal in the appropriations for Indian schools will find an excuse and shelter themselves under the claim that under this bill we are providing for Indian children, when in point of fact nothing substantial will come of it to the Indian.

Mr. MORGAN. May I ask the Senator a question about this bill? The bill provides that money shall be apportioned and shall be also applied without distinction of color. Does he understand that the Indians would be entitled to be considered in the application of this fund in the States? Take Kansas and North Carolina, where there are still a good many Indians.

Mr. DAWES. I suppose the Senator alludes to Indians who are members of tribes and under the supervision of an agent on a reservation. I should not think so. I should think it would be a very bad feature of this bill if it attempted to aid education in the State to the extent of interfering with the policy now adopted by the Government toward the Indians.

Mr. MORGAN. Then as color is the only question, and there shall be no distinction made on account of color, and illiteracy is the basis on which we make the appropriation, and also the school age is the basis on which we make the dispensation of the money, would not the State of North Carolina, for instance, be entitled to draw for the Indians within her borders, although she might not apply a dollar of the fund to their education?

Mr. DAWES. I do not know as to that. I am looking at the policy of undertaking in this way to eke out by interference and by friction and by diversion the system of educating the Indian. The Indian is unlike the colored youth and the white youth, and his education must be altogether from a different standpoint.

Mr. MORGAN. I thought the Indian was a colored man; I thought he was very much like a colored man. That is my idea about it.

Mr. DAWES. "Colored man" is in some sense a technical term. It has its meaning in laws and in our legislation. It never occurred to me until the Senator undertook by an amendment to make it applicable to the Indian that anybody would have thought that term included Indians on the reservations, who are treated to that extent as outside of the territorial limits of the State in which the reservation is situated for all purposes, and you must have special legislation to make the crimes act applicable to them.

Mr. BLAIR. There is no census whatever of Indians which throws any light upon their condition of illiteracy. They are taken by numbers and by sex. There are no data which could assist in the distribution of money for them under the provisions of the bill. The bill does not provide that every person of color in the States and Territories shall have any benefit under the act. The bill provides that the money shall be paid out in the States and Territories upon the basis of illiteracy as shown by the census of 1880, and that census shows illiteracy without any reference whatever to the Indians. The illiteracy shown is the basis of this distribution, so that the question does not arise at all as to the Indians within the States, and they are not in any way included.

The whole Indian question is entirely outside of this bill. No State is entitled to have counted in its number of illiterates the Indians that may exist in that State, because the bill provides that it is the illiteracy as shown by the census, which is simply that of the white man and of the black man and of the intermediate shade, those being the only classes of population, as I understand, that enter into the census.

If the Indian was taken into account in the census of the several States as a colored man, and his illiteracy was taken account of, then there is no difficulty whatever—he is already included; but I do not un-

derstand that to be so, for here are the tables of the Indian census, and they relate only, as I said before, to population and sex.

Mr. TELLER. If this amendment should be adopted I stated that I intended to follow it with others. I think the bill would need a further amendment in order to make it practicable to carry it out. I should provide some method perhaps by which there would be no trouble in determining what Indians could read or write.

Now I wish to say a word in reply to the Senator from Massachusetts [Mr. DAWES]. My proposition did not go at all to interfering with the Government of the United States in its lame and weak efforts at the education of Indians. I no not believe that the States would be willing to assume that responsibility, and I doubt very much whether the States and Territories would do it any more efficiently than the Government of the United States, although they could not well do it much worse. It was not for the purpose of interfering with the Government schools. The Senator can rest assured that neither the States nor Territories will rush to educate the Indians; they will let the Government do it, if it wants to do it. But I said that if a State did accept this appropriation, then their doors must necessarily be opened if the Indian saw fit to avail himself of common-school education in that State.

I understand that in the State of New York the common-school system applies to Indians just as well as to white people; that they have all the benefits of it; that they are enumerated. As I recollect after having been away from there a good many years (but that was the fact years ago as I recollect), the Indians have the opportunity of attending school, and they are enumerated in the list to determine the amount of money to be apportioned to a district, and in regard to everything, the same as white people, and the schools are open to them. I do not know that the Government is doing anything specially with reference to that class of Indians now.

As I said before, I want to amend the bill if I can so that it may be applied to the Indian Territory. If this amendment is adopted and another one, the bill will still require probably another amendment before that can be done.

Mr. DAWES. There is no doubt that if there are Indians in any State or Territory who have separated from tribal organizations and are leading the habits of civilized life their children could go into schools where colored or white children go. There are such Indians in Massachusetts. They have been there for two hundred years. They do not belong to any existing tribal organization now. They attend the schools wherever they are established in the neighborhood.

Mr. GEORGE. They are taxed, too.

Mr. DAWES. They are citizens of the United States and of Massachusetts, and they are treated in all respects as such. They are measured solely by their capacity, their moral capacity.

The PRESIDENT *pro tempore*. The question is on the adoption of the amendment of the Senator from Colorado [Mr. TELLER].

The amendment was rejected.

Mr. TELLER. I wish to add one other amendment to the bill, and I think perhaps the Committee on Education and Labor will not object to this one. In section 14 it is provided:

That the Secretary of the Interior shall be charged with the practical administration of this act in the Territories, through the Commissioner of Education, who shall report annually to Congress its practical operation, &c.

It is a little doubtful whether it is meant that the Commissioner of Education or the Secretary of the Interior shall report. In proper administration the report should come from the Secretary and not from the Commissioner.

Mr. BLAIR. If the Senator will read the whole section he will see that there is no doubt.

Beginning in line 6, the section reads:

Which report shall be transmitted to Congress by the Secretary of the Interior, accompanying the report of his Department.

Showing that it is the Commissioner of Education who is expected to make this report, through the Secretary of the Interior, who transmits it to Congress with the other papers accompanying his own report.

Mr. TELLER. I will ask the Senator if it is proposed that the Commissioner of Education shall also report to Congress? The ordinary method is that the head of the Department makes the report to Congress and the subordinates report to him.

Mr. BLAIR. I am exceedingly obliged to the Senator for the information. It is well that those who have not had the opportunity to be trained in all the schools of Government office should occasionally receive instruction upon doubtful and abstruse questions of practice like that. The entire fourteenth section reads as follows:

That the Secretary of the Interior shall be charged with the practical administration of this act in the Territories, through the Commissioner of Education, who shall report annually to Congress its practical operation, and briefly the condition of common and industrial education as affected thereby throughout the country, which report shall be transmitted to Congress by the Secretary of the Interior, accompanying the report of his Department. And the power to alter, amend, or repeal this act is hereby reserved.

If there are any amendments that ought to be made in that section I have no objection to them, but I will take this occasion to say to the Senator——

Mr. TELLER. I shall not take the time of the Senate in replying to the courteous and Senator-like remarks of the Senator from New Hampshire, but will proceed to offer my amendment.

Mr. BLAIR. The Senator was interrupting me, I will say.

Mr. TELLER. I decline to yield to the Senator from New Hampshire.

The PRESIDENT *pro tempore*. The Senator from Colorado has the floor.

Mr. TELLER. I decline to yield to a Senator who attempts to belittle everything that anybody tries to do in reference to the bill, upon the theory that nobody knows anything about the bill but the Senator from New Hampshire.

Mr. BLAIR. I call the Senator to order.

The PRESIDENT *pro tempore*. The Senator from New Hampshire will reduce his point of order to writing.

Mr. BLAIR. I withdraw the point of order.

Mr. TELLER. I do not desire to have any controversy with the Senator from New Hampshire. I propose to amend the bill so that it shall be in proper form if I can. The bill provides now that the Commissioner of Education shall report to Congress, and then it also provides that the Secretary of the Interior shall be his messenger to bring the report to Congress. In line 4 of section 14, after the word "report," I propose to strike out the words "annually to Congress." It will then read:

Through the Commissioner of Education, who shall report its practical operation, and briefly the condition of common and industrial education as affected thereby, &c.

Mr. BLAIR. Will the Senator state his amendment again? I presume there is no objection to it, but I should be glad to have him state it. I wish to understand it.

The PRESIDENT *pro tempore*. The amendment will be reported by the Secretary.

The CHIEF CLERK. In section 14, line 4, after the word "report," it is proposed to strike out the words "annually to Congress," so as to read:

That the Secretary of the Interior shall be charged with the practical administration of this act in the Territories, through the Commissioner of Education, who shall report its practical operation, &c.

Mr. BLAIR. There is no objection to that; at least none on my part.

Mr. ALLISON. Is an amendment to the pending amendment in order?

The PRESIDENT *pro tempore*. The amendment of the Senator from Colorado will be considered as agreed to if there be no objection.

Mr. DOLPH. I object to it.

Mr. ALLISON. I do not object to the amendment, but I desire to move to strike out section 14 down to and including the word "and," after "Department," in line 8. We have already provided that these funds distributed in the Territories shall be practically applied as they are in the several States, and therefore this whole provision should go out.

Mr. BLAIR. That is the logical result of the action of the Senate upon section 6. There is no objection to the amendment. Of course it improves the bill, and it should be agreed to.

Mr. ALLISON. I am glad that the Senator from New Hampshire agrees with me on that point.

Mr. BLAIR. The Senator is not aware of the amiable nature of the Senator from New Hampshire. When he is met with anything of a like spirit, he is the most docile creature in the world.

Mr. ALLISON. So I have observed. I ask that that amendment may be agreed to.

Mr. MILLER, of New York. Let it be reported.

The PRESIDENT *pro tempore*. The amendment will be reported.

The CHIEF CLERK. It is proposed to strike out all of section 14 down to and including the word "and," in line 8, so that the section, if amended, would read:

The power to alter, amend, or repeal this act is hereby reserved.

The PRESIDENT *pro tempore*. If there be no objection that amendment will be considered as agreed to.

Mr. HOAR. Is there not any provision for a report to Congress now left? I should like to know before that amendment is agreed to.

Mr. BLAIR. The section applies to what he shall do with reference to the Territories, the Senator will observe. It does not affect the general duty of the Secretary of the Interior.

Mr. HOAR. I rose at the moment the Chair was announcing that the amendment was adopted. I suppose the Chair will consider it as still pending if there be no objection.

The PRESIDENT *pro tempore*. The Chair recognized the Senator from Massachusetts after the amendment had been agreed to.

Mr. HOAR. I rose at the time it was announced, intending to speak to the amendment.

The PRESIDENT *pro tempore*. The question may be considered as still open and the amendment of the Senator from Iowa is pending.

Mr. HOAR. I wish to inquire whether it is the purpose of the Senator from Iowa to propose and the Senator from New Hampshire to consent to an amendment which strikes out the provision that the Secretary of the Interior shall make a report as to the effect of this bill on common-school education throughout the country—whether that report is now

to be dispensed with? It does not relate to the Territories alone; it relates to the whole operation of the bill. It seems to me there should be somewhere—there is probably elsewhere in the bill—a provision for an annual report to Congress of the whole matter of the operation of this measure.

Mr. ALLISON. The Senator will see that section 14 is intended to apply to the Territories, and then it adds a little suggestion that the Commissioner of Education shall make a report briefly, as the bill might affect the condition of education throughout the country. I think an ordinary Commissioner of Education will be able to state that in his report without special authority from Congress.

Mr. HOAR. Is that covered by the general law in regard to the Commissioner of Education?

Mr. ALLISON. What I desire is to place this provision on the same footing as all other provisions of the bill, whatever they may be.

The PRESIDENT *pro tempore*. The amendment will be considered as agreed to if there be no objection. The amendment is agreed to.

Mr. MORGAN. I offer an amendment, and desire to call the attention of the Senator from Indiana [Mr. HARRISON] to it.

The PRESIDENT *pro tempore*. The amendment will be reported.

The CHIEF CLERK. It is proposed to add as a new section:

SEC. —. That the money that shall be appropriated in pursuance of this act for the purposes of education in the Territories shall be apportioned according to a census that shall be taken in each of the organized Territories at the expense of the United States and under the direction of the Secretary of the Interior on or before the 1st day of June, 1886.

Mr. MORGAN. Yesterday, when the Senator from Indiana who is the chairman of the Committee on Territories was absent, I called the attention of the Senate to the condition of the bill and to its effects upon the new Territories. I will just repeat the remarks which I made yesterday, which are pretty concise:

Now I find by going back to 1880, according to the table presented in the report of the committee or by the Senator from New Hampshire, that Dakota is credited in this bill with only 135,177 people, in all of whom there are 4,631 that can not write. If we are proposing to do justice between the different States and Territories, why do we go back to 1880, when these Territories had very sparse population, and take from them the advantage of the increase in their population from that time? The amount of money that would go to the Territory of Dakota during all this time would be $59,737 during the whole eight years. Alabama has only about three times the population that is alleged here for Dakota, about 1,250,000 people. Alabama gets under this bill for the whole time $5,370,848.45.

A bill was brought in the other day to admit Washington Territory into the Union. Washington had 75,116 people in 1880. It is now claimed that there are 150,000 people in Washington Territory. The illiterates in that Territory, as shown in this table, are 3,850. The amount of money coming during the eight years to Washington Territory, claiming now to be entitled to Statehood, is $48,186.66; and that, too, when Washington Territory and Dakota are now paying more money into the Treasury of the United States for public lands, perhaps, or at all events a greater number of population is going there to take the benefit of our homestead system, than in any of the old land States of the Union.

Now I take Montana Territory. It is credited in this report with 39,159 people and its illiteracy is 1,077, and what it would get under the bill is $31,151.46 for the whole time, for the entire eight years, not quite $4,000 a year.

That is a very great injustice to those people. I am not their champion on the floor by any means, but I have not any doubt at all that the Senator from Indiana will be ready to claim for that body of organized Territories what is just in comparison with the people of the other parts of the United States. Commencing in 1880, we are six years advanced beyond that period, and during that time Dakota has added to her population, so that she now has—I can not recall the precise figures——

Mr. HARRISON. Five hundred thousand, in round numbers.

Mr. MORGAN. Dakota has, in round numbers, a population of 500,000. That is a tremendous increase. In eight years more she will probably have a million people, having a population as large as Alabama, and though her illiteracy would not be as great as that of Alabama, because of her not having any negroes there, and especially because she has not got any there over twenty-one years of age who can not get the benefits of this system, Dakota would go on under this basis, according to the census of 1880, and would run until 1894, four years beyond the next decennial census, as the bill is framed, and during all the life of the bill, unless it is afterward altered or amended in some way, Dakota would be drawing money on the basis of her population in 1880.

Now, I claim that that is an injustice which this bill ought not to inflict.

I am aware, Mr. President, yes, too sadly aware, that the money which would thus come from the people of Dakota goes to the people of the recent slave-holding States. I know that I yield for my State a very decided advantage in the proposition which I present here today; but, sir, if I am compelled to legislate on a subject like this, I am not here for the purpose of legislating for one State or one section of the country by way of discrimination against another. I can not content myself with legislation of that sort, whatever other gentlemen may do. Before I could support any feature of this bill, or have the slightest degree of respect for it, I must understand that there is some principle of justice in the bill, and that it is not a mere grab for one section of the country against another.

The committee have not considered this question; they could not have considered it; neither did the Senate when the bill was before us two years ago consider this question. It is an open question, and the Senate ought to do justice to those people.

Mr. HARRISON. I think the Senator from Alabama is clearly right in saying that the bill as it stands perpetrates a gross injustice upon the people of the Territories, and not only upon the people of the Territories, but upon the people of some of the new Western States that are increasing in population with enormous rapidity. I had myself noted upon a copy of the bill which I have before me an amendment which I shall offer presently, though it was not intended to supersede the amendment of the Senator from Alabama, providing that the census of 1880, which is declared by the bill to be the basis upon which the whole apportionment for the eight years is to take place, shall yield to the returns of the census of 1890 when they come in.

It will be noticed that the bill can hardly go into effect for a year. If it should pass the other House at this session of Congress, and the appropriation called for for the first year should be made in one of our next annual appropriation bills, it would not take effect or become available till the 1st of July.

Then there is another provision in the first section of the bill that "no money shall be paid to a State, or any officer thereof, until the Legislature of the State shall, by bill or resolution, accept the provisions of this act." It may very well be, it probably will be, that some of the State Legislatures will not assemble next winter; and there, if I may digress a moment, I want to suggest what seems to me to be an uncertainty in the bill.

Suppose it should be true that the Legislature of some State either does not meet in regular session or the governor does not convene it in extra session, so that it does not pass a resolution or bill accepting the provisions of this act next winter, the first year of this appropriation rolls around and whatever is not expended I suppose would go back into the Treasury of the United States as an unexpended appropriation, and in that case the State that did not act within the first year would lose the benefit of the appropriation. It would necessarily do so unless the Legislature was called together by the governor to take action upon the matter at an early day.

Mr. HOAR. Unless Congress remedied it.

Mr. HARRISON. Unless that should be remedied; but now, before the passage of the bill, is the time to remedy it, if there is anything in the suggestion which I make.

But the point I was proceeding to make is this: This bill can not take effect for a year, because it is not likely that the Legislatures that assemble next winter, as the Legislature of Indiana does in January, would be called together in special session to act upon this measure. Therefore the apportionment would not begin until a year from this time. That would make it 1887, so that only three years would remain until we entered upon the work of taking the census of 1890, and five years of the time covered by the bill would be after 1890. Yet, according to the terms of the bill, we are proceeding upon the basis of the census of 1880.

It seems to me that as soon as the returns are received at the Department of the Interior in such shape as to be made a basis of distribution we should abandon the census of 1880 and take up the returns of illiteracy for 1890. In that way States such as Kansas, Nebraska, Iowa, and other States on the frontier, that are increasing enormously in population, would get the benefit of that increase; they would get the benefit at least of the latest tables of illiteracy in those States. As to the Territory of Dakota, the Territory of Washington, and indeed as to all our Territories, the basis of the census of 1880 is utterly unfair.

Mr. HOAR. I should like to ask my friend from Indiana if while those States are to be increasing in population from 1880 to 1890 they will not be diminishing all the time in the proportion of their illiteracy to the illiteracy of the whole country?

Mr. HARRISON. Possibly.

Mr. HOAR. I do not mean to oppose the point the Senator is making, but there may be some injustice after the census of 1890 is taken which ought to be remedied by having that operate as soon as it taken, in the particular illustration which he makes, which is probably an illustration of States that will get less and not more under the distribution.

Mr. HARRISON. I agree that we can not say that an increase of population implies a proportionate increase in illiteracy. It may be the reverse. But at all events the basis adopted here is an uncertain one; it does not represent the actual basis. If in fact the proportion of illiteracy is diminished, then the injustice would be on one side; if it is increased, it would be on the other.

So it seems to me we should pass from the census of 1880 to that of 1890 at the earliest possible moment, and I think it is fair that there should be in the Territories a census. In the case of Dakota a census

was taken this last year. I think it embraces these returns; and I am of the opinion that the Secretary of the Interior as to that Territory, if the bill did not confine it to the census of 1880, would have before him the facts upon which that might be determined.

Mr. MORGAN. Will the Senator allow me to ask him a question for information?

Mr. HARRISON. Certainly.

Mr. MORGAN. The Senator has studied all about the population of the Northwest very much more than I have, I know. I have been informed, and I suppose it is correct, that there is a large influx of population into the Northwest from abroad, from Germany and other states of Europe where English is not spoken.

Mr. HARRISON. That is true.

Mr. MORGAN. This bill requires that persons shall be taught in the English language. I suppose the illiteracy which is mentioned here means of course illiteracy in respect to the English language. So I would take it that the large number of persons coming from Germany, for instance, would most of them come as persons who are not English-speaking people and would have to be taught. They can write, but they can not write in English; they can not speak in English.

Mr. HARRISON. I have no doubt what the Senator says is true, yet the emigration coming from European countries is very largely from the north of Europe, from countries where the people have had the advantage of instruction, of course in their own tongue, and I do not suppose they would be classed as illiterates. I do not understand the bill to mean that one shall be able to read and write in the English tongue. I do not think the census tables are made up upon that basis.

Mr. MORGAN. I do not know how they are made up; I inquired for information about it.

Mr. HARRISON. But it is clear, I think, that however the proportion might be maintained in the Territories with the increase of population, there would be a large increase of illiterates. What the proportion would be as to the whole population of the United States of course no one can tell; but it seems to me that we are taking too remote a basis or estimate for the Territories, whose conditions as to population are changing with such amazing rapidity.

I do not see any objection to the amendment of the Senator from Alabama; on the other hand, I think it enables us to distribute the fund to the Territories upon a more equal basis than the bill provides.

Mr. CALL. Mr. President, the bill reported from the committee is not, I think, properly subject to the criticisms which have been made upon it. It is a bill which necessarily establishes proportions, and appropriates the money according to a proportion between the illiteracy of a locality and the whole. Some basis must have been taken, and the only possible basis before the bill was reported was the last census.

It is impossible under the suggestion of the Senator from Alabama to fix that proportion. A census yet to be taken in the future may vary it entirely. Of what necessity is it? This law will always be within the control of Congress. When the fact is developed that the proportion does injustice to any locality, what is the difficulty in the next Congress or in any Congress establishing another basis for ascertaining what is the proportion of illiteracy between one part of the country and another? The bill is not an iron one that can not be changed, but must always be within the power of every succeeding Congress to alter it.

Therefore it appears to me that the suggestion is entirely an immaterial one and will not produce any substantial effect.

Mr. TELLER. At the risk of bringing down upon myself the condemnation of some member of the committee—not that I care anything about it; I rather like to see the courtesies and decencies of the Senate maintained myself—I will venture to suggest that several of the States under a United States law have recently taken a census. The act providing for the census of 1880 contained a provision that in 1885 such of the States as saw fit to take a census might do so, and that one-half of the expense should be paid by the General Government. Certainly several of the States have taken a census of that character. It seems if this provision was not limited to the census of 1880 the Secretary of the Interior would have some discretion to accept the last census. For instance Kansas, I understand, has taken a census, Colorado has taken a census, and other States have taken a census.

Mr. INGALLS. In Kansas a census is taken every year in March.

Mr. TELLER. In Kansas a census is taken every year in March, the Senator says.

Mr. DAWES. A census is taken every five years in Massachusetts.

Mr. TELLER. A census was taken in 1885 in Massachusetts. A great number of States availed themselves of that provision in the act for taking the census of 1880 that they might take a census in five years and the Government would pay one-half the expense.

Mr. CALL. Will the Senator from Colorado allow me to make a sugtion?

Mr. TELLER. Yes, sir.

Mr. CALL. I suggest to my honorable friend from Colorado that although there might have been twelve or fifteen or twenty States which had taken a census, you could not from that fix the proportion unless you took the census of those States as the basis for the whole, and the census of 1880, which extends to all the States, is the only practical basis for the ascertainment in all the States and Territories.

Mr. TELLER. I do not know how many of the States did take a census last year. It may be that it is not practicable; but I think myself the suggestion made by the Senator from Alabama is proper, and I am in favor of his amendment

Mr. HARRISON. I want to suggest to the Senator from Alabama, upon reflection, whether the expense of such a census as he provides for here would not in the Territories equal or very nearly equal the amount of the appropriation in the bill for their benefit, and whether his amendment might not be so modified as to allow the Secretary of the Interior to act upon the school reports, such reports and information as is furnished by the Territorial authorities from time to time. I think a census of Dakota would cost as much as the Senator stated a moment ago would be apportioned to that Territory, certainly more than for the first year on the basis of the census of 1880.

Mr. MORGAN. In proposing the amendment the thought had occurred to me that is suggested by the Senator from Indiana, and I supposed the words "school census" would probably reach it, which the Secretary could obtain through the legislative authorities. I grant that it will be an expensive business, and the only apology I should have for that view of the case is that this is a very expensive proceeding we are in, and we have stricken out of the bill $2,000,000 for the building of school-houses, as originally provided in the bill passed by the Senate before, and I suppose we might take that as a sort of contingent fund out of which we could provide for the persons who would suffer otherwise under the bill.

I do not want to increase the expenses of the Government, and I am quite willing to agree to any modification of the amendment by which it can be ascertained what is the present basis of illiteracy in the Territories or what it will be at the time the bill goes into effect.

The Senator from Florida I have no doubt understands this bill better than I do, but I have had a great misunderstanding of it if I have not rightly understood that the bill goes upon the basis of the number of illiterates that were found in the States over ten years of age at the date of the census that is the basis of the proportion. You ascertain, in order to determine the amount of money that is to be paid to any State or Territory, the number of persons over ten years of age who were illiterate at that time, and that is the basis of the proportion to the whole fund. There is where the difficulty comes in. Dakota had only about 150,000 people in 1880, and now she has 500,000; so that the basis of illiteracy in reference to Dakota which was established in 1880 would be a great injustice to her now. Assuming that the same proportion exists in respect to her 500,000 population that existed in 1880 in respect of her 150,000, still we should find that Dakota was behind some 300 per cent. probably in the amount of money that we are awarding to her under this bill.

As I observed yesterday, if the Senate has got the power to pass this enormous bill it ought to have the measure consistent; its committee ought to be willing to take pains to consider it; and I am quite dissatisfied with the statement made here to-day by Senators in which they seem rather to boast themselves that they did not bring in a bill that agreed with their own convictions as Senators, but they brought in a bill that was passed by the Senate two years ago as their guide. We want the enlightened opinion, the intelligent action of the committee on the bill upon its merits, without reference to how the Senate might have voted heretofore. I shall not say much, or anything indeed, about sending it back to the committee, for fear it might be understood that that was my method of trying to defeat it; but what has been said about the true features of this bill has been said very mildly. The Senate has purged out some of them after great and laborious effort and long debate. But I believe if I was on that committee I could not justify myself after all that has occurred here in not asking that this bill should be recommitted. At all events, I am trying to do what I can to get the injustice out of it.

Mr. CALL. I think the point is so clear that there ought not to be any difficulty here. The bill provides:

SEC. 2. That such money shall annually be divided among and paid out in the several States and Territories in that proportion which the whole number of persons in each who, being of the age of ten years and over, can not write, bears to the whole number of such persons in the United States.

If we are to take the census of Dakota we are to establish that proportion by the census, whether it be a school census or a State census of that Territory, for the whole United States; and the simple question presented by this amendment is whether it is right to take a census of a single Territory and make that the proportion for the whole country, or whether it is better to take the census of the whole United States, although it may have been several years past and may do injustice to some locality. There can be no question between those two propositions, that the only approximate basis that would be correct would be the last census of the whole United States.

Mr. INGALLS. Mr. President, the amendment proposed by the Senator from Alabama and the observations made by the Senator from Indiana are based upon an entire misapprehension of the objects and the purposes of this bill. It is not intended for the free Territories of the Northwest. It is not intended for the States of the North and the West. They spurn it. I know, sir, I voice the Republicans, the people of the State of Kansas, when I say that they spurn indignantly and

with contempt any assumption that they desire a donation from the national Treasury for the purpose of conducting the system of common schools within their borders.

Sir, the State of Kansas since 1861, amid all the perils and privations of her career during the period of the war, with less than 100,000 people when that war broke out and having sent more soldiers into the Union armies than she had voters when the war was declared, and notwithstanding all the subsequent privations of the frontier, droughts, locusts, perils of all descriptions, out of her scanty resources has expended more than $30,000,000 down to this last year of our Lord for the support and maintenance of common schools within her borders. And I am fatigued with the assumption that the Senator from New Hampshire so often presents and that others who advocate this bill so often present, that the people of the North and the West, that the people of Dakota or Montana or any of the other great Territories that are being filled up by immigration from the Northern and Western States, demand a donation from the national Treasury or ask any portion of this $77,000,000, either by way of bribe or by way of alms, to induce them to take care of the matter of education within their own borders.

Let us be just about this matter; let us drop disguises, let us come down to the basis of common sense and common justice, and do not insult the people of the Northern States, do not insult Massachusetts and New Hampshire and New York and Illinois and Wisconsin and Kansas and Nebraska and Iowa and Dakota and Montana by declaring that they want any portion of this donation of $77,000,000 for the purpose of taking care of the common-school system within their borders. We do not want it.

Sir, this bill is essentially dishonest, and under section 2, upon the basis of distribution that is proposed, the States which will take money under this bill are actuated by precisely the same spirit that would induce a man to pick a pocket or to rob a graveyard. When the States to whom this donation is to be given propose to ask us to vote $77,000,000 to be distributed upon the basis of illiteracy, to be determined by ascertaining the number of people within their limits above the age of ten years who can neither read nor write, that is essentially dishonest. It is an act of grand larceny of the Treasury of the United States. They do not intend to take that money for the purpose of educating those people upon whose illiteracy they obtain it. Let there be no misunderstanding about this matter. When the States of the South, for whom this money is intended, come here and ask that they shall obtain it, and that the basis of distribution shall be the number of illiterates above the age of ten years without any maximum, they know perfectly well, and the country knows, that they are obtaining that money under false pretenses. This is a bill nominally intended for the support of the system of common schools in this country.

Mr. MAXEY. Mr. President——

The PRESIDENT *pro tempore*. Does the Senator from Kansas yield to the Senator from Texas?

Mr. INGALLS. With pleasure.

Mr. MAXEY. I beg to say to the Senator who is making that sweeping expression as to the South that the State of Texas does not ask and has not asked for this money, and as represented on the floor of the Senate she will not vote for the bill.

Mr. INGALLS. I am very glad to hear it.

Mr. MORGAN. Will the Senator from Kansas allow me to call attention to a telegram which I received yesterday from the governor of Alabama?

MONTGOMERY, ALA., *February* 17, 1886.

To JOHN F. MORGAN,
U. S. S., Washington, D. C.:

I see no authority in the Constitution for the propositions of the Blair bill, and am opposed to this insidious effort to transfer to the Federal Government the power to control and regulate education within the States. I indorse your opposition to this bill and believe the people of this State do.

E. A. O'NEAL, *Governor.*

Mr. RIDDLEBERGER. Will the Senator from Kansas allow me to ask the Senator from Texas what the amount of the school fund in that State is derived from the large territory of that State which almost all the other States furnished troops to acquire for Texas, save and except possibly Kansas and a few others?

Mr. INGALLS. I hope the Senator from Virginia will allow the answer to that question to be postponed.

Mr. MAXEY. I wish to answer that single question.

Mr. RIDDLEBERGER. I should like to have an answer.

Mr. MAXEY. There is not a bit of territory in the State of Texas that was ever acquired by the exertion of any one State of this Union; it all belonged to Texas when that State was admitted into the Union, and belongs to it yet. Her school fund is her own property, not embracing a dollar of money derived from the United States.

Mr. RIDDLEBERGER. How much is it?

Mr. MAXEY. It is very large, and I hope it will be larger.

Mr. INGALLS. Section 2 of this bill says:

That such money shall annually be divided among and paid out in the several States and Territories in that proportion which the whole number of persons in each who, being of the age of ten years and over, can not write, bears to the whole number of such persons in the United States; such computation shall be made according to the census of 1880.

I moved yesterday to amend that section by providing that the basis of distribution should be ascertained by computing the number of such persons between the ages of ten and twenty-one years in each State and Territory, for the reason that I desired that this money should be distributed upon the basis of those persons who being unable to read and write were to receive the benefit of it. That amendment was rejected by a vote, I believe, of 17 to 23; and that was a declaration of the purpose and the intention of those who are promoting this bill, and that is to obtain for the States of the South a vastly greater proportion of this money than they are by any reason or by any equity entitled to.

Who is responsible for the illiteracy in the South of those people who are above the school age? I have heard this measure spoken of as an act of restitution, a contribution to the national conscience fund, as if the North, in overcoming the South and in securing the freedom of the slave and enfranchising the freedmen, was thereby compelled by virtue of that fact to bear the entire burden of educating them up to the condition where they would be properly competent and qualified to exercise the suffrage. Very good; admit that. What part or lot has that great class of illiterates who are above the school age, who were in that condition at the time enfranchisement was declared, in this matter?

Why should the United States of America, why should the people of the North, why should the people of Kansas be called upon, in addition to paying $3,000,000 this last year to educate their own illiterates between the ages of ten and twenty-one, to contribute of their hard-earned resources money to the South, not to educate those between the ages of ten and twenty-one, but to educate those who are far beyond the age of maturity and who were illiterates when the war closed? Who is responsible for that vast illiterate class above the school age in the South? I know, sir, that by the laws of those States they were forbidden to read and write. It was made a penalty subject to fine and imprisonment to teach one of those wretched and helpless creatures to read the Bible, which taught him the means of salvation; and yet we are in 1886 to be asked under the second section of this bill to contribute from the national Treasury this vast sum of $77,000,000, to be disbursed mainly in the Southern States, for the purpose of educating the illiterates, and the basis of distribution is not illiterates of the school age, but illiterates of every age, and I venture to say that one-half of all those persons above the age of ten years who can not read and write are also above the age of twenty-one years.

Now, sir, is there justice in that? If this is proposed as an act of national restitution, if we are called upon to make this contribution by reason of having enfranchised the slave, is that a reasonable basis of computation?

Therefore, Mr. President, so far as the amendment offered by the Senator from Alabama is concerned, I see no reason why it should be adopted. It is inconsistent with the theory and purpose of the bill, and I am very sure that for myself and my associates from the North and from the East and from the West I speak their sentiments when I say that none of them desire any portion of this contribution. It is not made because they need it; it is not made because they have asked for it; and if I could have my own views prevail about this matter I would have the State that I represent left out of this bill.

Mr. RIDDLEBERGER. Mr. President, this is about the most opportune time since the consideration of this bill began to have it understood that Kansas and Alabama and Texas are against it.

We passed this bill two years ago in the Senate, and it went to the House of Representatives. That was some three months before the Congress adjourned at that long session. The bill became very prominent in the party politics of the South in the canvass before the succeeding election in November, and I heard of gentlemen in the State of Virginia who approved it denouncing a Republican Senate for not having passed it in time for the House of Representatives to have duly considered it. They were all in favor of it, though I believe mine was the only vote from that State which was given for it.

Now, the Senator from Alabama has spoken here the better part of two days in opposition to this bill. We know his reasons against it. It has been under consideration twice before this, and at this time he asks, not that we shall consider what he has said and possibly be influenced in our votes by what he has given us as constitutional law, but that there shall be another census, or that the bill shall be recommitted. I want to fasten the responsibility of delay where it properly belongs. I do not want another canvass of falsehood and deception on this bill. Here is the place to have it understood. Three months this bill was pending in the House of Representatives before adjournment, after it had passed the Senate, and the objection of one single man defeated it, and that man himself never asserted that he had made the objection, and never denied it when the allegation was made and the man was present who heard him make the objection.

I can understand why the Senator from Kansas should oppose the bill, and should oppose it on the ground that his State does not want it. They do not need it. They look upon it as a gratuity, and they are so rich that they repel it. I can understand why the Senator from Alabama does not want it for his State. I can understand perfectly well why some States are benefited by their own illiteracy. I can understand why Texas does not want it. She, like Kansas, does not need it, because she has a territory there that she uses for the purposes of public education that the very States in distress gave to her and gave liberty

to the people of the State. They do not want it; but were they in the condition of Virginia, they would. I am not ashamed to say here on behalf of as good a people as inhabit the State of Texas or of Kansas, that we do want it; we ask for it, and we think that is due to us to have it.

I shall not go into a discussion of the war question as to who freed the slave; I am glad he is free; but being free, I ask the gentlemen here and elsewhere who considered that it was one of their duties under a higher law to free him, whether it is not one of their duties to come to the rescue of an impoverished people who accept the situation and desire that the freedmen shall be educated. [Manifestations of applause in the galleries.]

The PRESIDENT *pro tempore*. Persons in the galleries are warned that no sign of approbation or disapprobation is allowed by the rules of the Senate.

Mr. RIDDLEBERGER. I only intended to make these few observations. I want the responsibility of the defeat of this bill, if it shall be defeated, fastened exactly where it belongs. I want no more deception about this bill. When it is amended to suit Senators on the floor, or a majority of them, I think we should have a vote upon it. I represent a State that has as much illiteracy in proportion to its population as any other, I suppose, in the Union, except perhaps three or four that had more slaves. I represent a State that has a large number of white children who can not read and write. The Senator from Kansas refers to the fact that people were kept in slavery there and forbidden to read until they could not even understand the mysterious problem of the soul's salvation.

I can recollect, sir, when the public officers were not allowed even to distribute there the mails that contained an abolition paper. I grant that is true. But if he will have the same consideration, the same pious consideration, if I may so express it, for the white children there who can not read and write and the colored children there who can not read and write he will take from this public Treasury this surplus of money about which we have heard so much in political campaigns, and utilize it for that grand and glorious, religious and Christian purpose of enabling them all to read the Holy Bible. You can not appropriate it to any nobler purpose. I have heard that it ought to be put in circulation. I have heard that it ought to be distributed, because that would relieve the pressure and oppression of the public in debt. Can you give it out to any grander or holier purpose than to educate these same children to read that same Bible, which teaches us the mysterious doctrine of salvation?

That is the only answer I propose to make to the Senator from Kansas. I am sorry that he is not willing to accept even that small portion of this fund which would go to his State, and reproaches us who will accept it, but he, I know, is capable of drawing the distinction between Kansas after a war and Virginia after a war, and if he shall take that into the recesses of his soul he will conclude that I am not asking a donation, not asking a gift, but asking Congress to do that which I think is within its power under the Constitution, and which I believe it owes to our people.

Mr. COKE. Mr. President, the bill before the Senate is exactly the same that passed this body by more than a two-thirds vote two years ago. It went to the House of Representatives and was never reached on the Calendar. When it was under consideration in the Senate I gave full expression to my views in opposition to it in the long and exhaustive debate which then occurred. Not intending to repeat arguments then made, I rise now to declare my continued and unabated opposition to it, and to enter now, as I did then, my earnest protest against its passage; for in my judgment it is the most pernicious bill introduced into either House of Congress since the war, whether viewed with reference to the powers of Congress under the Constitution to pass such a bill, or to its expediency as a measure of policy.

As a precedent, it will be as utterly destructive of the limitations of the Constitution upon Congressional power, adopted for the preservation of the liberties of the people and the right of local self-government in the States, as if two-thirds of the provisions of the Constitution had been eliminated in a convention of the States. The powers of taxation, which necessarily are unlimited except by the purposes defined in the Constitution, to accomplish which taxes may be levied, have, in order to justify this bill, been enlarged and expanded until the discretion of Congress is their sole boundary, while the power of appropriation is held to be without limit or bounds, with the single exception that the object shall be the "general welfare," and of this Congress is to be the sole and exclusive judge. Unlimited power in Congress to tax, coupled with unlimited power to appropriate, is the theory of this bill, and this, according to the opinion of Justice Miller in the famous Topeka case, reported in 20 Wallace, is the very definition of despotism.

Says that great judge, speaking as the organ of the Supreme Court of the United States:

> It may well be doubted, if a man is to hold all he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many. The theory of our Government, State and national, is opposed to the unlimited deposit of power anywhere.

Congress, say the advocates of this bill, is the sole judge of what the "general welfare" requires, and the discretion of Congress is the sole limit of the power of Congress to tax the people and appropriate money to promote the "general welfare."

This proposition, if true, places every dollar's worth of property in this country under the dominion of Congress, without a single limitation upon the power of Congress to tax it not self-imposed, and the truth and correctness of that proposition the advocates of this bill find themselves compelled to maintain in order to justify the bill. Judge Miller, in the opinion I have just read from, discussing and denying the unlimited power of taxation and appropriation, said:

> It must be conceded that there are such rights in every free government beyond the control of the state. A government which recognized no such rights, which held the lives, the liberty, and property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depositary of power, is, after all, but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is none the less a despotism.

At the close of the war, when the blood of the victorious North was hot from recent conflict, when the surging passions of men rather than cool judgment dictated the policy of the hour, what would have been the fate of the South unprotected by the guarantees of the Constitution which this bill proposes to strike down and nullify? A sectional majority in Congress, with power to tax at will and appropriate at will upon its own decision of the requirements of the "general welfare," could constitutionally have taxed the people of the South until they were stripped of every dollar's worth of property they possessed in the world if the argument in support of this bill is sound. It was then that the South felt the value and wisdom of our noble Constitution, for it sheltered us from the storm.

The strong can always take care of themselves, while constitutions and laws are necessary for the protection of the weak against the aggressions of the powerful. Unlimited, uncontrolled Congressional power means the domination of the weaker by the stronger sections of the Union. It was against this condition that the framers of our Constitution sought most sedulously to provide in the enumeration of powers granted to the Federal Government and in the reservation of other powers to the States and the people, thereby intending and hoping to secure equality, independence, and security to all the States and sections alike, whether weak and insignificant or strong and powerful.

The public law of Europe which holds firmly the balance of power, under which feeble and insignificant states repose in perfect security against their more powerful neighbors, was worked out and formulated through centuries of struggle, rivers of blood, and the expenditure of countless millions of treasure. The wise men who framed our Constitution, utilizing this experience, by a system of checks and balances sought to accomplish the same results in a written Constitution for the States of our Union, covering more territory and a greater diversity of soil, climate, production, interests, and population than the states of Europe.

It is not claimed that the power to pass this bill is conferred by any of the amendments to the Constitution adopted since the war. The present distinguished Attorney-General, two years ago a member of this body and the leader of the debate in behalf of this bill, expressly disclaimed the derivation of the power from these amendments or either of them. So we must test the powers of Congress in this regard by the Constitution as it came from the hands of the fathers.

This bill, if passed, will establish a construction of the Constitution which utterly destroys the constitutional balance of power between the States and sections of this Union, and invests with unlimited and uncontrolled power a Congressional majority, which the universal history of all the ages shows will be used by the stronger for the oppression and despoiling of the weaker sections of the country. "The power to tax is the power to destroy," says Chief-Justice Marshall in a memorable case. This great power rests in the hands of Congress, as heretofore understood, subject to certain well-defined limitations in the Constitution, which the theory of this bill utterly ignores and which its influence as a precedent will utterly destroy, leaving in the hands of the majority in Congress the unlimited and uncontrolled power to be wielded, whether under the influence of passion and excitement or of greed and avarice, for the most destructive purposes.

The right of local self-government, so dear to the people of all the States and so fully guaranteed by the Constitution, and especially the ninth and tenth amendments thereto, if this bill becomes a law, based as it is on the theory that Congress may do all things not prohibited in the Constitution required by the general welfare and is the exclusive judge of what the "general welfare" does require, will have received a blow from which there is no recovery. For what local rights have the States or people if not that of controlling the education of their children? Hear what Mr. Madison says on this subject. I read again a portion of the extract from one of Mr. Madison's speeches heretofore read in this debate, and will add that all the research of the Senator from Tennessee [Mr. JACKSON] in his able argument on this bill has failed to discover any retraction or modification of what he here says:

> There are consequences—

Says Mr. Madison—

> still more extensive, which, as they follow clearly from the doctrine combated, must either be admitted, or the doctrine must be given up. If Congress can em-

ploy money indefinitely to the general welfare, and are the sole and supreme judges of the general welfare, they may take the care of religion into their own hands; they may appoint teachers in every State, county, and parish, and pay them out of their public Treasury; they may take into their own hands the education of children, establishing in like manner schools throughout the Union; they may assume the provision for the poor; they may undertake the regulation of all roads other than post-roads; in short, everything, from the highest object of State legislation down to the most minute object of police, would be thrown under the power of Congress; for every object I have mentioned would admit of the application of money, and might be called, if Conrgess pleased, provisions for the general welfare.

The passage of this bill is an affirmation in the most solemn official form that every subject of state concern, in the language of Mr. Madison, "from the highest object of State legislation down to the most minute object of police, would be thrown under the power of Congress," if Congress should deem it proper to exercise the jurisdiction. For it can not be denied that the argument which sustains this bill will equally well sustain any other assertion of jurisdiction over any of the local affairs of the States.

In order to justify themselves the Democrats who support this bill in this Chamber assert that while Congress has no power or jurisdiction over the common schools of the States, in which I concur most heartily with them, that still Congress has the power to levy and collect taxes from the people for the purpose of expending the money upon common schools in the States, confessedly beyond the jurisdiction of Congress. In other words, that Congress is not confined to the execution of its constitutional powers in levying taxes and appropriating the money, but that objects outside of and beyond the jurisdiction of Congress may be specially provided for by taxation and appropriation when the general welfare requires it. We are not dealing with a surplus in our Treasury, for if we will pay all the bonds subject to call we not only have not a dollar of surplus, but lack millions of dollars of having enough to pay them. So the precedents relied on to establish the power of Congress to appropriate money in the Treasury wherever and whenever the general welfare requires it, and which, in my judgment, signally fails to establish that power over money already in the Treasury, are not in point with or applicable to this bill.

The proposition here is not to apply money in the Treasury or to get rid of a surplus, but it is to lay additional taxes on the people to raise money first and then to appropriate it—the levy of the tax, as well as the appropriation, being to promote objects outside of and beyond the jurisdiction of Congress. I deny the power of Congress to appropriate money already in the Treasury for purposes beyond its jurisdiction, but if I am in error in this, which I do not for one instant believe, I can not be wrong when I deny the power of Congress to levy taxes upon the people and collect money for the purpose of expending it upon objects outside of its powers and jurisdiction, as the common schools of the States are admitted by the Democratic advocates of this bill to be.

The great power of taxation is limited, controlled, and confined by the grants of the Constitution, or it is unlimited except by the discretion of Congress. If the latter, then the Supreme Court of the United States, in the opinion I have quoted, is wrong, and ours is not a free government, but a despotism. Unlimited power of taxation as well as of appropriation is necessary to justify this bill, which dedicates $77,000,000 yet to be raised by taxation and to be expended over a period of eight years, and that to an object which the Senator from Tennessee [Mr. JACKSON] and his Democratic associates who support this bill admit is outside of and beyond the jurisdiction of Congress.

All the arguments made and the precedents cited by the advocates of this bill have been directed to the point of establishing the power in Congress to appropriate money already in the Treasury—a surplus—for any purpose which Congress may determine that the general welfare requires. None of them touch the question of the power of Congress to tax the people for the purpose of placing money in the Treasury to be appropriated or bestowed upon objects outside of and beyond the jurisdiction of Congress.

It would seem that the mere statement of the proposition that Congress has no power to levy and collect taxes except to raise money to carry out and execute its constitutional powers ought to be sufficient without an argument to support it; and it is equally plain and clear that the common schools of the States not being under the jurisdiction of Congress, nor their control, management, or maintenance being within the powers of Congress, no power resides in Congress to tax the people to raise money for their support, whatever may be the power of Congress over money lying unused as a surplus in the Treasury over and above the needs of the Government.

I do not propose to repeat the argument made by me on this question when this bill was last before the Senate, but will read here one authority used by me in that debate. I allude to Cooley on Taxation, a book of standard authority in all our courts.

Judge Cooley says:

Taxes are defined as being the enforced proportional contribution of persons and property, levied by the authority of the State for the support of the Government and for all public needs.

Again he says:

They are the property of the citizen, demanded and received by the Government to be disposed of to enable it to carry into effect its mandates and to discharge its manifold functions.

Again he says:

The power of taxation is an incident of sovereignty, and is coextensive with that of which it is an incident. All subjects, therefore, over which the sovereign power of the state extends are, in its discretion, legitimate subjects of taxation; and this may be carried to any extent to which the government may choose to carry it.

After enumerating a number of maxims on this subject, the author says:

All these maxims assume that taxation is laid for the purpose of obtaining a revenue. Within the definitions given, the burden would not be taxation, if revenue were not the purpose.

What is revenue but that which is needed to carry on the Government and enable the Government to execute its constitutional powers? But again, and here is where he covers the whole question:

In considering the legality of the purpose of any particular tax a question of first importance must always concern the grade of the government which assumes to levy it. The "public" that is concerned in a legal sense in any matter of government is the public the particular government has been provided for; and the "public purpose" for which that government may tax is one which concerns its own people, and not some other people having a government of its own, for whose wants taxes are laid. There may, therefore, be a public purpose as regards the Federal Union which would not be such as a basis for State taxation, and there may be a public purpose which would uphold State taxation, but not the taxation which its municipalities would be at liberty to vote and collect. The purpose must in every instance pertain to the sovereignty with which the tax originates; it must be something within its jurisdiction so as to justify its making provision for it. The rule is applicable to all the subordinate municipalities; they are clothed with powers to accomplish certain objects, and for those objects they may tax, but not for others, however interesting and important, which are the proper concern of any other government or jurisdiction. State expenses are not to be provided for by Federal taxation, nor Federal expenses by State taxation, because in neither case would the taxation be levied by the government upon whose public the burden of the expenses properly rests. To provide for such expenses would consequently not be a purpose in which the people taxed would in a legal sense be concerned.

That is what Judge Cooley in his work of standard authority says upon the subject, and it covers this whole ground.

The taxation which is legitimate under our Government is taxation to raise revenue, for what? To enable the Government to execute its constitutional powers, to exercise and perform the functions and duties of its jurisdiction, and to supply its needs for those purposes. Taxation to raise money to bestow on objects and promote purposes outside of and beyond its jurisdiction and powers would not be to raise revenue for the Government, and, Judge Cooley says, would not be taxation, but simply a taking by superior force. Therefore it is that I assert it to be an undeniable proposition that if Congress has the constitutional power to draw money from the people by taxation for the support of the common schools of the States, it must be because the maintenance of the common schools of the States is a public purpose within the powers and jurisdiction of the Government of the United States, for unless they are, no power resides in Congress to sustain them by taxation, and he who supports this bill stultifies himself whenever he denies the power and jurisdiction of Congress over public education in the several States.

I deny this power to the Government of the United States. I believe the common schools of the States are wholly and exclusively under the power and jurisdiction of the several States, and, therefore, being outside of the jurisdiction of the National Government, that that Government has no power to tax the people for their support. The Senator from Tennessee [Mr. JACKSON] claims, as I do, that the common schools of the States are wholly within the jurisdiction of the several States and not within that of the National Government; but he says that Congress, although these schools are beyond its jurisdiction and outside of its powers, can tax the people to raise money for their support. Upon this I take issue with him, and say to him that whenever he goes outside the jurisdiction and powers of Congress to find objects for which taxation may be imposed on the people he takes off the limitations of the Constitution upon the taxing power, and vests in the dominant majority in Congress an unlimited, uncontrolled, undefined power of taxation, which the Supreme Court of the United States has said in the opinion I have read from has never been confided in any free government to any depositary of power however democratic, not even to a majority.

No man has advocated this bill and no man can advocate it and justify it without being driven to the position thus condemned by the highest judicial authority in the world. I am not prepared to revolutionize this Government. I am not prepared to establish the despotism of a Congressional majority, and destroy the balance of power between the States and sections of this Union so wisely adjusted in our Constitution.

It is considered by my Democratic friends from the South who support this bill that it is a good thing to have the people in all the States of the Union taxed for the benefit of their constituents, but I beg them to remember that this is but the beginning of this new departure from constitutional methods, and that as surely as time rolls on the "general welfare" will levy its tribute on their people in turn. Once established, this precedent will return to plague you. You had better go on in the good old way. Your people are struggling bravely and successfully with the evils of illiteracy. Their achievements have challenged the admiration of the world, and if encouraged to rely on themselves instead of asking charity from the Government will in good time surmount all difficulties, and be stronger, wiser, and more self-

reliant and self-reverent for having accomplished their own redemption and re-establishment.

The plea for the passage of this bill is that the safety of the Republic demands that voters be educated. The Government of the United States has nothing to do with suffrage except to see to it that no State discriminates against any class of citizens in conferring the right of suffrage. The State prescribes the qualifications of voters and says who shall be voters and who shall not be. This is a subject wholly and confessedly within the jurisdiction and powers of the several States, and wholly outside of the jurisdiction of the National Government. Nobody denies this. My friends on this side of the Chamber who support this bill agree with me that public education is a matter wholly within the power and jurisdiction of the States and wholly outside the jurisdiction of the General Government. When the entire subject-matter, both suffrage and education, are thus wholly matters of State jurisdiction and wholly outside of the jurisdiction of the National Government, I can not see how it is that the National Government is to take hold of it.

I am here told that the "general welfare" requires that the National Government leave its own constitutional sphere of action and go into that of the States with their consent. I can not think that the general welfare will be promoted by a violation of the Constitution, nor can the States constitutionally consent to an assumption of their powers and duties by the National Government. The whole theory and framework of our Government is founded and built upon States possessed of the powers reserved to them in the Constitution and rests upon them as pillars, and if these pillars are to be wasted and frittered away by any process, the superstructure will come down. An indissoluble union of indestructible States, indestructible even by their own consent, is the character of our Government. The powers of Congress can not be enlarged by the consent of the States, nor can those of the States be diminished by the consent of Congress. An amendment to the Constitution alone can make these changes.

The States can not consent to a usurpation of their powers by Congress any more than Congress can rightfully go into the reserved domain of the States. The machinery of our Governments, both State and National, is adjusted to the Constitution and will not work without jarring and friction outside of it. All the powers of Congress, and no more and no less, and all the rights and powers of the States, and neither more nor less, must be exercised respectively by them in order to a harmonious working of our system. For Congress to go outside of its powers and jurisdiction to perform functions alloted by the Constitution to the States in the management or administration or maintenance of their common-school systems would be a violation of the rights and powers and duties of both the State and National Governments. What the Constitution has ordained shall be kept separate, apart, and distinct can not be mixed and mingled even by the joint action and consent of both Congress and the States without violence to our theory and Constitution of Government.

The astonishing proposition is asserted by some of the advocates of this bill that the Government of the United States can tax the people of the United States to raise money to aid the common schools of the States, but can not follow that money and see to its administration and disbursement. It is difficult to believe that they are serious in making this assertion. If Congress is performing a duty in passing this bill the duty certainly does not end with handing the money over to the States. It is a continuing duty to see to it that it is applied to the purpose for which it is raised. This duty implies a discretion in Congress as to the mode of administration, the agents and instrumentalities; indeed, as to the entire method and all the processes of its use, handling, disbursement, &c., and all these things together constitute the management and current business and running of the public schools.

The bill now before the Senate, which in my judgment concedes the jurisdiction and power of the National Government over the common schools of the States, to be taken charge of either wholly or partially, as Congress may determine, does in fact largely direct how these schools shall be administered, going so far even as to prescribe studies to be taught in them. The bill exercises the powers, or many of them, over the schools proposed to be aided which a reader of many of the speeches made in advocacy of the bill is led to believe could not be claimed under it by the Government.

While Democratic advocates of the bill are claiming that the Government has no right or power or jurisdiction over the common schools under this bill, and have no power to follow the money and see to its application and administration, exactly the contrary is claimed by my Republican friends on the other side of the Chamber. I will read an extract from a speech of the Senator from Ohio [Mr. SHERMAN] now in the chair on this bill made two years ago, which I think will not be denied to be representative of the views of his party associates on the subject. The Senator from Ohio [Mr. SHERMAN] said:

> If the United States have the right to appropriate the money, they have the right to say upon what conditions the money shall be expended. If they say we will aid the South or the Southern States to educate their illiterate children, then the United States have the power and the right to set out the principles and conditions or limitations of that grant. The greater includes the less; and if the power is given to make these appropriations at all, the power is also given to say for whose benefit the money shall be expended, how it shall be expended, where and when and how apportioned, and for what purposes. That is as clear a proposition as can be shown in Euclid or any other mathematical work.

I will also read from the debate of two years ago an extract from an editorial which I find in the speech of Mr. Bayard, then a member of the Senate, taken from a paper published in Rhode Island, of which Senator Anthony, of that State, then a member of this body but since dead, was the editor and proprietor:

> The more honest, as the more truthful way of putting it would perhaps be to say that the necessity has arisen for the exercise of ultra-constitutional but necessary authority, and that it is a logical consequence of the emancipation and enfranchisement of the negro, these being the inevitable results of the war of the rebellion.
>
> It is not at all irrelevant, however, to inquire whether the means will secure the end. The committee finds that five-twelfths of the school population of the country are growing up in ignorance of the English alphabet; that in eighty-six cities, containing a school population of over 2,000,000, over one-third of the children never enter a school-room. New York city has 114,000 children not enrolled at all, and of a school population of 385,000, there is an average attendance of only 132,000. Some of our New England villages exhibit statistics which are simply appalling. The South excuses herself on account of emancipation and poverty; the North explains herself by the inundation of a foreign population. Whatever the causes, and they are clear enough, the facts are to be admitted and faced. The prevailing sentiment is, that the State shall no longer be responsible for the education of her children, but they shall be educated by the National Government, the State doing so much as Congress shall require. This is to be understood, however, when the Federal Government undertakes this business, as of right and duty it has assumed, and the States have conceded that it has full and sovereign authority. It will be bound to look out for the "general welfare" in this behalf, according to its best judgment and highest wisdom. The schools must conform to its idea of virtue and its standard of education.

The Senator from Ohio is unquestionably correct in the opinion he expresses as to the right and power of the Government to follow and superintend the administration and disbursement of money it appropriates, and Senator Anthony undoubtedly foreshadowed, in the well-considered editorial just read, what the Republican party will claim in respect to this subject if the Government enters upon this career of interfering with the common schools of the States. Which construction shall prevail, that of the Democratic supporters of this bill, who claim that all the United States Government has the power to do is to hand the money over to the States to be controlled and managed exclusively by them, or that of the Republican supporters of the bill, that the passage of the bill would be the recognition of plenary power in the United States Government over the entire subject of common schools in the States, and enable the Government to exercise its sovereign will and pleasure in administering them?

A direct antagonism on this point exists between the Democratic and Republican Senators who support this bill, as the debate throughout abundantly shows; yet both agree in pushing the bill through. This unsettled difference of opinion will still remain if the bill shall become a law, and will be the fruitful source of acrimonious and heated sectional discussion hereafter. That clause of the bill which retains the power in Congress to alter, amend, or repeal the bill will always preserve the subject open for debate, amendment, and agitation. It will be a constant source of irritation under the handling of demagogues, who will not fail to use it for all the mischief there is in it in stirring up strife between the colored and white people of the South.

It will be the basis of Congressional investigations into the school systems of the South upon alleged discriminations against colored people in the administration of the fund appropriated, charged for political effect. It will cause the administration of the public schools of the States to be a distinct issue in all political campaigns, and be the most potent and effective means of inciting anew and keeping alive for political effect race issues, now being so happily solved under State jurisdiction. It will be a perennial source of trouble, of agitation, of unrest, of irritation, and harassment throughout the South. One construction of the powers of the Government over State schools under Democratic administration and another and different construction under a Republican administration will subject the education of the youth of the country to all the vicissitudes and changes occurring in the ups and downs of political warfare.

These and many other evils are plainly to result from the passage of this bill. Besides, the relaxation of effort and interest for and in behalf of education among the people of the States will surely eventuate in the end in the assumption by the General Government of full power, jurisdiction, and charge of the subject of education in all the States.

No greater misfortune, in my judgment, could befall the people of this country or the cause of education than would be involved in this result. The fund proposed in this bill is to be taxed out of the people and returned back to them, less the cost of collection and return. Why not retain the money while they have it, and at the same time retain the control of their school systems as they now have them?

Mr. President, I see only evil in this bill; and while I have not intended to go into a general discussion of its provisions as I have done heretofore, I could not refrain from saying this much before the vote is taken.

Mr. DOLPH. I desire to present some amendments that I propose to offer to the pending bill in order that they may be printed before we meet again to-morrow, as I do not see any chance of reaching them for consideration this afternoon. I ask that they may be read, as they are brief.

The PRESIDENT *pro tempore*. The amendments will be read if there be no objection.

The SECRETARY. The first proposed amendment is to add to section 1 the following:

And provided further, That no money appropriated by this act shall be paid to any State until three-fourths of all the States have so accepted the provisions of this act.

The next proposed amendment is to add to section 2:

Until and including the year 1890, and afterward according to the census of 1890: *Provided*, That the District of Alaska shall be considered a Territory within the meaning of this act; and the money apportioned to said district shall be expended annually under the direction of the Secretary of the Interior in the manner provided for the expenditure of other appropriations for educational purposes in said District.

The PRESIDENT *pro tempore*. The proposed amendments will be printed if there be no objection.

Mr. EVARTS obtained the floor.

Mr. HARRISON. I ask the Senator from New York to yield to me for a moment. I propose an amendment as a substitute for the amendment of the Senator from Alabama and I ask that it may be printed.

The PRESIDENT *pro tempore*. The order to print will be made if there be no objection.

Mr. HARRISON. As it is somewhat late, if the Senator from New York will yield, I move that the Senate do now adjourn.

Several Senators addressed the Chair.

The PRESIDENT *pro tempore*. The Senator from New York has the floor.

Mr. EVARTS. If it is intended that the vote shall be taken upon this bill to-night I shall not occupy the time of the Senate at all, as I am heartily and perfectly desirous that the bill shall be passed; but if it is not the intention of the Senator from New Hampshire or of the Senate that it should proceed to a vote, I may wish to make some remarks upon the subject.

Mr. BLAIR. I think that the intimation of the Senator from New York that he may offer remarks upon the bill to the Senate would produce a general inclination to adjourn in order to have an opportunity to listen to him to-morrow. I understand, too, that there may be other gentlemen who desire to be heard further, and if a motion to adjourn should be made I should not resist it.

Mr. ALLISON. Will the Senator yield to a motion for an executive session? I move that the Senate proceed to the consideration of executive business.

The PRESIDENT *pro tempore*. The Senator from New York [Mr. EVARTS] having the floor, the Senator from Iowa moves that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After eleven minutes spent in executive session the doors were reopened, and (at 5 o'clock and 35 minutes p. m.) the Senate adjourned.

EXECUTIVE NOMINATIONS.

Received the 18th day of February, 1886.

UNITED STATES MARSHAL.

John Christian Franks, of California, to be marshal of the United States for the district of California, whose term expires February 20, 1886.

POSTMASTERS.

Charles Stackhouse, to be postmaster at Osage City, Osage County, Kansas, *vice* Jacob V. Admire, commission expired.

Edward R. Pemberthy, to be postmaster at Houghton, Houghton County, Michigan, *vice* Frank A. Douglass, commission expired.

William G. McCarty, to be postmaster at Jefferson City, Cole County, Missouri, *vice* Jacob Steinenger, commission expired.

John McAusland, to be postmaster at Miles City, Custer County, Territory of Montana, *vice* Newman Borchardt, commission expired.

John C. Collins, to be postmaster at Brockport, Monroe County, New York, *vice* Mrs. Mary E. Baker, commission expired.

R. Chauncy Fisher, to be postmaster at White Plains, Westchester County, New York, *vice* Samuel C. Miller, whose commission will expire February 20, 1886.

Edward H. Freeman, to be postmaster at Binghamton, Broome County, New York, *vice* George W. Dunn, commission expired.

Dudley S. Nye, to be postmaster at Marietta, Washington County, Ohio, *vice* Samuel L. Grosvenor, whose commission will expire February 28, 1886.

Marinus W. Allen, to be postmaster at Titusville, Crawford County, Pennsylvania, *vice* Joseph H. Cogswell, whose commission will expire February 20, 1886.

Thomas B. Coon, to be postmaster at Kilbourn City, Columbia County, Wisconsin, *vice* Jacob V. Hughes, resigned.

James Benton, to be postmaster at Colfax, Whitman County, Washington Territory, *vice* Lewis P. Berry, commission expired.

FOR PROMOTION IN THE ARMY OF THE UNITED STATES.

Second Regiment of Cavalry.

Lieut. Col. Nelson B. Sweitzer, of the Eighth Cavalry, to be colonel, January 9, 1886, *vice* Hatch, retired from active service.

Eighth Regiment of Cavalry.

First Lieut. Edward E. Wood, to be captain, January 20, 1886, *vice* Farnsworth, who resigns his line commission only.

Second Lieut. John A. Johnson, to be first lieutenant, January 20, 1886, *vice* Wood, promoted.

CONFIRMATIONS.

Executive nominations confirmed by the Senate, February 15, 1886.

UNITED STATES MARSHAL.

David R. Waters, of Michigan, to be marshal of the United States for the western district of Michigan.

POSTMASTERS.

Alexander Ferguson, to be postmaster at Palestine, Anderson County, Texas, *vice* James F. Pells, commission expired.

John F. Walsh, to be postmaster at Humboldt, in the county of Richardson and State of Nebraska.

D. B. Hanan, to be postmaster at New Hampton, Chickasaw County, Iowa, *vice* Charles McCullow, commission expired.

John D. Russell, to be postmaster at Sedalia, Pettis County, Missouri, *vice* Milo Blair, commission expired.

H. E. Black, to be postmaster at Greensburg, Decatur County, Indiana, *vice* George H. Dunn, commission expired.

Frank D. Travis, to be postmaster at Holdredge, Phelps County, Nebraska.

Edmund Knapp, to be postmaster at Garrettsville, Portage County, Ohio.

James W. Talbott, to be postmaster at Middleport, in the county of Meigs and State of Ohio.

F. P. Thompson, to be postmaster at Eureka, Humboldt County, California, *vice* Frederick Axe, commission expired.

W. B. Burnett, to be postmaster at Athens, Clarke County, Georgia, *vice* Madison Davis, whose commission will expire February 13, 1886.

C. W. Freeman, to be postmaster at Bolivar, Polk County, Missouri, the office having become Presidential.

Frank M. Jackson, to be postmaster at Los Gatos, Santa Clara County, California, the office having become Presidential.

H. T. Davis, to be postmaster at Orange, in the county of Orange and State of Texas.

Charles C. Commerford, to be postmaster at Waterbury, New Haven County, Connecticut, *vice* John W. Hill, term expired.

Silas L. Erwin, to be postmaster at New Milford, Litchfield County, Connecticut, *vice* David A. Baldwin, commission expired.

R. J. Humphrey, to be postmaster at Poultney, in the county of Rutland and State of Vermont.

COLLECTOR OF CUSTOMS.

William F. Howland, of North Carolina, to be collector of customs for the district of Beaufort, N. C.

Executive nominations confirmed by the Senate, February 18, 1886.

UNITED STATES ATTORNEY.

Lewis L. McArthur, of Oregon, to be attorney of the United States for the district of Oregon.

COLLECTOR OF CUSTOMS.

James B. Groome, of Maryland, to be collector of customs for the district of Baltimore, Md., *vice* Edwin H. Webster, commission expired.

HOUSE OF REPRESENTATIVES.

THURSDAY, *February* 18, 1886.

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

The Journal of the proceedings of yesterday was read and approved.

CENSUS OF INDIANS IN THE UNITED STATES.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, transmitting an estimate from the Secretary of the Interior of an appropriation for taking a census of Indians in the United States; which was referred to the Committee on Indian Affairs, and ordered to be printed.

COMMITTEE VACANCY.

The SPEAKER appointed Mr. J. V. L. FINDLAY, of Maryland, a member of the Committee on Banking and Currency, to fill a vacancy.

ORDER OF BUSINESS.

The SPEAKER. The Chair will now proceed, under the rule, to call the standing and select committees for reports.

MORRIS COUNTY RAILROAD, NEW JERSEY.

Mr. COBB, from the Committee on the Public Lands, reported back with a favorable recommendation the bill (H. R. 4584) granting the right of way for railroad purposes through the lands of the United States powder depot near Dover, N. J., to the Morris County Railroad Com-

pany; which was referred to the Committee of the Whole House on the state of the Union, and, with the accompanying report, ordered to be printed.

LAND OFFICES IN NEBRASKA.

Mr. LAFFOON, from the Committee on the Public Lands, reported, as a substitute for H. R. 1448, a bill (H. R. 5873) to establish two additional land offices in Nebraska; which was referred to the Committee of the Whole House on the state of the Union, and, with the accompanying report, ordered to be printed.

The original bill (H. R. 1448) was laid on the table.

MISSOURI PACIFIC RAILROAD.

Mr. CRISP, from the Committee on Pacific Railroads, reported, as a substitute for the bills H. R. 70, 276, 378, and 1410, a bill (H. R. 5874) to amend the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862; and also to alter and amend the act of Congress approved July 2, 1864, in amendment of said first-named act; which was referred to the House Calendar, and ordered to be printed.

And House bills 70, 276, 378, and 1410 which were severally laid on the table.

WILLIAM BRIDGES, JR.

Mr. HAYNES, from the Committee on Invalid Pensions, reported back with a favorable recommendation the bill (H. R. 4389) granting a pension to William Bridges, jr.; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

ADVERSE REPORT.

Mr. HAYNES, from the Committee on Invalid Pensions, also reported back adversely the bill (H. R. 3461) granting a pension to Ansel Potter; which was laid on the table, and the accompanying report ordered to be printed.

NOAH B. BROOKSHIRE.

Mr. O'HARA, from the Committee on Invalid Pensions, reported back favorably the bill (H. R. 4644) granting a pension to Noah B. Brookshire; which was referred to the Committee of the Whole House on the Private Calendar, and the accompanying report ordered to be printed.

WILLIAM TURVILLE.

Mr. O'HARA, from the Committee on Invalid Pensions, also reported back with amendment the bill (H. R. 1275) granting a pension to William Turville; which was referred to the Committee of the Whole House on the Private Calendar, and the accompanying report ordered to be printed.

NAVIGATION AND CUSTOMS COLLECTION LAWS.

Mr. FARQUHAR, from the Committee on Printing, reported back favorably the following resolution; which was referred to the Committee of the Whole House on the state of the Union, and the accompanying report ordered to be printed.

Resolved by the House of Representatives (the Senate concurring), That there be printed 5,000 copies of the navigation and customs collection laws relating to vessels, including the laws relating to merchant seamen and the regulation of steam-vessels, compiled by the Bureau of Navigation in the Treasury Department; of which 1,000 copies shall be for the use of the Senate, 2,000 copies for the use of the House of Representatives, and 2,000 copies for the use of the Bureau of Navigation.

PUBLIC BUILDING AT LOGANSPORT, IND.

Mr. DIBBLE, from the Committee on Public Buildings and Grounds, reported back, as a substitute for H. R. 465, a bill (H. R. 5875) for the erection of a public building at Logansport, Ind.; which was read a first and second time, referred to the Committee of the Whole House on the state of the Union, and, with the accompanying report, ordered to be printed.

House bill No. 465 was laid on the table.

PUBLIC BUILDING AT SAN ANTONIO, TEX.

Mr. DIBBLE, from the Committee on Public Buildings and Grounds, also reported back with amendment the bill (S. 44) providing for the erection of a public building at San Antonio, Tex.; which was referred to the Committee of the Whole House on the state of the Union, and the accompaning report ordered to be printed.

DINWIDDIE B. PHILLIPS.

Mr. TUCKER, from the Committee on the Judiciary, reported a bill (H. R. 5876) for the relief of Dinwiddie B. Phillips; which was read a first and second time, referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

MESSAGE FROM THE SENATE.

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

A bill (S. 30) for the relief of Harry I. Todd, late keeper of the Kentucky penitentiary;

A bill (S. 94) for the relief of Mrs. Sarah Elizabeth Holroyd, widow and administratrix of the estate of John Holroyd, deceased;

A bill (S. 349) for the promotion of anatomical science and to prevent the desecration of graves;

A bill (S. 353) for the relief of J. D. Morrison, surviving partner of C. M. and J. D. Morrison;

A bill (S. 491) to provide for an American register for the steamship Caroline Miller, of Baltimore, Md.;

A bill (S. 632) to provide for the settlement of the estates of deceased Kickapoo Indians in the State of Kansas, and for other purposes;

A bill S. 738) for the relief of James Clifford;

A bill (S. 936) for the relief of John M. McClintock;

A bill (S. 952) to authorize the increase of the capital stock of the Citizens' National Bank, of Louisville, Ky.;

A bill (S. 1052) for the relief of Capt. C. H. Warrens; and

A bill (S. 1055) to amend section 2148 of the Revised Statutes of the United States in relation to trespassers on Indian lands.

LAND GRANT TO ATLANTIC AND PACIFIC RAILROAD.

The SPEAKER. The call of committees for reports being concluded, the hour for the consideration of bills called up by committees now begins at twenty-five minutes past 12 o'clock. The Clerk will report the title of the pending bill, called up yesterday by the gentleman from Indiana [Mr. COBB] on behalf of the Committee on Public Lands.

The Clerk read as follows:

A bill (H. R. 453) to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast and to restore the same to settlement, and for other purposes.

Mr. COBB. There is a question of order pending, I believe, upon an amendment submitted yesterday by my colleague [Mr. HOLMAN].

The SPEAKER. The gentleman from Indiana [Mr. HOLMAN] was occupying the floor yesterday when the hour expired. The Chair does not know whether he desires to conclude his remarks at this time.

Mr. HOLMAN. I have not concluded my remarks, but I am entirely willing that the question of order shall be decided now.

The SPEAKER. The gentleman from Indiana [Mr. COBB] will state his point of order.

Mr. COBB. My point of order, Mr. Speaker, is that there is now pending before the House a bill providing, I think, for everything contained in the amendment proposed by my colleague. This bill, which I hold in my hand and will send to the Chair, provides that all laws with reference to the disposition of our public lands, except the homestead law, shall be repealed, and it especially provides that these lands shall not be sold at public or private sale, but shall only be disposed of by homesteading. While I am in favor of my colleague's proposition, I do not wish the pending bill encumbered with matters which may provoke discussion and obstruct or delay its passage in this or the other end of the Capitol.

I may state further that this House at the last session of Congress passed a bill in substance the same as that which I now send to the Chair, and probably such a bill will be passed again during this Congress. The last section, as I think the Chair will find, covers the proposition embraced in my colleague's amendment; indeed, I may say that the whole bill affects this question.

Mr. HOLMAN. Mr. Speaker, I have no doubt that there are pending in the House bills providing for the repeal of all laws now in force, with the exception of the homestead law, for the disposition of public lands; but I call the attention of the Chair to the fact that it is not assumed there is any bill now pending in the House which provides for the application of the provisions of the homestead law to lands heretofore granted by Congress, and which may be restored to the public domain. The effect of my proposition is not to reach the entire public domain, but only this particular body of land heretofore granted, and which I propose, when restored to the public domain, shall be restored only upon the condition of being occupied as homesteads by actual settlers.

It seems to me, Mr. Speaker, if the gentleman's proposition is correct and this point is well taken, then it is almost impossible to submit an amendment to a bill which in some form or other is not embraced in some proposition pending before the House.

I admit there is a bill pending to repeal the desert-land law and the timber-culture law and the pre-emption law—I concede all that; and the result necessarily will be the law remaining in force will be the homestead law. But there is no bill declaring that upon the forfeiture of a grant of public lands heretofore made the homestead law shall apply to it. That is the only point presented—simply as to this particular body of land heretofore granted by Congress, that upon the declaration of forfeiture by Congress those lands shall be controlled by the principles of the homestead law. I think if the narrow view necessarily taken of this subject by the point of order is good, it will be almost impossible to submit an amendment to the House that will not be subject to the same point.

Mr. COBB. I do not so regard it. This bill now pending, and to which this amendment is offered, provides that these lands, when forfeited, shall become a part of the public domain and be subject to the laws governing the public domain, and therefore the homestead, pre-

emption, and other laws would apply to these lands from the very moment the forfeiture takes place. They would apply in all cases suggested by the gentleman. In other words, they become a part of the public domain, and are governed by the rules and regulations affecting the public domain. The bill is this: After repealing all the provisions relative to the construction of said railroad or telegraph line, it provides that all the lands granted be, and the same are hereby, restored to the public domain. They are made subject to disposal under the general laws of the United States as though said grant had never been made. Of course this bill, when passed, will restore these lands to the public domain, and they will be affected by any general law which affects other portions of the public domain. I think the gentleman's point of order is not well taken, and I believe the point of order should be sustained.

The SPEAKER. From such examination as the Chair has been able to give to the bill sent up by the gentleman from Indiana [Mr. COBB] it appears to be a general bill, applicable to all the public lands of the United States, whereas the amendment offered by the gentleman from Indiana [Mr. HOLMAN] applies only to this particular body of lands heretofore granted to a railroad company. The Chair thinks the best test which can be applied in determining a question of this character is to ascertain whether or not the adoption of the amendment would either absolutely or substantially supersede the necessity for the passage of some bill which is pending. It is evident that the adoption of this amendment could not cover the subject embraced by the bill which the gentleman from Indiana has sent up. The amendment would apply this rule only to the lands in the particular bill now under consideration and leave all the other lands of the country just as the law now leaves them—to be affected hereafter by the passage of the bill which the gentleman sent up. The Chair thinks the point of order is not well taken.

Mr. HOLMAN. I do not know what the purpose of the Committee on the Public Lands may be; and if I can have the ear of my colleague I will be able to determine whether I am justified in occupying further the attention of the House. The question I wish to put to my colleague is this, Whether it is proposed during this morning hour to put this bill on its passage, or is it intended to carry it over for further debate?

Mr. COBB. I desire to put the bill on its passage. Of course that will depend upon the temper of the House. I conclude the provisions of the bill, unless some amendment is proposed, will not take up much of the time of the House; that is, they will not provoke discussion. In other words, I think we can pass the bill before the hour expires.

Mr. HOLMAN. Does not the gentleman intend to discuss the substitute offered to the bill?

Mr. COBB. That has been discussed, or it was yesterday.

Mr. HOLMAN. If it is not intended to discuss this subject further upon the main point presented, then I will occupy but a moment further to state my own position in regard to it. I shall be brief, because I do not wish to embarrass the passage of this bill.

The SPEAKER. The gentleman will proceed with his remarks.

Mr. HOLMAN addressed the House. [See Appendix.]

Mr. OATES. Mr. Speaker, I concur in a portion of the remarks made by the distinguished gentleman from Indiana [Mr. HOLMAN] on yesterday with regard to the importance of legislation to preserve what remains of the public domain, especially that which is fit for agricultural purposes, for actual settlers; in other words, to provide lands for the landless and homes for the homeless. But I must express my surprise at the extraordinary position taken by that distinguished and learned gentleman this morning with reference to the minority report of this committee and the substitute which the minority offer. The gentleman certainly loses sight of a very important consideration in questions of this kind, to wit, the nature and character of the law of forfeitures.

Let me say, too, in this connection, that while I have very little doubt of the power of Congress to declare a forfeiture to the extent the majority of the committee has reported, or that which is tantamount thereto, a repeal and revocation of the grant, yet a mere forfeiture to the extent recommended by the minority of the committee report would go for naught, would have no more force or effect, in my judgment, with the learning I have as a lawyer, than to whistle against the wind.

There is a question, however, of great moment in this connection, growing out of the peculiar phraseology of the proviso in the act of 20th April, 1871, authorizing this company to place a mortgage on the land granted. Now it may be, and in fact as the language literally imports is, the right of these mortgagees to foreclose the mortgage on the land coextensive with the road constructed at the time they see proper to foreclose; for the language is:

> That portion of said road which shall have been constructed at the time of the foreclosure of said mortgage.

That is, it shall operate on all lands conterminous with constructed roads at the time of the foreclosure of the mortgage.

That presents a question of importance from this consideration: Now, when a forfeiture is declared, or a revocation of the grant, where no road has been constructed, and the land is thrown open to homestead settlement or entry under the general laws, and is taken up by homestead settlers and improvements made, in course of time their rights, their homes may be jeopardized in consequence of the rights vested by this language in the bondholders under the mortgages upon these lands. This consideration induced me to examine this question critically, and though I may be wrong I have reached certain conclusions. Forfeiture, Mr. Speaker, has a well-defined meaning. The law abhors forfeitures, and hence in no case will one be sustained except the right to it clearly exists. A forfeiture is not like unto a judgment which results at the end of a litigation or legal controversy. It is a common-law, not a statutory, method, by which a grantor of an estate upon condition subsequent gets the title back on account of a failure by the grantee to perform the condition.

In the case of an individual grantor, all that is necessary for him to do to reinvest himself with the title in case of a breach of the condition is to go upon and claim his estate, which is called a re-entry. In the case of the king, under the English common law, in lieu of re-entering in person he had the process of office found—a sort of office judgment which had the effect of reinvesting the Crown with the title. But if there was a controversy, mark you, as to whether the grantee had performed the condition or the grantor had prevented full performance, then the grantor, whether king or peasant, was put to his suit, his action in court, for the recovery of the estate. If the grantor, instead of relying upon his common-law right of forfeiture, substitutes other remedies and reservations in the deed, he must rely on them and not on forfeiture.

In the case of the Atlantic and Pacific Railroad grant there are many conditions, and the reservations of power on the part of the Government, as grantor, are expressed in the twentieth section in these words:

> Congress may at any time, having due regard for the rights of said Atlantic and Pacific Railroad Company, add to, alter, amend, or repeal this act.

Now, the only reservation which the company makes, or, in other words, the only limitation upon the reservation of the Government, is that due regard shall be had for the rights of this company.

What, then, are the rights of this company as between it and the Government? At most, only to have the lands conterminous with the constructed and completed road. The committee concedes this to the company. But the act of Congress of April 20, 1871, authorized the Company to mortgage the lands granted to secure bonds to be issued and sold, and now the holders of the bonds which were thus secured and sold claim that they have a vested right in all the lands granted, and that the Government has no legal right to reclaim those lands and restore them to the public domain. Lee us see. The following in the granting act is strong language, and it is claimed with some plausibility that it constitutes an irrevocable dedication of the lands to the building of the road:

> The United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road.

Said act further provides that—

> The better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line and keep the same in working order, and to secure to the Government at all times, but particularly in time of war, the use and benefits of the same for postal, military, and other purposes, Congress may at any time, having due regard to the rights of said Atlantic and Pacific Railroad Company, add to, alter, amend, or repeal this act.

When we consider the entire granting act in all its parts, this language is but indicative of the great object which the Government desired to attain by making the grant. But it is manifest that it was not intended that the grant should be an unconditional estate in fee. Such a construction would be utterly inconsistent with the reservations of power over the lands granted. The grant was made to aid in the construction of a railroad westward on the nearest practicable route along the thirty-fifth parallel of north latitude to the Pacific Ocean. The lands in the State of California, which were withdrawn in accordance with the map of definite location of the road, are situated north of thirty-five and extending to or into the thirty-eighth parallel of north latitude; and although a Secretary of the Interior decided that this departure from the line indicated in the deed or granting act by the grantor was lawful, I can not sanction such a doctrine. The proviso touching the bondholders, which I have just read, is not very perspicuous in its language. The granting act is referred to, and hence the two must be construed and considered as different parts merely of one and the same act. "If the company shall hereafter suffer any breach of the conditions of the (granting) act," &c., is the first proposition in the proviso, and, if taken literally, would imply that the grantor would commit the breach; whereas its true meaning, to be gathered from the whole act, is that if the company commits a breach of the conditions, &c.

Next, the proviso declares that in that event the rights of the bondholders under the mortgages in respect to the lands shall extend only to so much thereof as shall be conterminous with or appertain to that part of said road which shall have been constructed.

Then, instead of stopping here, which would have made the meaning beyond question, these words follow, "at the time of the foreclosure of said mortgage;" language which is utterly inconsistent with every preceding proposition in the proviso and every reservation in the granting act. To hold that Congress intended just what this language literally imports would place it in the power of the trustees and bondholders, by never foreclosing their mortgages, to annul all the reservations over the lands granted and convert the grant into an absolute and unconditional one.

Congress must therefore have meant that if the company failed to perform the conditions, and the United States in consequence proceeded to take the lands from the company, the mortgagees should have a right to foreclose on all the lands conterminous with the constructed road. The object of authorizing the mortgage on the land was to raise money with which to construct the road; and it is therefore equitable for the Government to limit itself to reclaiming only the lands where no road has been constructed. This is, in my opinion, what was intended by the proviso.

The act authorizing the company to mortgage the lands granted is so intimately connected with the granting act that it may be considered a part, a section of it. Being a part, the whole act must be construed so as to harmonize and furnish a field of operation for each particular provision, if it can be done. The reservation of a right to the Government to repeal the granting act, having due regard for the rights of the company, was known to the mortgagees when they wrote the mortgages. The bondholders are chargeable with that which apppears upon the face of the legislative enactment which authorizes the issue of the bonds. I suppose that no lawyer here will dispute this proposition. Then, as they had notice that the Government, while consenting that the lands might be mortgaged, reserved in express terms the right to terminate the grant whenever the company failed to comply with their part of the contract, therefore the bondholders and mortgagees have not in my opinion a vested right in any lands except such as are conterminous with the road constructed and completed at the time the Government declares a dissolution of the contract and a resumption of the title to unearned lands.

There is another consideration which tends strongly to show that such was the intention of Congress. Lop off the words "at the time of the foreclosure of said mortgage;" strike them out of the proviso as meaningless, and the lien of the bondholders under it will be identical with the rights of the company as against the Government as grantors, and harmony of the otherwise conflicting provisions of the act is secured. I am therefore persuaded that the words "at the time of the foreclosure of said mortgage" are mere redundant words of description, and in fact mean "at the time when the grant is terminated."

But, Mr. Speaker, there is another answer to the claim of the bondholders. I find in the report of the committee several propositions of law the correctness of which I do not sanction, but I have no good reason to dispute their statement of the facts as found by them. I will therefore ask the Clerk to read a passage which I have marked on page 4 of the report.

The Clerk read as follows:

These bonds were all taken and are now owned by the parties interested in the Atchison, Topeka and Santa Fé and the Saint Louis and San Francisco Companies, and the capital stock is now owned by these two companies; and the Atlantic and Pacific road, and all the property, rights, and franchises of the company, are virtually owned and controlled by these two corporations. They hold the mortgage interest complete, all of the road which is completed, and operate it after it is so completed. We believe that the tripartite agreement above referred to was entered into with a full understanding by all the parties that the Atlantic and Pacific was to maintain a nominal existence merely so as to enable these two corporations to secure the benefit of the land grant to the extent they desire under the act passed by Congress April 21, 1871, to enable the Atlantic and Pacific Company to mortgage its road. They caused the mortgages named to be executed, and the bonds to be issued, for the individuals composing these two companies owned the capital stock of the Atlantic and Pacific Company; thus giving them complete control of the latter company. They bought the bonds so issued, and now own them, and these corporations guaranteed their payment. They are, therefore, both debtor and creditor in this transaction.

Mr. OATES. Now, if it be true that these two corporations owned the Atlantic and Pacific Railroad, they stand in the shoes of the grantees, and can claim no more than their assignors; and if they also caused the mortgages to be made, and are the owners of all the bonds, it is quite clear that their lien upon the lands is limited to the lands conterminous with the completed road. They would be subrogated to the rights of the grantees, the Atlantic and Pacific Railroad Company, which still retains a nominal existence.

Now, the reservation to the company in the language of the twentieth section, "with due regard to the rights of said company," means just what the majority of the committee in their report have conceded; that if there is a breach of conditions and a consequent termination or revocation of the grant, they should have the lands conterminous with the portion of road they had constructed. It can not mean anything else. And the fact that this road was constructed after the limitation expressed in the grant amounts to nothing, in my judment, for the plain reason which I will state. Every gentleman who is acquainted with the horn-books of the law, who understands its elementary principles, knows that estates upon condition are of two kinds; an estate upon condition precedent, the title in which can not vest until the condition precedent is performed; and an estate upon condition subsequent, the title to which vests the moment the grant is made. In the latter case, although the grantee fails to perform the condition at the time and in the manner prescribed in the deed, that does not in itself forfeit or terminate his estate; that does not cause the title to revert to the grantor.

The title still resides in the grantee; the estate is still his until the grantor acts. The right which the grantor has to re-enter in the case of individuals, and thereby reinvest himself with the title, is not regarded as property so far as to enable him to sell or transfer it. His heirs, or his successor, alone can exercise that right if he himself fails to do so during his existence. But suppose he never does re-enter, or, in the case of the Government, declare a dissolution of the contract and a resumption of the title—for that is the only office and effect of an act passed here to declare what is called in this bill a forfeiture—to reinvest the Government with the title to the lands granted? Until this is done, where is the title to the estate? I ask any legal gentleman whether he will dispute the proposition that it rests and resides in the grantee? So long as the title rests and resides in the grantee, the estate is his property. In the case of individuals, whenever the grantor re-enters he is reinvested with the whole estate; and no improvements nor complication placed upon it by the grantee can prevent its reinvesting entire.

But in the case of these peculiar grants to railroad corporations there is in every one of them a provision that when the conditions are performed as to certain specified sections of the grant—20, 30, or 50 miles—the company shall be entitled to patents for lands conterminous with such constructed road. This apportions the grant; so that whenever the Government, for a breach of condition, sees proper to declare a forfeiture of the grant or a resumption of title, it does so only as to that part where the conditions have not been performed.

So long as the Government permits the company to go on and perform its conditions out of time the company has the right to the lands conterminous with the conditions thus performed.

And I say this in reply to the position of the gentleman from Indiana and those who have reported the substitute in this case. The right of this company I maintain is a right to have the lands conterminous with the completed road under the original act. The granting act retained to the Government the right, on breach of conditions by the company, to declare forfeiture at any time. It never was intended, in my judgment, to grant to this company the right to place mortgages on the lands which would extend the right of the mortgagees beyond the right of the company. As I may be wrong in this opinion, and if I am wrong, then if these lands are thrown open to homestead entry and settlement it will result in great hardship to these settlers hereafter, because this corporation or its successor or the mortgagees may bring suit for the recovery of these lands. Therefore it had better be put in such shape as will settle it, so that when settlers go upon the lands and acquire homes there and make improvements they will have security against being ousted. I therefore deem it to be both cautious and wise that the House should adopt an amendment of the character of that which I shall offer at the proper time.

A MEMBER. Offer it now.

Mr. OATES. Very well; I will offer it now and let it be pending if that be deemed best. I am not aware whether it is now in order or not, as there is a substitute and an amendment already pending.

The SPEAKER. The Chair will state there is a substitute pending, and there is also pending an amendment to the text of the original bill proposed by the gentleman from Indiana [Mr. HOLMAN]. If the gentleman from Alabama proposes to amend the substitute that is in order.

Mr. OATES. No; I propose to amend the bill.

The SPEAKER. If he proposes to amend the amendment of the gentleman from Indiana that would be in order. But an independent amendment to the bill itself would not now be in order.

Mr. OATES. I will read the amendment I intend to propose as part of my remarks for the purpose of explaining it to the House. It is as follows:

Add to the bill the following:

"*Provided*, That any person interested in, or injuriously affected by, the passage of this act, may, at any time within one year after the approval of the same, bring a suit in any circuit court of the United States exercising jurisdiction over the Territory or the district in which the subject of controversy is, and all rights of action given hereby which are not commenced within said year shall be forever barred."

Now, Mr. Speaker, I propose to add this provision at the proper time to the pending bill. I think it ought to be adopted for the reason that it opens the way to any person injuriously affected by this legislation, so that if these bondholders have rights they can be adjudicated in the courts. If this corporation has rights they will have their opportunity. At the same time if such rights are not brought to the attention of the country, if they are not enforced by bringing suits within one year, it is a statute of limitations which forever bars their right of action. The settlers and homesteaders on these lands under such provision will find repose under quiet titles.

Mr. BRECKINRIDGE, of Kentucky. When do these mortgages expire?

Mr. OATES. I am informed not until 1910.

Mr. BRECKINRIDGE, of Kentucky. In default of payment of interest can the bondholders under the terms of the mortgage bring action to foreclose?

Mr. OATES. No action, I am informed, has been brought to foreclose under the mortgage, the interest having been paid.

Mr. BRECKINRIDGE, of Kentucky. Is there anything to prevent——

Mr. STEWART, of Vermont. When can they bring suit under the amendment?

Mr. OATES. They have one year.

Mr. BRECKINRIDGE, of Kentucky. Is there anything to prevent the bondholders under the mortgage, when the bond falls due, bringing suit to foreclose the mortgage?

Mr. OATES. I think there is, after one year.

Mr. BRECKINRIDGE, of Kentucky. Would it not only be an accumulative remedy by which they could file a bill to quiet title? Is it to prevent bringing suit, when the mortgage falls due, in equity to have that mortgage foreclosed?

Mr. OATES. You mean in the event the company builds the road beyond the present terminal point and they enter suit to foreclose the mortgage upon that portion of the grant?

Mr. BRECKINRIDGE, of Kentucky. If I understand the facts, this road is completed for a certain number of miles. The right of way is still given by this bill. It only applies to the lands beyond the point of present completion. There is a provision in the amended act by which the mortgagees have a right to foreclose on such lands as are conterminous to the road at the time of the foreclosure of the mortgage.

Mr. OATES. That is in the proviso.

Mr. BRECKINRIDGE, of Kentucky. Now, will the amendment which you offer prevent a bondholder, at the time when his bond becomes due, in case the road is operated farther out, from taking action to foreclose the mortgage and have the land which is then conterminous to the increased completed portion of the road sold subject to that mortgage? I ask that for information.

Mr. OATES. That is a feature which I have not carefully studied. I will only say my present impression is it will bar the action.

Mr. BRECKINRIDGE, of Kentucky. My idea is that if we are to open these lands to homestead settlement under a doubtful title it would be an unwise act on the part of Congress. When do I understand these mortgage bonds to be due?

Mr. OATES. They are due in 1910. But I will say to the gentleman from Kentucky that my desire in offering this amendment is to avoid any defect in the title. I think the statute of limitations would protect the settlers if no suits were commenced within the one year.

Mr. BRECKINRIDGE, of Kentucky. That is the point I had in mind, whether the statute is sufficient to protect the homestead settler under the mortgage which exists, provided we throw these lands open.

Mr. OATES. I think it would.

Mr. PERKINS. Let me ask the gentleman from Alabama a question, whether this Atlantic and Pacific Company did not as a matter of fact construct its road to the western boundary of Missouri and several miles into the Territory a good many years ago?

Mr. OATES. Yes, sir; the report discloses that.

Mr. PERKINS. And is it not a matter of history that all or nearly all of the land in Missouri has been disposed of by the company, and that settlers have gone on it?

Mr. OATES. I think that is set forth in the report.

Mr. PERKINS. Then I desire to ask the gentleman from Alabama if by either of the bills, that of the majority or minority of the committee, these settlers are protected in any way in their rights.

Mr. OATES. I think so.

Mr. PERKINS. I would be glad if the gentleman from Alabama would point out any provision in the bill which protects them.

Mr. OATES. They are certainly protected, because the bill of the committee does not propose to interfere with any of the lands conterminous with the completed portions of the road.

Mr. PERKINS. Here is the language of the bill:

Provided this act of forfeiture shall not affect the rights of those claiming under any mortgage made by the said company by virtue of the act approved April 20, 1871, &c.

Mr. OATES. If the gentleman will look at the beginning of the bill reported by the committee—he is reading now from the substitute—he will find that it declares a forfeiture, in my opinion I may be permitted to say not in proper language, but a forfeiture nevertheless, which amounts to a repeal or revocation of the grant where no road has been built.

Mr. STEWART, of Vermont. I would like to ask the gentleman from Alabama a question.

Mr. OATES. Certainly.

Mr. STEWART, of Vermont. If the right has not accrued to these bondholders by any failure on the part of the company to meet the payments due to them in interest or otherwise, how can any rights accrue under this act?

Mr. OATES. The amendment which I propose gives to all persons who are injuriously affected the right to go into the courts.

Mr. STEWART, of Vermont. But how can they be injuriously affected or come within the provisions of the act if this interest is paid and other conditions on which they hold the bonds complied with?

Mr. OATES. If they have a vested right, of course they are protected and will under the amendment I offer have a right to have their rights passed upon and adjudged by the courts of the United States.

Mr. Speaker, I reserve my time.

Mr. COBB. Mr. Speaker, there seems to be some misunderstanding in the minds of gentlemen upon the other side as to the provisions of this bill with reference to that portion of the line within the Indian Territory. If I can have their attention for a few moments, I believe I can satisfy them upon that point. The Indian Territory is not a part of the public lands of the United States, and is not contemplated as such by the law. None of the land laws are extended over the Indian Territory, and therefore it is not affected by this grant.

The third section of the act provides what is granted in the way of the public domain. The second section grants the right of way, while the third section grants the lands. Now it is provided that the lands in the Territory and the States—that is, the public lands—are granted. Under the rulings of the Departments of the Government, as well as the courts, the Indian Territory has been regarded as a Territory of the United States. It is a separate and distinct portion of the lands of the continent set apart for the Indians. It is held, therefore, in larger part by deeds and treaties, and it can not be the subject of a grant, not being a part of the public domain.

Mr. WEAVER, of Iowa. Will the gentleman allow me to ask him a question?

The SPEAKER. The hour for the consideration of this business has expired.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted to Mr. PETERS for fifteen days, on account of important business; and to Mr. SWINBURNE for four days, on account of sickness.

MISSOURI PACIFIC RAILROAD.

Mr. BLISS. Mr. Speaker, I ask unanimous consent to submit the report of the minority of the committee on the bill (H. R. 5874) reported to-day by the gentleman from Georgia [Mr. CRISP].

Mr. CRISP. What time does the gentleman desire in which to file the report?

Mr. BLISS. Within one week.

Mr. CRISP. I shall have to object to that length of time, as I hope to get the case up on the next day when the committee is called, which would probably cut it off.

Mr. BLISS. The gentleman can set the time. I think I can submit the report on it by Saturday.

Mr. CRISP. I have no objection to that length of time.

The SPEAKER. There being no objection, the gentleman from New York will have leave to file the views of the minority.

FITZ-JOHN PORTER.

Mr. BRAGG. I move that the House resolve itself into Committee of the Whole House on the Private Calendar, for the consideration of the special order, the bill (H. R. 67) for the relief of Fitz-John Porter.

The motion was agreed to.

The House accordingly resolved itself into Committee of the Whole on the Private Calendar, Mr. SPRINGER in the chair.

The CHAIRMAN. The House is in Committee of the Whole for the purpose of considering the bill the title of which the Clerk will report.

The Clerk read as follows:

A bill (H. R. 67) for the relief of Fitz-John Porter.

Mr. STEELE. I desire to inquire of the Chair how much time each side of this debate has remaining.

The CHAIRMAN. The Chair has computed the time up to the close of the debate yesterday, and finds that six hours have been consumed by those supporting the bill and seven hours and thirty minutes by the opponents of the bill.

Mr. PHELPS. Mr. Chairman, I believed for twenty years that Fitz-John Porter was a traitor and that he deserved to be hanged. I accepted this belief because it was the public opinion of the loyal North, and my whole heart was with them. Now I believe he was an honest man and a loyal soldier, and I reached this conclusion when it became my duty as his representative to examine the evidence, and I learned the facts. The examination was tedious. There was the testimony in two trials and the vast accumulations besides. Fitz-John Porter determined at the start to regain his good name, and all these years gathered every fact and every utterance which would recreate the 29th day of August, 1862, when he lost it. The case is so voluminous that I am not inclined to find fault with any who, exempt from this official obligation, shrink from the task of examination and have determined to swim with the popular current of their section. But this examination I have made, and I can not, as an honest man, shrink from its results, and I state them to-day to the committee partly to atone for the bitter words I have heaped upon the man whom I believed to be a traitor, and partly because I wish to show to those who sent me here, some of whom do not approve of my action, that I acted in this case not from impulse, but upon reason and conviction.

First. Consider the facts in the case and the presumption to be derived from them. Look first at the facts before the 29th day of August, 1862. Fitz-John Porter started well. His ancestry was good. His father and grandfather fought in the battles of the country, and they created those family traditions of military honor which the son inherited. Starting with these traditions, he was a good boy, studious and dutiful; he was a good youth, and by his gentleness and his courage won popularity among his fellows, while his success in the exercises of the academy secured for him the approbation of his instructors. He was a good soldier, and the Mexican war soon gave him the oppor-

tunity to show his metal. He was in that wonderful little army which subdued a nation and had private soldiers who carried in their knapsacks, all unknown, the stars which they afterward wore as generals.

Yet in such an army Porter acquired conspicuous distinction. He was very brave and he was very prudent—a model officer. And when he lay in the hospital in the city of Mexico wounded in the assault, he solaced his confinement with the knowledge that the distant Government whose commission he bore recognized him as the most promising among its younger officers. With this record he was immediately and naturally called to positions of highest responsibility in the war of the rebellion. How well he discharged them his opponents on this floor have acknowledged. The hero of the City of Mexico became the hero of Gaines's Mill and Malvern Hill; and the Fifth Army Corps, as they rested under the Virginia sky on the 29th day of August, 1862, had not a private in the ranks who did not thrill with the conviction that his commander was the consummate flower of the American Army and its pride. This was the record of Fitz-John Porter up to and on the morning of August 29. Is there anything in it inconsistent with the theory of his innocence on that afternoon?

Now look at the facts which came after this date. On the 30th day of August he received an order to fight. He knew that the order was a blunder, and he said so; but he also knew that it was an order which, under that military code which speaks to the soldier like a voice from Sinai, left him no discretion. He obeyed. He led his six thousand into hopeless battle and held them under a leaden hail until twenty-two hundred lay on the ground about him. Then he thought he had lost all the men the order required him to lose, and he withdrew the remnant. This was the obedience and courage, on the 30th, of the man who on the 29th day of August was insubordinate and a coward. On August 31, knowing that such generalship must sink the Army of the Potomac, he determined to rescue his own reputation and that of his friends from the general wreck, and he sends, August 31, a rapid courier to Washington to demand of Abraham Lincoln an investigation that should prove his treason.

President Lincoln on the 5th of September granted his request and ordered a court of inquiry. Porter did not know his request was granted. He first heard it sixteen years afterward, when the original order appeared among the exhibits in his second trial. The War Department thought that this was not the court and this was not the time. Lee's victorious army was threatening Washington and they needed the most trustworthy soldier in the Army to guard the defenses of the capital. To that post of supreme importance they promptly summoned Porter, and the man who on the 29th day of August was a coward and a traitor on the 3d day of September at Arlington guarded this beleaguered city. Afterward they asked him to pick out his own division and his own commander to take them with his own old forces to Antietam.

When that campaign of disaster was ending, when Pope had been superseded by McClellan and Mr. McClellan by Burnside—when the people, mad in their disappointment, clamored for an explanation and a victim—then the Department gave them Porter. It organized its court. It summoned nine officers from the smoke of battle and placed them under the shadow of the Department to perform their task. They hesitated to do it. They lingered for weeks until a War Secretary ever ready to sacrifice an individual for the nation's life ordered them to find their verdict. The order was read in the morning, they found their verdict at noon, and in the afternoon they adjourned. Five could find a verdict. And the record tells us that one became a witness for the prosecution and four received promotion two weeks afterward. Porter met his fate as only a brave and innocent man could. He took himself and his family from the public eye. He has appeared only to recall or to present fresh evidence of his innocence. He worked and waited. He never threatened and he never murmured. He trusted in the justice of God and man. I think he has not trusted in vain.

At the time the verdict was given the evidence was printed and was read largely by the legal profession. With singular unanimity they condemned the result, and the great leaders of the profession, in writing and unsolicited, expressed their opinion that the evidence did not sustain the verdict. Those who gave such written opinions were lawyers like Daniel Lord, Charles O'Conor, Benjamin F. Curtis, and Sydney Bartlett. Afterward Legislatures in many Northern States, in New Jersey, in Pennsylvania, in New Hampshire, in Minnesota passed resolutions asking for a reopening of the case; and private citizens bearing such names as Edward Everett, Robert C. Winthrop, and Amos A. Lawrence, without consultation with Porter, prepared and signed memorials of similar purpose, which Porter with difficulty suppressed. Garfield himself introduced in this House a bill proposing a commission similar to that one which was afterward created, who should sit and review and report upon the new evidence. Public opinion in this demand grew irresistible, and in 1878 such a commission was created and acted. The conclusions of this commission, whose wording is so familiar to the country, reversed the findings of the first trial, and for a verdict of censure substituted a verdict of praise.

General Grant accepted their conclusions and boldly declared his conversion; and so did the Count of Paris, the impartial historian of our civil war, who in his second edition erased the charges he had made in his first. Since that time Senates have passed this bill, and one House of Representatives, by a vote in which more than a score of Republican members who had read the evidence were forced to join. These are the facts after the 29th day of August, 1862, and the presumptions to be drawn from them are not inconsistent with his innocence on that day.

Now let us look at what transpired on the 29th day of August, 1862, and our task is done. This is the one day in a long life—for Porter must be now more than sixty years old—when the man who was always faithful was, in a supreme moment, faithless; when the man always brave was a coward; when the man always a patriot was a traitor.

On this day Major-General Pope, in command of the Union forces in Virginia, was in active warfare on the field and in his dispatch box. He issued that afternoon an order to General Porter, dated at 4.30, commanding him to attack the enemy. General Porter did not attack the enemy. That is the charge; that is the crime if Porter committed one. And what is the defense? One is that the order was not delivered in time. This seems to be complete, but Porter has always refused to rest his case upon it. And I refer to it now only because it capitally illustrates two things which the committee should keep in mind. One is the strange carelessness with which the court in the first trial treated its evidence; and the other is the great value of the new testimony which was presented at the second trial.

The issue in the first trial was upon the time that the order was delivered. The prosecution introduced two witnesses, who were interested, whose words showed their views were conjectural. These two were the captain and his orderly, who brought the order. They testified that the order was delivered early and in good season. The defense introduced five witnesses of the highest character, disinterested, unimpeachable, who testified that it was delivered at dusk, late, too late for execution. The judges chose to believe two witnesses rather than the five led by Major General Sykes, and found that the order was delivered in time. With the same carelessness this court seems to have weighed its evidence all through the case. At the second trial, along with other new evidence, was produced (I think by General McDowell) a dispatch sent that day by Porter to General Pope. In this dispatch Porter showed his ignorance of Pope's whereabouts and his desire to get that information. Porter carelessly took the dispatch and was toying with it, when his eye read in the corner the hour when it was sent—"half-past six o'clock in the afternoon." At that hour evidently Pope's order had not come, and here was documentary evidence which confirmed the oral testimony of five witnesses and established this defense.

But upon this defense Porter refuses to rest his case. He disobeyed the order because it could not be executed, and because to attempt to execute it under the circumstances would be unsoldierly and cruel. Pope commanded him to attack the army of Jackson on the flank or on the rear. Porter could not attack the army of Jackson on the front or on the rear, because the army of Jackson was not before him, but the army of Longstreet, which had suddenly and unexpectedly appeared and assumed this position. Porter had ten thousand men, Longstreet twenty-five thousand men, and Porter could reach the flank or rear of Jackson only by first marching over the forces of Longstreet.

This thing, impossible to be done, he would have attempted had Pope been aware of the presence of Longstreet or present to accept the responsibility of the movement. But Pope was ignorant of the presence of Longstreet—the order itself showed it—and he had only assumed the responsibility of an attack upon Jackson. This left the responsibility of decision under these new circumstances upon Porter, and he decided wisely not to make the attack. So plain was it that the presence of Longstreet excused and forbade the attack, that in order to condemn Porter the first court had to find that Longstreet was not there. Abundant testimony has since proved that he was. So says Lee, the commander-in-chief of the confederate forces; so says Longstreet; so, finally, in a late magazine, says Pope, the persistent prosecutor, himself. And this ends the contest.

Finally, Mr. Chairman, I ask you could any case be better buttressed by facts and authority than Fitz-John Porter's to-day? In his two trials Pope claimed that Longstreet was not there, and so admitted his own ignorance of the circumstances of the field; then came Longstreet to say he was there, and the circumstances of the field were just as Porter claimed. And these two admissions bring the case directly within the Napoleonic maxim, which declares "that discretion must be assumed by the subordinate when the superior who issued the order is absent and is ignorant of the circumstances in the case." And how well this discretion was exercised by the subordinate is proven by the best of evidence, the statement of Lee, who commanded the enemy's forces: "Porter could not flank Jackson. I suppose we would have cut Porter to pieces had he attempted to get at Jackson's flank."

In view of such facts how insignificant seems to be the hasty and imperfect decision at the first trial! So imperfect, that the whole legal profession rose with Bartlett, O'Conor, and Lord to say that there was not evidence to support it. Especially how insignificant does it appear by the side of the decision in the second trial, where judges of highest rank, upon mature deliberation and full evidence, after admitted prejudice against the accused, declare him not alone free from guilt but worthy of commendation. How well is Porter justified in his persistent trust in the ultimate justice of God and man, and how proud must

he feel—if the sorrows of so many years leave any place for pride—when he sees all the great generals of the civil war, with one notable and regrettable exception, joining with Terry and Schofield and Grant to acclaim his innocence and to lead him to their august companionship. This is the story of Fitz-John Porter. An old, a familiar, a wearisome one to us, to him it is the story of a blighted life. Let the friends of justice do to-day what they can to repair the wrong and so end forever, so far as this House is concerned, one of the strangest and saddest scenes in American history.

Mr. KELLEY. Will the gentleman from New Jersey yield to me a portion of the remainder of his time to make a request?

Mr. PHELPS. I have yielded the remainder of the time to the gentleman from Pennsylvania, Mr. CURTIN, otherwise I should be very glad to oblige his colleague.

Mr. KELLEY. I would ask again a moment that I may renew my application to print a review of the testimony on the part of the Judge-Advocate-General, which was presented to President Lincoln as a part of my remarks on this case.

Mr. BRAGG. And I object.

Mr. ADAMS, of New York. I hope no objection will be made.

Mr. CURTIN. Mr. Chairman, some one asked me for a minute—I think the gentleman from Ohio, General WARNER. I will yield him that time, and know he will occupy that minute well.

Mr. WARNER, of Ohio. Mr. Chairman, I desired a moment that I may give a brief explanation of the vote I expect to cast on this bill. I am one of those who do not believe that Fitz-John Porter did his whole duty at the battle of second Bull Run. But, on the other hand, I believe that if the court which found him guilty of the charges as laid could assemble again, and have the evidence which now is in possession of the country presented to it, it would be compelled to reverse the verdict it once gave. For that reason I shall cast my vote for the passage of the bill. [Great applause.]

Mr. CURTIN. Mr. Chairman, we had before us a bill in the last Congress to restore Fitz-John Porter, and we have to-day a similar bill to do for him what I regarded then and regard now as a measure of justice to an American citizen. I know the man well, sir. He was the first military officer of this Government who came to me in the beginning of the war, and of all the men who did come—and there were many—he was the most faithful, vigilant, active, and intelligent. He was placed on the staff of General Patterson, who commanded the Pennsylvania forces down in the Valley of Virginia.

My colleague from Allegheny County, Pennsylvania, has stated that in a council of war at Winchester Fitz-John Porter opposed an advance on the enemy. He was then a captain of the United States Army—that was all; and my colleague has not read the report of General Patterson, who commanded that force; and has not read that President Lincoln said to Patterson, "You can wait for your vindication." And the old man did wait—he who had been in the war of 1812 and '13, who commanded an army in Mexico in the war with that country, and at an advanced age took part in the war which so agitated this great country and imperiled our Government. When that war was over that old Irish hero so vindicated himself that every man in America agreed that he was right.

I recommend to my colleague to read General Patterson's book, and he will find that he acted under obedience to orders from Washington.

My colleague from Philadelphia, my venerable colleague [Mr. KELLEY], in the speech he made yesterday, denounces Fitz-John Porter as a traitor. Traitor, Mr. Chairman, is a terrible word to an American citizen. It means much. We have had few traitors in this great Government of ours from the beginning of our national existence down to this day. They have been few, indeed. The inspiration of patriotism and devotion to this great Government forbid that men should be traitors; and if Fitz-Fohn Porter is a traitor I am one. [Applause.] And yet I gave my country the best years of my life. I knew him well, and his friends. And the gentleman from Michigan [Mr. CUTCHEON] denounced Fitz-John Porter in a speech so technical and trite in the discussion of evidence that it would have been creditable in a court of quarter-sessions for a man who had stolen a pair of trousers or a pair of boots, or had violated the liquor law. [Laughter and applause.]

And, Mr. Chairman, he said, in his peroration, that he summoned from high heaven Garfield and others who are dead; he canonized as saints all the persons interested in the court-martial and condemnation of Fitz-John Porter—and I notice that the gentleman dealt generally with the dead [laughter]—that they, before the high court of heaven, would sustain the verdict that Fitz-John Porter was a traitor to his country. I want to say to the gentleman, under God I hope that Grant will be there, and if he is there, then there will be conflicting testimony on that point. [Applause and laughter.] And if he is there, I trust he will be permitted to cross-examine Grant, and that high court of heaven may be resolved into a court of quarter sessions, and the gentleman can then display his ability, his wit, as a cross-examiner, his logic, and his facts. [Laughter and applause.]

Mr. Chairman, Henry Wilson, of Massachusetts, Horace Greeley, of New York, and the man who has the honor to speak to you now, first presented to the Government of the United States a review of the court-martial and the sentence of Fitz-John Porter. They are in their graves; and will you say that Horace Greeley and Henry Wilson, of Massachusetts, were traitors? Who will say that? And if you say to me that I am a traitor, say it in the corridor and you will regret it. [Laughter and applause.] We presented that subject to the Government after a full and deliberate consideration. Our names are on record and I glory in the fact that my humble name is in such association. I repeat I glory in the fact, and that the appeal was to vindicate an American citizen. That is all.

I hold in my hand Scribner, containing an article written by General Pope; and I have listened to the discussion on this floor; and in vindication of General Pope I have heard nothing new. It is all here. He complains of Halleck. He complains that his counsel was not accepted by Lincoln, who is so eulogized on this floor, and in those eulogies I most heartily unite. He complains of the tardiness of the officers who came up to him, and especially of John F. Reynolds.

Mr. WARNER, of Ohio. Than whom there was never a more faithful soldier.

Mr. CURTIN. Never. He was an ideal soldier, so grand and pure that no man can taint his memory here. We erect monuments to him in Pennsylvania. The men of his corps in 10-cent subscriptions made a fund for a bronze statue of him at Gettysburg. And the State of Pennsylvania has now appropriated money to put up a monument to his memory where he fell. And a liberal gentleman of Pennsylvania, Mr. Temple—God bless him—subscribed $25,000 to put a bronze equestrian statue of that pure soldier in the city of Philadelphia, which I had the honor to unveil. I can not but express my indignation at the imputation that John F. Reynolds ever disobeyed an order.

Here it all is in this article. I say to the gentleman from Michigan, it is all here. I do not know if he read it, but it is all in Pope's own article. He says he advised the President and the Secretary of War—and he deals with dead men. My friend, Fitz-John Porter, lives. I am no longer young, but I am glad I live to vindicate him.

My venerable colleague from Philadelphia [Mr. KELLEY] quoted Dessaix, as was also done in the discussion last Congress. He has not read the history recently. Massena was shut up in Genoa. Dessaix was ordered to relieve him. Napoleon found he needed the column of Dessaix, and Dessaix came back to Marengo under orders. His tragic death made him remarkable in history. He obeyed the order and did come back.

Disobedience of orders and acting without orders is a common occurrence in all great wars, and a man is unfit to command armies who fails at times to exercise his judgment and discretion. It is for that he is put in the field and clothed with authority. It occurred very often in the war of the rebellion; notably my kinsman, General Gregg, when Hancock was hard pressed at Ream's Station, went to the sound of his guns, dismounted his cavalry, and assisted in preventing what might have been one of the greatest disasters of the war. If he had lost his command, as he acted without orders, gentlemen on this floor might have applied their wisdom and knowledge of war to him, and have had him court-martialed and dismissed.

My friend from New Jersey [Mr. PHELPS] has shown to the House that the order of which they complain arrived at 6.30. That is the end of it. The speech of the gentleman is so clear and forcible and his conclusions so just and logical, that it is unnecessary for any advocate of this bill to go over the same ground again. One more day and Fitz-John Porter, as these gentlemen know, with his column resisted the approach on Washington with eight thousand men, not ten thousand or twelve thousand, as you say; and it is part of the history of that battle that three thousand men of that column were either killed or wounded in that terrible struggle.

Mr. Chairman, I witnessed that war with intense anxiety; and for the State of Pennsylvania I feel pride in all the great people of that State did to preserve the Government. I will astonish you, sir, and this House when I tell you that after the second battle of Bull Run the great Commonwealth of Pennsylvania put thirty-two regiments in the field in sixteen days. I ought, therefore, to know something about the war.

I wish to God it had never occurred. I believe if that war had not occurred and forced on me those terrible four years I would, thanks to my Irish ancestry, have lived to be a hundred. [Laughter.] If I had been ten years older it would have killed me. But I watched the war, I encouraged my fellow-citizens engaged in its hostilities and giving their lives as the highest measure of their fidelity to their country. I do hate to hear gentlemen on this floor denouncing American soldiers as traitors or cowards. Fitz-John Porter was not a coward. Ah, no! There were few cowards in that war on either side.

The newspapers were constantly clamoring "On to Richmond!" "On to Richmond!" but we always found some fellows between us and Richmond who gave us a great deal of trouble, as the soldiers who fought them will tell you. [Laughter.] The war should never have occurred, but it did; and I now appeal to this House, Mr. Chairman, to have justice done to an American soldier. Admiral Byng, who should have attacked the fort of St. Philip, at Minorca, but retired in the presence of a French superior force, was tried, convicted, and shot. But the ministry who made that victim were hooted and mobbed in the streets and turned out of power for the injustice done to that gallant man. History is constantly repeating itself.

Now, Mr. Chairman, this Government at that time needed a victim,

and something had to be done. The disasters on the Peninsula had aroused the American people. McClellan was removed from the command, and Pope was recalled from the West to take command of the armies, and he proclaimed himself, in brilliant and glittering rhetoric, as commander of the armies. Although he says in his article he did not use the phrase, he announced that his headquarters would be in the saddle, which meant an improvised saddle down here at Willard's Hotel. [Laughter.]

Mr. GALLINGER. He denies that.

Mr. CURTIN. His order was read by everybody at the time. I read it myself with great satisfaction. Now, I thought, we have got the right men, the fighting men, the men in the saddle. Now, if there has been anything elucidated on this floor in the discussion of this question, and in the newspapers and periodicals of the day, it is the utter impossibility of many of the conversations which are reported to have occurred with Abraham Lincoln, because, if they be true, when did he find time to attend to public duty?

When men are dead, that is the time to publish conversations [laughter]; for in these conversations men too often magnify themselves into consequence before the country. I used to see Lincoln myself occasionally, and when I did see him he attended promptly to the public business that we had under consideration and didn't talk much about anything else; but it would appear now from these publications that he devoted most of his time to holding conversations. [Laughter.] They are publishing conversations with him in all parts of the country, and conversations with Halleck and with Stanton. General Pope says in this article that he objected to the movement, did not desire the place of commander of the army, but accepted it and took the field. Sir, if there is anything in history that is beyond dispute, it is that that second battle of Bull Run was simply a struggle of a confused mob, one division going in after another without any concert, a front five miles long, and such a general state of confusion as would have resulted in the capture of Washington if the enemy had known the real situation.

Fortunately for the country they did not. Fortunately for us all they did not. Fortunately for you gentlemen who come here from the South to represent upon this floor, your people, who are now enjoying, in common with us all, the blessings and the benefits of this great Government; fortunately for you, they did not capture Washington. When that confusion was passed and McClellan was called back to the command of the Army, we obtained a success at South Mountain and a victory at Antietam.

As the House will remember, it was about that time that the conference of State governors was held at Altoona. The case for the conference was withheld until the Army of the Potomac obtained a success. The most active agents in the calling of that conference were Governor Andrew, of Massachusetts, and Governor Morton, of Indiana. That conference was called to set a policy for the war and to urge its vigorous prosecution. The main question was whether the proclamation of freedom for the slaves should precede the Altoona conference or should follow it. There were seventeen governors of States present.

Before the conference it was decided that the proclamation of freedom should be issued, and that the war should be prosecuted vigorously, and that the governors would approve and support that policy, and they did. I do not deal with dead men or report conversations with dead men. [Laughter.] Of the seventeen governors there assembled there are three—Kirkwood, Blair, and Sprague—still living besides myself. Ask them, and they will tell you what we did there. We took that course because the war was about slavery, and the time had come to assert it. I hold in my hand the correspondence with Governor Andrew and with Governors Kirkwood and Blair, and I want it published soon, because I am afraid that the other three survivors of that conference may die. For my own part, I do not intend to die until it is done [laughter] and the history of that conference known to the nation, as it will be soon.

Now, as to Fitz-John Porter, I do not propose to go into the details of the case. I shall not undertake to say just when that famous order was received. The gentleman from New Jersey [Mr. PHELPS] says it came at half past 6, and he has no doubt investigated the facts. But, as I have said, I do not care to fight our battles over again. I do not like bloody-minded men. I never did. For a like reason I did not like the commissaries or the contractors who wanted the war to go on because they made money out of it, and when I visited the Army I always hated to see, as I did see stuck up on trees, notices announcing "embalming done at low prices." [Laughter.] As to these bloody-minded men, some of whom would wipe out everybody on this side of the House, these warriors who can never be appeased, they remind me of a noted character who lived in my town years ago. He was an old fellow; I think he had been a wagon-master in the Revolution; that was the tradition of the town. He used to tell a story of his warlike achievements in battle, and he told it so often that he believed it himself, and when strangers would come to the little village in which we lived they would give "Captain Curzy" (that was his name) a drink or two and get him to tell his story. The story, as he told it, was about like this: "At the battle of Monmouth," he would say, "although in the light-horse I fought that day on foot. I slashed with my saber cuts one and two, and a head went off here and a limb went off there, until the blood actually ran into my shoes. [Laughter.] A pile of dead bodies surrounded me; I was excited, and I was still slashing away, when I felt a touch on my shoulder. I looked up and there was Washington! [Laughter.] I shall never forget the solemnity of his appearance or the gravity of his speech. He gazed at me a moment without speaking, and then he said, 'Young man, restrain your impetuosity! In the name of God, do not make a slaughter-house of the field of battle!'" [Renewed laughter.]

Now, Mr. Chairman, I wish to remind these bloody-minded men, if any of them are here, that the war has been over more than twenty years. The war ended nearly a quarter of a century ago. Good God, let us forget it! You gentlemen of the South are back in this house built by your fathers; we of the North are in the same house, built by our fathers. It was the soldiers of the Union that maintained this Government that made us one again, that restored peace and concord and fraternity. Mr. Chairman, there is a wide difference between a state and a government. For example, Sweden is a state; Belgium is a state. Can Austria be a state? Austria is a government. She holds Hungary, another nation, under subjection to her government.

But a state must be homogeneous. We are a state, if when the interests of Maine are touched the vibration is felt in California; if when the interests of the people of Oregon are violated it is felt in Florida. To be a great nation of sixty million people we must be homogeneous; we must be fraternal; and above all when an American citizen is punished unjustly we must relieve him and do justice. In a former age when a man said, "I am a Roman citizen," an empire moved to revenge his ignominious death, and the nation that touched the body of a Roman citizen was destroyed. When some years since the missionaries of the Cross in Africa were maltreated the Lion growled, and Great Britain knocked an empire to pieces and vindicated the rights of those who had suffered wrong.

We, as a nation, have been constantly making apologies; but in my judgment the time has come when this great people should assert themselves in the family of nations, when the mariner or the merchant or the man traveling for pleasure should be protected in any part of the world by the power of this great Government. Most of all, we should protect the honor and interests of the individual citizen of the United States. A man who is placed in the dock of the court of quarter sessions, accused of crime, epitomizes in himself all that there is in this Government. He is not to be convicted of crime without evidence. All the panoply of the Government, all its greatness and power, encircle the meanest citizen. Whether the man whose rights are in question be a "tramp" or a man of wealth it matters not; power must be exercised legitimately. If we fail to accord justice at home, how can we exact it abroad?

Gentlemen say there is no constitutional right on our part to review the finding of this court-martial. Sir, I am tired of that kind of talk. What does it mean? Does it mean that the action of a court-martial summoned suddenly to provide a victim for the indiscretion of the Government can not be reviewed? It has been reviewed, and honorable men have declared their judgment in opposition to the verdict of that court. I have on my desk a private letter from General Schofield to a friend of his, in which he says that he went to the trial of this case before the military court of inquiry without prejudice or feeling, and was convinced that Fitz-John Porter had been unjustly accused. Other gentlemen who sat on that board have come to the same conclusion.

But the gentleman from Michigan [Mr. CUTCHEON] complains that Grant was mistaken; half his speech was occupied with an effort to convince this House that Grant was mistaken, if not worse. Now, if there has been, in the history of this great nation, a military man deserving the respect and honor and gratitude of the country it is Grant. I am sorry he was ever President; I still more regret that he ever went to New York to be involved in the speculations of Wall street. For, mark it well, Grant during the whole war never took a place that he did not hold. That is his history. At Shiloh he went under the banks of the river, but he held the position. In the Wildnerness, when defeated, he did not know it; he held the position. Wherever he went, whatever position he took, he held. He developed from obscure life into one of the greatest soldiers of the world.

When the last court was appointed, Grant turned his attention with renewed interest to the case. One gentleman complains that Fitz-John Porter importuned Grant. Thank God, he did. He importuned different Presidents in succession. He knocked at the doors of this Hall. He demanded for himself and his children the justice due to an American citizen. If he importuned Grant he had the right to do so; and Grant yielded. Having made an investigation of the whole case, Grant declared to the American people that he had been mistaken.

Mr. BURLEIGH. And he never took that out of the record.

Mr. CURTIN. No; he never took it out. Why, sir, death came to Grant when he knew it was coming. The grim monster was feeling for his heart-strings day by day and hour by hour. So long as he could speak his voice was for his country, its perpetuity, its peace, its grandeur. When he could no longer speak, his writing was all in the same strain. Why, Mr. Chairman and gentlemen, there is not in all history a

death so poetically sublime as Grant's. And he will be there to answer the accusations which the gentleman said will be sustained above. Look out for Grant! I hope my friend from Michigan will get there; but look out for Grant, because on earth or in heaven that man will be believed.

Mr. Chairman, is my time out?

The CHAIRMAN. The gentleman has fifteen minutes more.

Mr. CURTIN. Why, I thought I had only fifteen minutes altogether. Well, I do not think I need say anything more on this question. I will not fight the battle of Bull Run over again. It has been fought so often on this floor and by some men who were not there [laughter], and I was not there! My enlightened friend from Nebraska [Mr. LAIRD] was there, and has made a speech on behalf of Fitz-John Porter; and Mr. Ray, of New York, who was also there, but not now a member of this House, made a speech on the same side in the last Congress.

A MEMBER. And Mr. HAYNES spoke on the same side.

Mr. CURTIN. Yes, I heard his speech and admired it. I heard also the speech of my excellent friend, the gallant gentleman from Indiana [Mr. STEELE], who was not there, and who elucidated this question on the map. Why, sir, what are maps worth? Anybody can make a map. While my excellent friend from Indiana made a map, I would remind him that Grant made maps also.

Mr. CUTCHEON. Will the gentleman from Pennsylvania yield at this point for a question?

Mr. CURTIN. Oh, yes; I am a yielding man.

Mr. CUTCHEON. The gentleman from Pennsylvania thinks that General Grant is to be believed either on earth or in heaven. Now, I desire to know whether he thinks that General Grant is to be believed when in his letter of May 9, 1874, to General Pope he wrote:

* * * I read during the trial the evidence and the final findings of the court, looking upon the whole trial as one of great importance, and particularly so to the Army and Navy. When General Porter's subsequent defense was published I received a copy of it and read it with care and attention, determined if he had been wronged and I could right him I would do so. My conclusion was that no new facts were developed that could be fairly considered, and that it was of doubtful legality whether by mere authority of the Executive a rehearing could be given.

Yours, truly,

U. S. GRANT.

General JOHN POPE,
United States Army.

Is Grant to be believed when he says there that he had read all the evidence and saw no new facts?

Mr. CURTIN. Oh, yes; as to facts the evidence of which was then before him, he was familiar with them. As to the question of legality, why, sir, this is the grandest inquest of the American people. This is the great tribunal for final adjudication of such questions. Do you say there is no appeal, no redress for the wrongs of an American citizen who has suffered as Porter has suffered? Why, sir; if a man is unjustly put into jail the governor or the President can pardon him.

Grant, after the date of the letters which the gentleman has just read, examined this whole case carefully at his home when death was almost upon him, and Grant then said that he had been mistaken. What manhood! How some other men are dwarfed beside him!

Mr. CUTCHEON. The distinguished gentleman from Pennsylvania and myself can have no controversy as to General Grant.

Mr. CURTIN. No.

Mr. CUTCHEON. Either as to his military supremacy or his absolute honesty. I wish now—— [Cries of "Go on, governor," from the Democratic side.]

Mr. CURTIN I understand you perfectly. You said that; you read it before. I read it in your speech.

Mr. CUTCHEON. The gentleman has yielded to me.

Mr. CURTIN. But not too much.

Mr. CUTCHEON. The gentleman has invoked the names of Henry Wilson and of Horace Greeley and of the distinguished gentleman from Pennsylvania himself.

Mr. CURTIN. Oh, never mind me.

Mr. CUTCHEON. As proving what? [Cries of "Go on, governor," from the Democratic side.] I have in my hands the letter of Henry Wilson, and also the letter of Horace Greeley, and also the letter of the gentleman from Pennsylvania.

Mr. CURTIN. Yes; we asked re-examination.

Mr. CUTCHEON. I wish to call the gentleman's attention to what Henry Wilson did say.

Mr. CURTIN. I know what he said. You need not read it to me. I know it by heart. [Laughter and applause.] I know it better than the shorter catechism. [Renewed laughter and applause.]

Mr. CUTCHEON. Will the honorable gentleman permit me to read it?

Mr. CURTIN. The gentleman from Michigan is a more adroit man than I am. I am a plain, common-sense man, and he is a very astute man. [Laughter.]

Mr. CUTCHEON. The gentleman cited Henry Wilson.

Mr. CURTIN. I cited him. Henry Wilson believed him innocent; and so did Horace Greeley; and so did I, too. You shook me a little in your speech, but not much. [Laughter and applause.]

Mr. CUTCHEON. Allow me to read it?

Mr. CURTIN. Oh, no; it is all in your speech. [Laughter.] There is not a man in your presence——

Mr. CUTCHEON. I would be glad to read it, and also to read the letter of Horace Greeley.

Mr. CURTIN. There is not a man in your presence to-day who can not read. If there is in this House such a one let him stand up and say so. There is not a man up. [Great laughter and applause.] I remember very well in the last Congress——

Mr. CUTCHEON. The gentleman will not permit me to read what Mr. Wilson wrote.

Mr. CURTIN. No; they have all read it, and if they have not—as they can all read—they can go and read it for themselves. The gentleman in the last Congress stated on this floor that some kind of an arrangement had been made with Grant; that we ought to put him through again as a general, and that we would sustain him. Very well. The next morning it was not in his speech. I want to say to the gentleman from Michigan—I need not call him my friend; I would be friends with him if I could—but what he said about that arrangement was not in his speech as it was published the next morning. About two or three thousand years ago there were two men, one of whom repented and the other was severely shaken, just on the margin, at the eleventh hour, very near the fire. [Laughter and applause.] But though they were malefactors they did not bear false testimony against their neighbor, which false testimony has always been cursed. [Applause.]

Now that is all. The gentleman does not say that now. If these men are to be believed, we only ask for justice to a man who was injured.

Mr. CUTCHEON. Under these circumstances will the gentleman yield to me?

Mr. CURTIN. What do you want me to yield for? We should never agree. You have had your speech, and it was a good one. I did not interrupt you. If that is not enough to satisfy the gentleman I will tell him that it was one of the best speeches I ever heard. He made the most of it. [Laughter and applause.]

Mr. CUTCHEON. I do not desire to interrupt the gentleman if he does not wish to yield to me.

Mr. LAIRD. I do not think it is fair to the gentleman from Pennsylvania to be constantly interrupted.

Mr. STEELE. The gentleman from Pennsylvania can take care of himself.

Mr. CURTIN. I am about done. I desire to do justice to Fitz-John Porter. The gentleman himself says we are going to pass the bill. Oh, yes; we will pass it! [Applause.]

Mr. STEELE. Will the gentleman from Pennsylvania yield to me for one minute?

Mr. CUTCHEON. I ask the gentleman from Pennsylvania——

Mr. STEELE. Oh, let me alone.

Mr. CURTIN. One at a time. [Laughter and applause.] The gentleman from Wisconsin [Mr. BRAGG] has the floor. I have talked my time out; but what does the gentleman from Indiana wish to ask me.

Mr. STEELE. It is but a word.

Mr. BURROWS. I claim the balance of my time which I reserved.

Mr. BRAGG. There is no time left for anybody to claim.

Mr. CURTIN. Before I resume my seat I wish to say in reference to my friend from Indiana [Mr. STEELE], and I am pleased to call him my friend, that in nothing which I have uttered do I wish in the slightest degree to reflect upon his gallantry as a soldier. He was upon other fields and fought gallantly. I wish to treat him with the greatest possible respect. So, too, I wish to speak of the gentleman from Michigan. We differ on these points, and we only differ to that extent.

Now, Mr. Chairman, having at all times, with a sincere belief in the innocency of Fitz-John Porter, whenever and wherever in my power advocating that justice should be done him, I make the last appeal for this gallant soldier, who, together with his family, have so long and so grievously suffered, to this august tribunal, representing the grand inquest of the American people.

I do this with great satisfaction, independent of your favorable official action, which is, I hope, to occur to-day, but from the higher and holier motives that I believe him innocent, and that I am thereby discharging a grateful duty to a gentleman who honors me with his friendship.

I am done. I yield the floor. [Applause.]

Mr. BURROWS. Mr. Chairman——

Mr. BRAGG. I have the floor, Mr. Chairman, I believe.

Mr. BURROWS. I desire to occupy my time.

The CHAIRMAN. The Chair will state that by a general order the time fixed for closing this debate expires at 3 o'clock to-day, when it is understood the previous question is to be ordered. The Chair has endeavored to divide the time equally between gentlemen favoring and those opposing the bill. In that effort to equally divide the time the Chair finds that the seven minutes between now and 3 o'clock belong to those who support the bill, and therefore the Chair recognized the gentleman from Wisconsin.

Mr. KELLEY. Then I would ask the Chair, with permission, whether an arrangement was not entered into between the gentleman from Wisconsin [Mr. BRAGG] and the House, the Speaker being in the

chair at the time, that the previous question should be ordered at 3 o'clock and that the chairman of the committee in charge of the bill should have one hour thereafter? I ask whether that arrangement is not on record, and how, that being the order of the House, time can now be taken from the gentleman from Michigan [Mr. BURROWS] and yield it to the gentleman who is ordered to confine himself to the hour after the previous question is ordered?

Mr. BRAGG. I will answer that, Mr. Chairman.

Mr. KELLEY. I want the Chair to answer it. I addressed my inquiry to the chairman and not to the gentleman from Wisconsin.

Mr. BRAGG. There is no order confining me to the hour, and no one knows that better than the gentleman from Pennsylvania himself.

Mr. BURROWS. Do I understand the Chair to deny the floor to me for the balance of the time, five minutes, remaining?

The CHAIRMAN. The Chair will state, in response to the gentleman from Pennsylvania, that the Chair can not take cognizance of the ruling of the Speaker; but if the gentleman desires it the Chair will cause to be read the agreement or understanding entered into at that time.

Mr. BURROWS. That will consume the balance of the time, and if I am entitled to the floor I desire to proceed now.

The CHAIRMAN. The Chair is of opinion that the remaining time belongs to those gentlemen who support the bill, which will equalize the time.

Mr. BRAGG. Mr. Chairman, gentlemen upon the other side have had their time. Now let me be heard.

Mr. CUTCHEON. I ask unanimous consent of the House, in the few minutes remaining of the gentleman from Pennsylvania's time, to print in the RECORD the letter of Henry Wilson, Horace Greeley, and ANDREW G. CURTIN.

Mr. BRAGG. I object.

Mr. CURTIN. Except as to my letter. Print my letter. [Laughter and applause.]

Mr. BRAGG. I object.

Mr. CURTIN. I promised my colleague from Pennsylvania [Mr. EVERHART] five minutes, which promise I had entirely forgotten. I hope that it will be allowed to him, although he is against the bill.

The CHAIRMAN. The Chair has recognized the gentleman from Wisconsin.

Mr. REED, of Maine. What was the ruling of the Speaker that the chairman was about to have read?

The CHAIRMAN. The Chair has stated that if the gentleman from Pennsylvania desired, the understanding which was reached in the House with reference to the debate on the bill would be read.

Mr. BRAGG. Mr. Chairman, I am not surprised that a member of the old Fifth Army Corps should be able to cause such disturbance in the ranks of the enemy. I stand here to-day, sir, representing the old Fifth Army Corps, and a member also of the First Army Corps, wearing upon my breast the badge of the old Army of the Potomac that loved McClellan and Porter while they fought the battles of this country well, despite Congressional influence. [Applause.] They sometimes had good officers; they sometimes had officers of medium capacity, and they sometimes had officers that would have disgraced a country militia camp. But, sir, they fought steady and well against the flower of the confederate army, led by their ablest captains. Their danger was more from the rear than from the front, for Congressional committees were prowling through their camps looking for candidates for the Presidency, and interfering with all orders that their general officers issued. [Applause.] That condition of things existed up until the time that the country cried out against it and the power was given to General Grant to command all the armies. Then, with him at their head, the Army of the Potomac went forward to victory and closed the war and saved the Union by the surrender at Appomattox. So have we, friends of Fitz-John Porter, pressed forward year after year asking that justice be done to him. Partisan zeal and malicious personal motives combined with it have prevented a fair and impartial hearing, and have made men fearful to vote in accordance with their judgment lest the long black mark should go down across their name and the curse of the G. O. P. be issued against them.

But at last, like the Army of the Potomac in its campaigns, we come on this battlefield with the great captain, Grant, at our head, and we are going to win the battle. Justice is all that we ask. Mr. Chairman, there is no better test in the world of the honesty, the faithfulness, the zeal, the ardor, and the bravery of an officer than the testimony of the men under his command.

Mr. BURROWS. Has not the time arrived when the previous question was to be called?

The CHAIRMAN. The hour of 3 o'clock has arrived.

Mr. BRAGG. I move that the committee rise and report the bill to the House.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. SPRINGER reported that the Committee of the Whole House, having had, according to special order, under consideration the bill (H. R. 67) for the relief of Fitz-John Porter, had instructed him to report the same back to the House without amendment.

Mr. BRAGG. I move the previous question on the engrossment and third reading of the bill.

Mr. CUTCHEON. I desire to make a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. CUTCHEON. I wish to ask if amendments are now in order or will be at any time?

The SPEAKER. If the demand for the previous question is not sustained amendments will be in order. If the previous question is ordered, then all amendments, under the rule, will be cut off.

Mr. CUTCHEON. I desire to ask another question. The gentleman from Pennsylvania [Mr. EVERHART] gave notice of an amendment which he proposed to send up. Will that amendment be considered as pending?

The SPEAKER. The chairman of the Committee of the Whole House reports the bill back to the House without amendment.

Mr. CUTCHEON. I desire to offer an amendment to the last clause of the bill if it can be permitted. Possibly the gentleman from Wisconsin will permit me to do so. I ask the gentleman to yield to me to move an amendment to the last clause of the bill.

Mr. BRAGG. No, sir; I yield for nothing.

The previous question was ordered; and under the operation thereof the bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time.

Mr. BRAGG. I move the previous question on the passage of the bill.

Mr. WARNER, of Missouri. I move to recommit the bill to the Committee on Military Affairs with instructions to add as the second section of the bill what I send to the desk.

The Clerk read as follows:

Whereas Andrew J. Smith, late a major-general of the United States volunteers and colonel of the Seventh Cavalry of the United States, never was court-martialed;

Whereas said Andrew J. Smith was never accused of disobedience of the orders of his superior officers and never turned his back upon the enemy, always marched when ordered without question as to the difficulties or dangers in the way;

Whereas said Andrew J. Smith never had his loyalty to his country or his commanding officer questioned during a continuance in service from July 1, 1838, to May 6, 1869, through all grades from second lieutenant of the First Dragoons to major-general of volunteers;

Whereas the said Andrew J. Smith received the brevet of colonel, United States Army, April 10, 1864, for gallant and meritorious services at the battle of Pleasant Hill, La.; of brigadier-general, United States Army, March 13, 1865, "for gallant and meritorious service at the battle of Tupelo, Miss.," and of major-general, United States Army, March 13, 1865, "for gallant and meritorious services at the battle of Nashville, Tenn.;" and

Whereas the said Andrew J. Smith performed longer and more arduous and gallant services on our frontier before the late war of the Rebellion than any other living man. This old veteran, now full of years—three-score and ten—being poor, is entitled to the grateful recognition of his country.

That the laws regulating appointments in the Army be, and they are hereby, suspended, and suspended only for the purposes of this act; and the President is hereby authorized to nominate and, by and with the advice and consent of the Senate, appoint Andrew J. Smith, late colonel of the Seventh United States Cavalry and a major-general of volunteers, a brigadier-general in the Army of the United States, and thereupon to place him, the said Andrew J. Smith, upon the retired-list of the Army as such brigadier-general, without regard and in addition to the number now authorized by law of said retired-list.

Mr. BRAGG. I make the point of order on that proposition that it is not germane to the subject-matter of the bill under consideration.

The SPEAKER. The gentleman from Wisconsin [Mr. BRAGG] makes the point of order that this proposes to instruct the committee to amend the bill by adding to it a subject not germane.

Mr. REED, of Maine. I wish to be heard on the point of order. Notwithstanding the fact that this bill for the rehabilitation of Fitz-John Porter has a preamble which relates entirely to him, nevertheless, if it is a proper bill to be presented for the consideration of this House, it must be because it creates an office such as is needed for the carrying on of the business of the United States. And if the bill proposes to create one office, or rather one officer, it certainly must be in order to propose to double that number.

If the Chair shall decide that the purpose of this bill is not to create an office which is needed to carry on the business of the United States Government, it certainly exposes the character of this bill as to its constitutionality and purpose more thoroughly than any lengthy argument can do. The pretense here is the creation of an office. I do not say anything about the propriety, which seems to me indefensible, of proposing to the Executive that it shall create that office and put a man in it whom Congress has designated or he shall not have the office at all. But if it be proper for this House by a bill to propose that there be one officer of a certain class it must be within the competency of this House to decide that there may be two of a class, or twenty, or a hundred; and if it be proper to do as is done in the first bill—if it be proper to fill that office by legislative act, it must be equally competent to fill a second position created in like manner by act of Congress.

I do not know but that the point of order will be sustained, but I think that the situation is very well explained by it.

The SPEAKER. The bill under consideration is a private bill, the title of which is, "An act for the relief of Fitz-John Porter." So far as the Chair knows, it has always been held in the House that a bill for the benefit of one private individual could not be amended so as to extend its provisions to another by an amendment offered upon the floor, and the present occupant of the chair has had occasion to decide very frequently that it is not competent to do indirectly, by recommitting a bill with instructions, that which could not be done directly by an

amendment offered by a member. The Chair thinks that the point of order is well taken, and that the motion of the gentleman from Missouri [Mr. WARNER] is not in order.

Mr. EVERHART. Mr. Speaker, if the previous motion is withdrawn, I move to recommit the bill with instructions.

The SPEAKER. The Chair has decided that the previous motion was not in order.

Mr. EVERHART. Then I move to recommit the bill with instructions to strike out the last line.

The SPEAKER. The Clerk will report the words which the gentleman from Pennsylvania [Mr. EVERHART] moves to strike out.

The Clerk read as follows:

Strike out at the end of the bill the words "prior to his appointment under this act;" so that the proviso will read:

"*Provided*, That said Fitz-John Porter shall receive no pay, compensation, or allowance whatever."

The House divided on the motion of Mr. EVERHART; and there were ayes 103.

Before the noes were announced,

Mr. REED, of Maine. Mr. Speaker, I ask for the yeas and nays.

The yeas and nays were ordered. The question was taken; and there were—yeas 112, nays 175, not voting 36; as follows:

YEAS—112.

Adams, G. E.	Everhart,	Lindsley,	Ryan,
Allen, C. H.	Farquhar,	Little,	Sawyer,
Anderson, J. A.	Fleeger,	Louttit,	Scranton,
Atkinson,	Fuller,	Lyman,	Sessions,
Bingham,	Funston,	Markham,	Smalls,
Bound,	Gallinger,	McComas,	Spooner,
Boutelle,	Gilfillan,	McKinley,	Steele,
Browne, T. M.	Grosvenor,	Millard,	Stephenson.
Brown, C. E.	Grout,	Milliken,	Stewart, J. W.
Brown, W. W.	Guenther,	Moffatt,	Stone, E. F.
Brumm,	Hanback,	Morrill,	Strait,
Buchanan,	Henderson, D. B.	Morrow,	Struble,
Buck,	Hepburn,	Negley,	Symes,
Bunnell,	Herman,	Nelson,	Taylor, E. B.
Burrows,	Hiestand,	O'Donnell,	Taylor, I. H.
Butterworth,	Hires,	O'Hara,	Taylor, Zach.
Campbell, J. M.	Hiscock,	O'Neill, Charles	Thomas, J. R.
Cannon,	Hitt,	Osborne,	Thomas, O. B.
Caswell,	Holmes,	Owen,	Thompson,
Conger,	Hopkins,	Parker,	Van Schaick,
Cooper,	Houk,	Payne,	Wade,
Cutcheon,	Jackson,	Payson,	Wakefield,
Davenport,	Johnson, F. A.	Perkins,	Warner, William
Davis,	Johnston, J. T.	Peters,	Weaver, A. J.
Dingley,	Kelley,	Price,	West,
Dorsey,	Ketcham,	Reed, T. B.	White, Milo
Dunham,	La Follette,	Rice,	Whiting,
Evans,	Lehlbach,	Rowell,	Woodburn.

NAYS—175.

Adams, J. J.	Dockery,	Jones, J. H.	Rockwell,
Allen, J. M.	Dougherty,	Jones, J. T.	Rogers,
Anderson, C. M.	Dowdney,	King,	Sadler,
Baker,	Dunn,	Kleiner,	Sayers,
Ballentine,	Eden,	Laffoon,	Scott,
Barnes,	Eldredge,	Laird,	Seney,
Barry,	Ellsberry,	Lanham,	Seymour,
Bayne,	Ely,	Lawler,	Singleton,
Beach,	Ermentrout,	Le Fevre,	Skinner,
Belmont,	Felton,	Lore,	Snyder,
Bennett,	Findlay,	Lovering,	Sowden,
Blanchard,	Fisher,	Lowry,	Springer,
Bland,	Foran,	Mahoney,	Stewart, Charles
Bliss,	Ford,	Martin,	St. Martin,
Blount,	Forney,	Matson,	Stone, W. J., of Ky.
Bragg,	Frederick,	Maybury,	Stone, W. J., of Mo.
Breckinridge, WCP.	Gay,	McCreary,	Storm,
Burleigh,	Geddes,	McKenna,	Swinburne,
Burnes,	Gibson, C. H.	McMillin,	Swope,
Bynum,	Glover,	McRae,	Tarsney,
Cabell,	Green, R. S.	Merriman,	Taulbee,
Campbell, Felix	Green, W. J.	Miller,	Taylor, J. M.
Campbell, J. E.	Hahn,	Mills,	Throckmorton,
Campbell, T. J.	Hale,	Mitchell,	Tillman,
Candler,	Hall,	Morgan,	Trigg,
Carleton,	Halsell,	Morrison,	Tucker,
Catchings,	Hammond,	Muller,	Van Eaton,
Clardy,	Harmer,	Murphy,	Viele,
Clements,	Harris,	Neal,	Wadsworth,
Cobb,	Hatch,	Norwood,	Ward, J. H.
Collins,	Hayden,	Oates,	Ward, T. B.
Compton,	Haynes,	O'Ferrall,	Warner, A. J.
Comstock,	Heard,	O'Neill, J. J.	Weaver, J. B.
Cowles,	Hemphill,	Outhwaite,	Weber,
Cox,	Henderson, J. S.	Peel,	Wellborn,
Crain,	Henley,	Perry,	Wheeler,
Crisp,	Herbert,	Phelps,	Wilkins,
Culberson,	Hewitt,	Pidcock,	Willis,
Curtin,	Holman,	Pindar,	Wilson,
Daniel,	Howard,	Reagan,	Winans,
Dargan,	Hutton,	Reid, J. W.	Wise,
Davidson, A. C.	Irion,	Richardson,	Wolford,
Davidson, R. H. M.	James,	Riggs,	Worthington.
Dibble,	Johnston, T. D.	Robertson,	

NOT VOTING—36.

Aiken,	Croxton,	Long,	Reese,
Arnot,	Dawson,	McAdoo,	Romeis,
Barbour,	Gibson, Eustace	Neece,	Shaw,
Barksdale,	Glass,	Pettibone,	Spriggs,
Boyle,	Goff,	Pirce,	Stahlnecker,
Brady,	Henderson, T. J.	Plumb,	Townshend,
Breckinridge, C. R.	Hill,	Pulitzer,	Turner,
Caldwell,	Landes,	Randall,	Wait,
Cole,	Libbey,	Ranney,	White, A. C.

So the motion to recommit was rejected.

The Clerk proceeded to read the names of members voting.

Mr. EDEN. Mr. Speaker, I move to dispense with the reading of the names.

The motion was agreed to.

Mr. BROWNE, of Indiana. Mr. Speaker, permit me to ask if the gentleman from Arkansas [Mr. ROGERS] is recorded as having voted?

The SPEAKER. The gentleman from Arkansas [Mr. ROGERS] voted on the second call.

Mr. BROWNE, of Indiana. That gentleman and myself were paired on all preliminary questions in connection with the Fitz-John Porter case. I was present in my seat listening to the roll-call, and on the first call the gentleman from Arkansas [Mr. ROGERS] did not respond. Believing that it were better that I should treat this as a preliminary question, I also failed to respond. I think that now it is but fair that I should be permitted to vote.

The SPEAKER. The Chair thinks the name of the gentleman from Indiana [Mr. BROWNE] should be called.

The Clerk called the name of Mr. BROWNE, of Indiana, and he voted ay.

Mr. BLOUNT. Mr. Speaker, my colleague [Mr. TURNER] is absent on account of sickness.

Mr. HAMMOND. Mr. Speaker, I desire to announce that my colleague [Mr. REESE] is absent on account of the death of his father.

The following pairs were announced:

Mr. BARBOUR with Mr. PIRCE, until further notice.

Mr. TOWNSHEND with Mr. GROSVENOR, until further notice.

Mr. LANDES with Mr. PAYNE.

Mr. BOYLE with Mr. WAIT. If present, Mr. BOYLE would vote for the Fitz-John Porter bill.

Mr. COLE with Mr. PLUMB, on political questions, until Friday next. On the Fitz-John Porter bill, Mr. COLE, if present, would vote for the bill and Mr. PLUMB against it.

Mr. MCADOO with Mr. GOFF, on all political questions, until further notice. If present, Mr. MCADOO would vote for the Fitz-John Porter bill, Mr. GOFF against it.

Mr. CALDWELL with Mr. PETTIBONE, for this day.

Mr. RANDALL with Mr. WHITE, of Pennsylvania, for this day.

Mr. HENDERSON, of Illinois, with Mr. BRECKINRIDGE, of Arkansas, on this vote.

Mr. GROSVENOR. Mr. Speaker, I was paired with Mr. TOWNSHEND on all political questions, but I was not paired with him upon the passage of the Fitz-John Porter bill. However, it apparently having been the understanding that I was so paired, if my vote would change the result upon the passage of the bill I would not vote; but as it probably will not, I wish to have my vote recorded.

Mr. PIRCE. Mr. Speaker, my name was called, and I voted. I have since learned that I was paired. I did not know it; but if I am paired I desire to withdraw my vote.

The SPEAKER. The pair of the gentleman with another member has been announced.

Mr. STAHLNECKER. Mr. Speaker, I was unavoidably absent during the roll-call. Had I been present, I would have voted against recommitting this bill.

The result of the yea-and-nay vote was then announced as above recorded.

Mr. BRAGG. Mr. Speaker, I desire to withdraw the motion which I made for the previous question upon the passage of the bill. I will renew it at the conclusion of my remarks.

The SPEAKER. The gentleman from Wisconsin [Mr. BRAGG] withdraws his motion for the previous question.

Mr. REED, of Maine. Mr. Speaker, does that require unanimous consent?

The SPEAKER. No; there has been no decision on it.

Mr. BRAGG. It requires *my* unanimous consent.

Mr. Speaker, it is a serious question to ask one to discuss *seriatim* the numerous points of this case within the limited space of one hour. I can not do it; I shall not attempt to do it. I have given months of study to the consideration of this case——

Mr. STEELE. Mr. Speaker, I would like to know whether the previous question has not already been ordered, and whether the gentleman can now withdraw the call.

The SPEAKER. The previous question was ordered on ordering the bill to be engrossed and read a third time. The bill was ordered to be engrossed and read a third time.

Mr. STEELE. Has not the previous question been ordered on the passage of the bill?

The SPEAKER. It has not. The gentleman from Wisconsin demanded it, but before the question was put a motion was made to recommit the bill with instructions. The gentleman from Wisconsin now withdraws the demand for the previous question.

Mr. BRAGG. Mr. Speaker, independent of being personally upon that field and of marching behind the color of Fitz-John Porter on the 29th of August, 1862, and of fighting steadily to the front, following that same color against the enemy on the 30th of August—independent of personal knowledge—independent of the fact that I read day by day the testimony produced before the original court-martial as the proceedings went on—I have since that time given two months to a care-

ful compilation of the evidence before the old court; have compared it with the evidence before the new court, and line by line have abstracted and analyzed it, so that I have a slight conception that I know what is contained in the record. And I say to you, Mr. Speaker, and to gentlemen of the House, that no greater disgrace has ever stained the pages of the history of a republic or of a despotic form of government than the finding and sentence against Fitz-John Porter that was made in accord with the demands of the Secretary of War in 1863. There was scarcely a principle of law or of evidence that was not violated; and every lawyer in this country who has examined the question judicially has so said, and will so say down all time.

That court sat, sir, in the midst of an excitement the like of which this country never before saw and I trust in God may never see again. Disaster attended our arms. A black pall was cast over all our people. The capital was in danger. Men were struggling for political preferment in this Hall, in the streets, in the hotels, and in all the entrances of the public offices of this country. Each man was striving to outdo his neighbor in bending the pliant knee to power so that he could get place. Under such circumstances this court was convened—not by the order of the President, but by the clerk of the Secretary of War.

Sir, there has been much said about this court. I am a man who deals in plain talk. I have no cant and no hypocrisy in my composition; and I must say that it fills me with supreme disgust, when there is an argument as to whether the truth be on one side or the other, to see the Republican party running (as I have seen boys run away from their mothers), and just as they are about to receive a blow cry out, "Oh, you are going to hurt Mr. Lincoln!" There is where the sneaks of your party always run. You dare not face the truth and decide upon it as men, but you run behind Mr. Lincoln; you run behind the court; you run behind the Secretary of War. Why is it that you do this? Because you are afraid that an investigation will rustle some drapery that enshrouds your self-canonized saints, and when the drapery is pulled aside, as with the saints of old whose history we now read, you will find heaps of moral corruption underneath that drapery.

Now, let us talk a little about the court and see whether it was not a court exactly adapted to the circumstances of the case by the master-hand that sought to bring about a result. Who was its president? You say the great General Hunter. What position did he occupy? He had been removed from his command in South Carolina because of incompetency. Removed by whom? By the man that put him as president of that court, to do justice. Justice? No; to do Stanton's bidding. Who were the other members of the court? One of them a man who, as the report of General Pope himself shows, disobeyed orders and when he held the key to the door between Longstreet and Jackson deserted the field and retired (after being ordered to hold on) without firing a shot; and for that reason he had been relieved from his command. Was he not an elegant man under the direction of Mr. Stanton to do justice? Who was another man? A man who had fallen into disrepute in Colorado and had found himself over here as military governor in Alexandria, and Colonel Morris was stricken off the court in order to make a place for him—to make a sure thing. Then came Buford, from Kentucky—not General Buford, the soldier—no, no! Then came General Prentiss, whose division was surprised at Shiloh. They are all worthy men, to be sure; but they all occupied exactly the position that Mr. Stanton wanted the men to occupy that were to decide upon sacrificing the life or character of the man against whom he aimed his blow.

Why, sir, I was told the other day that there had been no promotions of members of that court, and I was challenged to tell who were promoted, and that, too, by a gentleman who claims to have spent months in examining this case and its surroundings. Buford was promoted within a very few days after the rendition of that verdict. Casey was promoted within a few days after the rendition of that verdict, and he, too, was under a cloud for a report as to allowing his division to break at Seven Pines.

Mr. STEELE. General Hunter——

Mr. BRAGG. Be quiet. When that verdict was rendered General Hunter was restored to his command. There is his pay. [Applause.] When that verdict was rendered General King, the man who disobeyed the order and ran away from between Jackson and Longstreet on the 29th of August, was restored to his command. Smith, the swift witness, who I am sorry to say once lived in my county, was made, at the age of nearly sixty, a paymaster in the Army for his testimony. Douglas Pope, who swore that he carried that dispatch in half an hour, when the next messenger who went, knowing the place, took six hours to deliver the dispatch, was made a captain in the regular Army. Rewards and punishments followed one another very rapidly in those days.

That is the court. Those are the gentlemen whose memories you are afraid to disturb. What did they find? I might go further. That court was placed in charge of an apostate Democrat [laughter] to do the bidding of another apostate Democrat who was acting as Secretary of War. The two apostates, as apostates always do, out-Heroded Herod in order to get at the top of the column of the new company into which they were brought. [Laughter and applause.]

Mr. NEGLEY. As the gentleman has defined the character of an apostate Democrat, will he define the character of an apostate Republican?

Mr. BRAGG. I do not yield to the gentleman. I will give you the character of an apostate Democrat. He is a man who cut the Democracy and went into the Republican party for an office; he then became a Republican saint, but I call him an apostate Democrat. [Applause.]

Let us go back to contemporaneous events and let me present to you some of the evidence in detail and give you some of the minor decisions upon these questions as they went along by the men who were acting in connection with them.

My distinguished and eloquent friend from New Jersey [Mr. PHELPS] this morning painted the situation beautifully, both before and after the battle, but there were some things which he did not describe, because he did not know them.

The first order that Fitz-John Porter received from John Pope was to move to Warrenton Junction for the purpose of moving next morning on Greenwich. Porter arrived in his camp at night—just at nightfall. General Porter, Fitz-John Porter, the coward, the laggard, the man who was seeking an opportunity to do what he did—what did he do? He dispatched two aids, Monteith and McQuaid, to ride over that country between daylight and dark so far as they could go, to ascertain the condition of all the roads, so he might move his command in fighting order on Greenwich.

There is the man whom they say did not want to move with alacrity to meet the orders of John Pope. Soldier as he was, he comes for the first time into that part of Virginia with a body of troops, without acquaintance with the country, with no knowledge of the roads and surroundings, with no knowledge of the plan of the campaign, because there was not any plan. [Laughter and applause]. There he was, with a corps that loved him as children love their father and he loved them. They were proud of him and he was proud of them. Without suggestion from anybody he dispatched his staff officers at once for the purpose of inquiring into the condition of the country—the condition of the roads, so that he could handle his troops. And for what? Not to fight for John Pope. No, sir. No good soldier ever fought for any man. He did it in order that he might fight the battles of his country and bring back victory to its flag out of the hands of incompetency. [Applause.]

It was that night, while these men were making their reconnaissances and coming in, that an order came for him to move. The order was to move at 1. His direction, after consulting with his officers, was to move at 3. Why? Because by moving at 3 he had his men in hand to use them for a fight, whereas if he moved at midnight in a broken country with streams and quicksand bottoms to be crossed with his artillery, with roads packed and crowded by Sigel's wagons and wagons coming in from every direction of the country, his men would come in, as every soldier knows, jaded and weary and unable to accomplish any purpose whatever.

Mr. STEELE. Is it not frequently the case——

Mr. BRAGG. You had your two hours and I have only an hour.

Mr. STEELE. We will give the gentleman all the time he wants.

Mr. BRAGG. What did he do? He sent a dispatch to John Pope informing him of the condition; that is what he did.

Mr. STEELE. There is no record of it.

Mr. BRAGG. Yes, there is; and there is the reason why I knew the other day you had never read the evidence. [Applause and laughter.]

Mr. STEELE. I should like to see the record.

Mr. WHEELER. Page 28 of the record.

Mr. BRAGG. John Pope so testified, that he received another note, and he thought one, too, explaining the circumstances. I knew you did not know it, but it is only a little thing. There he was. When he had determined, in order his commanding officer might know his position, he dispatched a staff officer with a note, and John Pope swears to it. Then, sir, when he reported himself the next morning, there you have John Pope's judgment on Fitz-John Porter's disobedience established by his reception of him, by his shaking him by the hand, by his discussing the plan of the campaign (if he had one), and without one single word of passion, without a single word of complaint, and putting him in command of what was recognized as the flower of the army. There, sir, is judgment number one in a court in which John Pope was sole presiding justice.

John Pope remained with that corps until it went in camp at Bristoe and was at Sykes's headquarters, where General Porter was. He left that command at Bristoe without orders to move; and now let me show you where this cowardly laggard Fitz-John Porter was and what he tried to do. At 5 o'clock that day Porter heard the firing of Gibbon's guns. He did not know that McDowell had run away. He did not know that Sigel was standing aloof. He did not know that General Gibbon's pet little "Iron Brigade" was being hurled against Jackson's forces, as many as they could bring, but he supposed there was some order, some method in the battle, and he sent a staff officer to Pope. What for? To get orders to go into the fight. Pope was looking through a field-glass at the flashes of the guns and sent word to him, "Tell General Porter when I want him I will send for him."

Mr. STEELE. Now let me ask the gentleman a question?

Mr. BRAGG. No, sir; I decline to yield.

Mr. STEELE. In all fairness I hope the gentleman will not refuse.

Mr. BRAGG. Not in my time.

The SPEAKER. The gentleman declines to yield.

Mr. STEELE. I yielded every time you rose to interrupt me. [Loud cries of "Order!"]

Mr. BRAGG. It was said, Mr. Speaker, that that was a mere "conjuring" of a staff officer, who ought not to be believed; but, sir, when the board met at West Point the original letter, directed to John Pope, was produced from General Pope's miscellanies, that was sent by Fitz-John Porter asking for orders, and dated it 5 p. m. Pope the hero and McDowell the Ney of that campaign—one ran away from his command and the other sat upon his horse looking through his glass watching the flashes of the guns of Gibbon's brigade as we stemmed the tide of Jackson's host, and Porter, chafing for the fray, burning to make himself the bright shining star of the war and add still greater luster to the historic name of Porter, sent a dispatch for permission to go in the fight.

"When I want you I will send for you" was the reply he received from the general commanding!

That is the traitor up till the 29th day of August. What then?

Why, Porter actually ate his breakfast and dictated a dispatch in his own camp that morning. Why should he have been elsewhere? The order for Fitz-John Porter to move was given at Centreville at 3.30 a. m., and Centreville was 12 miles from Porter's camp. There you have the ride of your orderly for 12 miles before an order could be delivered. He had been given notice not to go forward until he got orders. You may make it half past 5 or 6 when the order was received. His men were to be breakfasted and break camp. Then he put his command in motion, as he always did, and down he came to Manassas Junction, and, with the head of his column toward Centreville, looked to find the itinerant commander-in-chief.

Mr. STEELE. That order was sent from the headquarters between Manassas and Centreville.

Mr. BRAGG. This order is dated 3.30 a. m. at Centerville.

Mr. STEELE. The headquarters were at Bull Run, half-way between Manassas Junction and Centreville.

Mr. BRAGG. That is another order altogether. That is the one you looked up. [Laughter and applause.]

But, sir, let me stop right here, for I have passed in the hurry of this argument a point where I have not done my friends on the other side justice. I desire to do it in order to show how the verdict of that court-martial was made to mold the public sentiment of this country. There was taken out of the testimony an analysis of all the evidence that bore against the defendant, and not one single word of testimony in his behalf was added to it, which was compiled, and printed at a Government press, and sent to every officer of the United States.

Mr. STEELE. Why do you object to allowing the gentleman from Pennsylvania to print that compilation to show what it was?

Mr. BRAGG. It was sent all over the country indorsed, "The proceedings and evidence of the court that tried Fitz-John Porter;" and that was the record which General Grant read when he supposed he knew all about the case.

Mr. STEELE. Let the compilation be printed so as to show whether that statement is true or not.

Mr. BRAGG. Following that came another prepared paper, and that was prepared by General McDowell, and in that was the embodiment of the report of Jackson, containing his account of the resistance to the attack of the Fifth Corps on the 30th day of August, which was made to appear in the testimony, by a false indorsement across the top, against the defendant as if it applied to the action of the 29th of August. These are matters of history and they are in the record.

Now, to show you that the animus of the partisan Republican has not yet died out, let me state that the gentleman from Michigan [Mr. CUTCHEON] took the report of the battle of Bull Run and read from the official records the number of killed and wounded upon the 29th day of August for the purpose of showing that there was a general battle. If he had been disposed to be ingenuous he would have said that the headings of those official reports are the casualties between the 16th day of August and the 2d of September.

Mr. CUTCHEON. I have so stated. The entire number of casualties is 14,462.

Mr. BRAGG. But that is not the statement you made in your argument. It is the same old story. You took a table of figures from a heading that covered almost a month, including all the battles of the Rappahannock and Cedar Mountain, and from that table you have stated in your speech the evidence of losses on the 29th of August. And your Republican constituents, who read nothing but your speech in a Republican newspaper, will think that is historical evidence of the war.

Mr. CUTCHEON. The figures show precisely what they apply to.

Mr. BRAGG. I decline to be disturbed.

Mr. CUTCHEON. When you make such a statement as that I should be allowed to make a correction.

Mr. BRAGG. I state what you said. I state what the figures are. I draw my own inferences as to your purposes, and will repeat them if you desire it.

Mr. CUTCHEON. I only claim you shall not cram a falsehood down the throat of this House. [Applause on the Republican side.]

The SPEAKER. The Chair will state to the gentleman from Michigan that the gentleman from Wisconsin is not subject to interruption except by his consent, and he has declined to yield.

Mr. BRAGG. I am delighted I have driven one Radical from under Stanton's petticoats, so that he has come out to the front.

When Fitz-John Porter reached Manassas and was passing on he received notice from Pope that he should turn back. What did General Pope then do? General Pope then directed the traitor, the coward, the laggard, to take away from McDowell the best division in the First Army Corps and take command of it himself. There is another judgment of John Pope on the faithful conduct and fidelity of Fitz-John Porter. He detached from McDowell King's division, which in his report he said contained the flower of that corps, and gave it to Porter and left McDowell in disgrace. McDowell followed him until he got the joint order, and when he got it he rode on to Porter.

In what condition was Porter then? Why, Mr. Chairman, when McDowell reached Porter, Porter's line of battle was on Dawkin's Branch. His skirmishers were across Dawkin's Branch; Butterfield, in command of one of his favorite brigades, was moving at the head of his column beyond the branch intending to form a line of battle for others to move up to. He saw the enemy, as the Fifth Corps always did, and the sight neither frightened, sickened, nor confused him.

His place was with his men to the front and forward. But Butterfield, as he tells you, riding on, when he turned about, discovered his brigade was gone. What had become of the brigade? He rode back, he tells you, in a rage to think his command had been taken away from him, and then he learned General McDowell, the senior officer on the field, had ordered his troops to be withdrawn. And upon the testimony of that witness this court found Fitz-John Porter guilty of not moving to the front, when his guilt consists in obeying the military direction of his superior officer.

Mr. STEELE. There is no evidence that General McDowell gave any such order.

Mr. BRAGG. I will tell you where to look for it. Read the evidence of a Michigan captain, who tells you he heard McDowell tell him so.

Mr. STEELE. But he swears he did not.

Mr. BRAGG. He swears like the Italian witness on the trial of Queen Caroline; whenever he gets in a corner, he says, "Non mi ricordo."

There was the testimony of Morell's staff and the testimony of Porter's staff, that that advance—which my friend from Alabama [Mr. OATES] thought might have amounted to a success—was actually being made. The struggle was going on, with the Fifth Corps and its commander unflinching, until this marplot came, not to fight a battle, but to call out that he might get hurt if he went that way. That was the first thing McDowell always thought of, that he might get hurt. He thought he would go by virtue of his authority on that field, take King's division away, saying, "You remain here while I go and put them in there."

Mr. CUTCHEON. But does not the evidence show——

Mr. BRAGG. I do not yield. The galled jade winces, but I can not wait to hear her cry. That is the fact; for I marched in King's division on that bloody day. I followed down the way McDowell said he was going, and he never joined his division that day or the next.

Mr. STEELE. Will the gentleman allow me to read——

Mr. BRAGG. No, sir. I do not allow you to read anything. If I had two hours' time I would give you all the chances you want, but I have not got it.

On my march to the Henry house I saw that distinguished major-general riding along with a staff officer, far away from his command, which was being pressed into that vigorous battle, and when we reached the Henry house we could not find him to report to and did not know where the balance of his division was, and neither did he. And yet, to show how evenly justice was meted out in those days, while Porter was being tried by court-martial, McDowell had a court of inquiry. That court of inquiry found that he was guilty of opening the gap between Longstreet and Jackson, so that the responsibility for the failure of the campaign rested upon him, but, like the country justice in the story, they said that in consideration of the strong recommendations of his friend John Pope they would excuse him! [Laughter.] That was their decision, and there comes in "the milk in the cocoanut."

Pope, McDowell, Benny Roberts, Paymaster Smith, Douglas Pope, were all moving on that court-martial. The conviction of McDowell would have destroyed the mainspring of the case. In order to clear McDowell, they allowed him to give evidence of his heroic conduct on the 30th, which was a myth. When Porter was on trial and his counsel asked the court to consider what his action was the day before and the day after the 29th, in order that his true animus might appear, My Lord Chief-Justice Holt said, "No! such a thing never was heard of." Yet in the adjoining court it was heard of, and a man was cleared there in order that he might come into the next room and give testimony against his comrade, his superior in every particular and in every high quality which makes a soldier with which God Almighty has ever endowed humanity. That is the justice that is talked about here. Perhaps you may think that King ran away.

Mr. STEELE. He belonged to your division. You should know more about that than we do.

Mr. BRAGG. Yes, King ran away and we had to follow him, but we did not follow him until John Gibbon, with four regiments, left upon the field seven hundred and seventy-seven men out of eighteen

hundred, to test, not their loyalty to Pope—for he was an object of derision to every man in the command—but to show our devotion and loyalty to our Government and to teach the gentlemen on the other side who had so often boasted that one man of theirs could whip three of ours, that, whether that was so as a rule or not, the "black hats" of the West could not be driven by any men in any such proportion. [Applause.]

Mr. Speaker, I have given to the House different verdicts of Pope upon Porter. Let me now give one more verdict of Pope upon Porter. When we fell back in total rout at Centreville on Sunday morning after that battle, when neither Pope nor McDowell knew anything about the military organization, for Pope telegraphed to Halleck, as you will see in his official report, that he had not lost a gun nor a wagon, and Halleck at the other end of the line responded, "You have done gloriously, and the country is in arms to congratulate you and receive you on your victorious return from the second Bull Run" [laughter]—in that situation there was needed a military mind, a man who could inspire confidence in the troops. The situation required a man who, if two regiments were marching by different roads to a junction, could tell something about where the roads would join, and the Army had not had such a man in that campaign up to that time. In looking about for a man to take command of the mob in that exigency Fitz-John Porter was selected by General Pope and given the post of honor, the command of the rear-guard, to protect those military scalawags on their trip to Washington to enter complaint, as it proved, against him.

The only organized body of forces that amounted to anything like a division or corps was the old Fifth Corps, with all its banners tattered and torn, with its ranks thinned, but with its survivors still inspired with love for their commander and for their country. Just think of it, Brother STEELE, that Pope in that trying hour, when everything turned on alacrity and judgment, should have given control of his army to a coward, a laggard, and a traitor, a man in whom his countrymen put no trust! Oh, shame on you, men! The day will come when the history of the war shall be written long after us, when the grand old party that you are trying to keep from going to pieces shall be forgotten, except to be execrated, and when your sons will blush to think that you were Porter's foes. [Derisive laughter and cheers on the Republican side.]

Mr. Speaker, there is one more judgment on Porter that I want to call attention to. Abraham Lincoln placed Fitz-John Porter in command of the defenses of Washington. What a traitor Lincoln was! He placed Porter in command of the defenses of the national capital. What did he do with Pope? What did he do with McDowell?

Mr. STEELE. Where was McClellan?

Mr. LAWLER. At the head of the Army.

Mr. BRAGG. Pope was sent to fight the Indians in Minnesota; McDowell was sent to the rear, and neither of them ever commanded a soldier again during the war.

Occupying that position, did not those two men occupy a position that should call on their utmost zeal and their most intense forgetfulness to bring about a verdict that should blacken somebody else's character? There is Mr. Lincoln's judgment upon the men—Porter in the defenses of Washington, Porter commanding the reserve and re-enforcing the lines of Antietam; Pope and McDowell, rejected as worthless vessels, were sent to the rear, to spend their time writing dispatches and articles addressed to the commissaries and sutlers of the Army. And there is where they belonged.

Still, it said we can not upset the verdict of a court-martial. Upon that subject I desire to speak my views distinctly and unmistakably. The power to control the Army rests absolutely in time of peace in the Commander-in-Chief of the Army of the United States, except where there is some prohibition of positive law; in time of war the maxim *Inter arma silent leges* prevails; and civil law does not affect or control him. So that all the power of the military establishment, except as regulated by law, rests in the President of the United States. Show me any provision of law that prevents the President, when he sees injustice being done to one of his officers, from sending a board of inquiry to examine into the facts; show me any law but one—and that was passed for the Porter case. But for that law the President could have restored Porter of his own free will.

But, sir, gentlemen tell me that in this Republic Congress, the source of the law-making power, having exclusive authority to make rules for the government of the Army, may not make a law affecting the judgment of a court-martial. Why, sir, has not Congress power to discharge the judgment even of a civil court? If not, why do men come here and ask to be relieved from the operations of judgments? Congress has no power to discharge a judgment between two private individuals, for that would interfere with a provision designed to protect the rights of persons under the Constitution, but when the judgment runs for the benefit of the United States we represent the United States; we are the attorneys in fact of the people, and we may cancel any judgment the United States have recovered. There is no power on earth to interfere with us; there is no law that can be cited to tie our hands.

One thing further. Cowardly shame seeks silence; conscious innocence is always bold. From the hour of the rendition of that verdict up to the present time Fitz-John Porter has persisted unalterably and firmly in declaring that he was innocent both in thought and deed. For years he did not come to Congress for relief. He went to the War Department, like a soldier. He filed his petition. When Congress had a two-thirds majority in both branches against men thinking like him, he kept his petition there. It was acted upon adversely by General Schofield, as Secretary of War. He continued to press it through the military channel until Rutherford B. Hayes, acting President of the United States [laughter and applause on the Democratic side], directed a board to be convened; and upon that board he placed the man who, when he was under political pressure as a Republican Secretary of War, had refused to act in the case. Upon that board he placed a volunteer officer who had pronounced his judgment that Porter ought to be shot. Upon that board he placed another regular Army officer whose convictions upon the testimony that he had seen were open and announced in favor of the declaration of Porter's guilt.

But, as I said, innocence is always bold. Porter went before that board. All he asked was a careful analysis of the evidence and an understanding of the situation. That board reversed the previous judgment and found in his favor. They found that instead of ever enveloping Jackson's flank, as represented in the old map, which was produced and sworn to before the previous court-martial, Porter's corps was more than 3 miles from there, and the ground where it had been supposed Porter was in a position from which he could have rolled up Jackson like a scroll was in fact occupied by Longstreet. And that judgment was transmitted by a Republican President to Congress for its action in the premises, and then for the first time Fitz-John Porter came to Congress.

At this point I ought not to omit a reply to an oft-repeated question, "How did Porter know Longstreet was there?" Well, if Pope had been in Porter's place he would not have known it until a dozen or more regiments had been sacrificed, and even then he would have wondered whether it was not somebody else. I will tell you how Porter knew it. Porter first received a message from a countryman, who came through the lines, that Longstreet's skirmishers were coming forward to that branch. He subsequently captured some prisoners, and upon examination he found they belonged to Longstreet's corps. He received a dispatch from Buford, handed him by McDowell, that Buford had seen seventeen regiments pass a point within 8 miles distant about an hour and a half or two hours before.

His skirmish line, under the command of an officer of the regular Army then commanding the Thirteenth New York, reported Longstreet in front; and General Porter knew Longstreet well enough to know that he did not go wandering around the country like Pope, but always went in state [laughter], supported by his whole retinue! When we struck Longstreet's forces, or Jackson's, or Lee's, we knew who was there. We knew we were fighting a battle with men who went to do battle in a condition to do battle; that we were not fighting stragglers.

Mr. STEELE. Will the gentleman allow me to read three lines?

Mr. BRAGG. No; you can read all you like when you go home to-night. [Laughter.]

But we are told certain brigades were thrown in support. If the distinguished gentleman from Vermont wants to find out the position of those brigades and how they were moved, he will find that the support of which he talks was so placed in the rear and opposite the center between Jackson and Longstreet that it served as a support for Longstreet, if he was pressed, and that if the enemy left his front it could be handled to support Jackson's right. The troops were changed and put in position, so the machine was ready to be handled to take the enemy if he came in front or the other way by reverse action and gobble him up. He will find that to be the condition of the troops if he will look at Longstreet's map, in which he lays down his own line with every brigade he had and the exact position of the supporting troops.

Now about the battle on the night of the 29th. On the 29th McDowell was there with the same insane mania Pope had, that the enemy heard those two gentlemen were there and was running away. [Laughter and applause]. That commenced in the afternoon of the 29th—that they were running away. About sundown of the 29th they ordered a portion of McDowell's division—he was not with it—Hatch had it—McDowell was not there—it would have taken a piece of artillery to fire a long way to reach where he was. [Laughter.]

Mr. STEELE rose.

Mr. BRAGG. Is my hour out?

The SPEAKER. No.

Mr. BRAGG. How much time have I left?

The SPEAKER. Six minutes.

Mr. BRAGG. I have tormented my friends enough on the other side, and I now say in conclusion that I can not leave this debate without congratulating the country there are men who, acknowledging themselves to be Republicans in good standing, yet do not feel they are politically disgraced if they have the honesty to declare their sentiments by their votes. Would to God there was more freedom of conscience allowed in that party; we should have vastly more votes. [Applause.] As that party is to run on the Fitz-John Porter bill, it will not do for too many of you too come over, or the Black Eagle of the West may think he is losing some of his support. [Groans on the Republican side.] I am glad to hear you groan, for it is evidence there is a little bit of life left in you. [Laughter and applause on the Democratic side.]

Groans always proceed from some suffering body. [Laughter and applause.] They are no evidence of a happy spirit, of a happy frame of mind, or of content, but of a cramp in the bowels, either mental or physical, and the record here proves it. [Laughter and applause.] I now demand the previous question. [Applause.]

Mr. BURROWS. I hope the court will preserve its dignity. [Cries of "Oh!" on the Democratic side.]

The SPEAKER. The gentleman from Wisconsin demands the previous question on the passage of the bill.

The previous question was ordered.

Mr. STEELE. I demand the yeas and nays on the passage of the bill.

Mr. BRAGG. I hope the yeas and nays will be ordered.

The yeas and nays were ordered.

Mr. STEELE. I would like to have permission to print Griffin's and Sykes's testimony. [Cries of "Regular order!"]

Mr. BRAGG. I object.

Mr. CUTCHEON. Mr. Speaker, I rise to a question of personal privilege.

The SPEAKER. The gentleman will state it.

Mr. CUTCHEON. The gentleman from Wisconsin [Mr. BRAGG]—— [Cries of "Regular order!"]

The SPEAKER. The gentleman from Michigan states that he rises to a question of personal privilege, and he is now stating it.

Mr. CUTCHEON. The gentleman from Wisconsin [Mr. BRAGG] in the course of his remarks referred to the table printed by me in the RECORD of this morning with respect to the losses in the battle of Bull Run or Groveton, and charged me, as I understand him, with the purpose of misleading the readers of my remarks into believing the entire footing of the table showed the losses on the 29th of August, 1862. At that time I asked him to yield to me for a moment, which he declined to do.

Mr. BRAGG. Yes, sir.

Mr. CUTCHEON. I ask now as a matter of personal privilege, and here now in this presence where the statement was made, to refer to that table in order to correct what I consider to be a misstatement in reference to my remarks. I ask it as a matter of personal privilege.

Mr. BRAGG. I object.

The SPEAKER. The gentleman from Michigan states he understood the gentleman from Wisconsin to attribute to him an improper purpose, that is, to mislead the readers of his remarks. If that is the correct understanding of the remarks of the gentleman from Wisconsin the Chair thinks a question of privilege is involved.

Mr. HAMMOND. No such remark was made.

Mr. CUTCHEON. The table in question is headed "Returns of casualties in the Union forces"——

Mr. HAMMOND. I rise to a question of order.

The SPEAKER. The gentleman will state it.

Mr. HAMMOND. Before the gentleman can have the right to raise the question of privilege as to a matter said about him on the floor the fact that such an expression was used must be ascertained. There was no remark made about his purpose at all, as I understand it.

Mr. CUTCHEON. And on that I call for the reading of the notes of the Official Reporter. The gentleman from Wisconsin referred to the table printed by me——

Mr. BRAGG. I did not refer to the table that was printed, for I did not know that it was printed.

The SPEAKER. The Chair understands that the gentleman from Wisconsin did refer to some table which had been used in the remarks of the gentleman from Michigan. The Chair does not know whether this is the table or not.

Mr. BRAGG. I did not know that he had printed such a table. I referred to what I understood him to read on the floor. Of course I do not know what he has got printed. The last Congress shows many things said by the gentleman on the floor that were not printed.

Mr. CUTCHEON. Am I permitted to proceed?

The SPEAKER. The Chair can not yet decide whether the gentleman has stated a matter of personal privilege or not. The Chair understands the gentleman from Wisconsin to say that he does not know that he referred to the table to which the gentleman from Michigan now alludes.

Mr. CUTCHEON. The Official Reporter's notes will decide.

Mr. BRAGG. I did not know that you had printed a speech.

Mr. CUTCHEON. You referred to a table of casualties that I had used in my argument.

Mr. BRAGG I referred to a speech that you would print and that your constituents would read and which would be published in your country newspaper, and that it would pass for the history of this case; that is the substance and almost the language I used.

Mr. BRUMM. You stated that the gentleman had published a list of the losses during that whole campaign and fixed it all as of the 29th of August.

Mr. BRAGG. You have been showing your teeth here for the last few days, and the gentleman has nothing to do with this question.

Mr. BRUMM. You distinctly made that statement on the floor.

Mr. CUTCHEON. Am I permitted to proceed?

The SPEAKER. Before the Chair can decide whether a question of personal privilege is involved or not it will be necessary to know what the gentleman from Wisconsin actually said.

Mr. CUTCHEON. I demand the reading of the Reporter's notes.

The SPEAKER. The Chair will cause it to be written out and have it read.

Mr. BRAGG. I have not been guilty of a breach of the privileges of the House. The taking of this vote can not be delayed in this way. If I have been guilty of a breach of the privileges of the House, and the words have been taken down, they will be considered at the proper time; but calling the previous question and taking the vote can not be delayed by a man rising here and asking that certain things shall be read.

Mr. HENDERSON, of Iowa. There is no such claim made.

The SPEAKER. There is no such claim made, and if it were made it would have been necessary to take the words down at the moment.

The gentleman from Michigan rises to a question of personal privilege, and says that the gentleman from Wisconsin, in his remarks, has questioned his motives; or, in other words, attributed improper motives in the use of the table in question. This is not a question affecting the dignity of the House itself or the integrity of its proceedings, but it is a question of personal privilege made by the gentleman from Michigan. Now, of course the Chair can not determine whether any question of personal privilege is involved unless he can ascertain exactly what was said.

Mr. CUTCHEON. And I have asked for the reading of the Reporter's notes.

The SPEAKER. The Clerk will read what was said.

The Clerk read as follows:

Now, to show you that the animus of the partisan Republican has not yet died out, let me state that the gentleman from Michigan [Mr. CUTCHEON] took the report of the battle of Bull Run and read from the official records the number of killed and wounded upon the 29th day of August for the purpose of showing that there was a general battle. If he had been disposed to be ingenuous he would have said that the headings of those official reports are the casualties between the 16th day of August and the 2d of September.

Mr. CUTCHEON. I have so stated. The entire number of casualties is 14,462.

Mr. BRAGG. I do not yield. It is the same old story. You took a table of figures from a heading that covered almost a month, including all the battles of the Rappahannock and Cedar Mountain, and from that table you have published in your speech the evidence of losses on the 29th day of August. And your Republican constituents, who read nothing but your speech in a Republican newspaper, will think that is historical evidence of the war.

Mr. CUTCHEON. The figures show precisely what they apply to.

Mr. BRAGG. I decline to be disturbed.

Mr. CUTCHEON. When you make such a statement as that I should be allowed to make a correction.

Mr. BRAGG. I state what you said. I state what the figures are. I draw my own inferences as to your purposes, and will repeat them if you desire it.

Mr. CUTCHEON. I only claim you shall not cram a falsehood down the throat of this House. [Applause on the Republican side.]

The SPEAKER. The Chair will state to the gentleman from Michigan that the gentleman from Wisconsin is not subject to interruption except by his consent, and he has declined to yield.

Mr. BRAGG. I am delighted to have driven that Radical from under Stanton's petticoats, so that he has come out to the front.

Mr. HAMMOND. Mr. Speaker, I desire to say that I think that the gentleman from Wisconsin [Mr. BRAGG], in the portion of his remarks where he intimated that the gentleman from Michigan [Mr. CUTCHEON] had been disingenuous, and afterward spoke of that gentleman's "purpose," did create a case which gave the gentleman from Michigan a right to rise to a question of privilege; and when the gentleman from Michigan is done with that, I think his own remark about the gentleman from Wisconsin [Mr. BRAGG] "cramming falsehood down the throat of the House" will justify the gentleman from Wisconsin in rising to a question of privilege.

Mr. REED, of Maine. All right. Let him rise.

Mr. BRAGG. Mr. Speaker, I do not propose to settle this matter by arbitration. I have not called upon anybody but the Speaker of this House to settle it.

The SPEAKER. The Chair thinks that the remark made by the gentleman from Wisconsin [Mr. BRAGG] in reference to the gentleman from Michigan [Mr. CUTCHEON] might, without any strained construction, be understood as attributing to the gentleman from Michigan a disposition not to be ingenuous in the discussion of this bill.

Mr. BRAGG. Let me say to the Speaker that there is a participle there which I did not use, because I did not know the heading was printed. [Cries of "Regular order!" on the Republican side.]

I will give you [addressing Mr. CUTCHEON] cause for personal explanation if you will let me speak a minute now. The gentleman from Michigan stated in his speech that Fitz-John Porter was lying down 2½ miles from the head of his column. There is no such evidence in the record. [Renewed cries of "Regular order!" on the Republican side.]

The SPEAKER. It is not in order at this time to discuss what the gentleman from Michigan or any other gentleman has said during the progress of the debate. The only matter now before the House is the question of privilege raised by the gentleman from Michigan [Mr. CUTCHEON], and that gentleman, the Chair thinks, has a right to make a statement as to what his tables show. That is the extent of the privilege. The merits of the bill are not now before the House for discussion.

Mr. CUTCHEON. Thanks. The table in question to which the

gentleman from Wisconsin [Mr. BRAGG] referred is headed as follows: "Return of casualties in the Union forces, commanded by Maj. Gen. John Pope, during the operations August 16–September 2, 1862, inclusive." I will not read the names of the different corps, but the aggregate is 14,462. That is followed by this statement, which was a part of my speech as delivered:

This includes all the fighting on the Rappahannock, the battles at Catlett's 25th, Kettle Run 26th and 27th, Manassas 26th and 27th, Bull Run Bridge 27th, Thoroughfare Gap and Gibbon's fight 28th, Groveton 29th, Bull Run 30th, and Chantilly September 1, and nearly one-half that entire loss was on the 29th, at Groveton.

I believe that it is demonstrable that one-half of this entire loss occurred upon the 29th.

Mr. BRAGG. That is the printed speech. It was not delivered in that form. [Renewed cries of "Regular order!" on the Republican side.]

The question was taken on the passage of the bill, and there were—yeas 171, nays 113, not voting 39; as follows:

YEAS—171.

Adams, J. J.	Dibble,	Jones, J. H.	Rockwell,
Allen, J. M.	Dockery,	Jones, J. T.	Rogers,
Anderson, C. M.	Dougherty,	Kleiner,	Sadler,
Baker,	Dowdney,	Laffoon,	Sayers,
Ballentine,	Dunn,	Laird,	Seney,
Barnes,	Eden,	Lanham,	Seymour,
Barry,	Ehtredge,	Lawler,	Singleton,
Bayne,	Ellsberry,	Le Fevre,	Skinner,
Beach,	Ely,	Lore,	Snyder,
Belmont,	Ermentrout,	Lovering,	Sowden,
Bennett,	Findlay,	Lowry,	Springer,
Blanchard,	Fisher,	Mahoney,	Stahlnecker,
Bland,	Foran,	Martin,	Stewart, Charles
Bliss,	Ford,	Matson,	St. Martin,
Blount,	Forney,	Maybury,	Stone, W. J., of Ky.
Bragg,	Frederick,	McCreary,	Stone, W. J., of Mo.
Breckinridge, C. R.	Gay,	McMillin,	Storm,
Breckinridge, WCP.	Geddes,	McRae,	Swinburne,
Burleigh,	Gibson, C. H.	Merriman,	Swope,
Burnes,	Green, R. S.	Miller,	Tarsney,
Bynum,	Green, W. J.	Mills,	Taulbee,
Cabell,	Hahn,	Mitchell,	Taylor, J. M.
Campbell, Felix	Hale,	Morgan,	Throckmorton,
Campbell, J. E.	Hall,	Morrison,	Tillman,
Campbell, T. J.	Halsell,	Muller,	Tucker,
Candler,	Hammond,	Murphy,	Van Eaton,
Carleton,	Harmer,	Neal,	Viele,
Catchings,	Harris,	Norwood,	Wadsworth,
Clardy,	Hatch,	Oates,	Ward, J. H.
Clements,	Hayden,	O'Ferrall,	Ward, T. B.
Cobb,	Haynes,	O'Hara,	Warner, A. J.
Collins,	Heard,	O'Neill, J. J.	Weaver, J. B.
Compton,	Hemphill,	Outhwaite,	Weber,
Comstock,	Henderson, J. S.	Peel,	Wellborn,
Cowles,	Henley,	Perry,	Wheeler,
Crain,	Herbert,	Phelps,	Wilkins,
Crisp,	Hewitt,	Pidcock,	Willis,
Culberson,	Holman,	Pindar,	Wilson,
Curtin,	Howard,	Reagan,	Winans,
Daniel,	Hutton,	Reid, J. W.	Wise,
Dargan,	Irion,	Richardson,	Wolford,
Davidson, A. C.	James,	Riggs,	Worthington.
Davidson, R. H. M.	Johnston, T. D.	Robertson,	

NAYS—113.

Adams, G. E.	Farquhar,	Lindsley,	Rowell,
Allen, C. H.	Fleeger,	Little,	Ryan,
Anderson, J. A.	Fuller,	Louttit,	Sawyer,
Atkinson,	Funston,	Lyman,	Scranton,
Bingham,	Gallinger,	Markham,	Sessions,
Bound,	Gilfillan,	McComas,	Smalls,
Boutelle,	Grosvenor,	McKenna,	Spooner,
Browne, T. M.	Grout,	McKinley,	Steele,
Brown, C. E.	Guenther,	Millard,	Stephenson,
Brown, W. W.	Hanback,	Milliken,	Stewart, J. W.
Brumm,	Henderson, D. B.	Moffat,	Stone, E. F.
Buchanan,	Henderson, T. J.	Morrill,	Strait,
Buck,	Hepburn,	Morrow,	Struble,
Bunnell,	Herman,	Negley,	Symes,
Burrows,	Hiestand,	Nelson,	Taylor, E. B.
Butterworth,	Hires,	O'Donnell,	Taylor, I. H.
Campbell, J. M.	Hiscock,	O'Neill, Charles	Taylor, Zach.
Cannon,	Hitt,	Osborne,	Thomas, J. R.
Caswell,	Holmes,	Owen,	Thomas, O. B.
Conger,	Hopkins,	Parker,	Thompson,
Cooper,	Houk,	Payne,	Van Schaick,
Cutcheon,	Jackson,	Payson,	Wakefield,
Davenport,	Johnson, F. A.	Perkins,	Warner, William
Davis,	Johnston, J. T.	Peters,	Weaver, A. J.
Dingley,	Kelley,	Pirce,	West,
Dorsey,	Ketcham,	Price,	White, Milo
Dunham,	La Follette,	Reed, T. B.	Whiting,
Evans,	Lehlbach,	Rice,	Woodburn.
Everhart,			

NOT VOTING—39.

Aiken,	Dawson,	Long,	Scott,
Arnot,	Felton,	McAdoo,	Shaw,
Barbour,	Gibson, Eustace	Neece,	Spriggs,
Barksdale,	Glass,	Pettibone,	Townshend,
Boyle,	Glover,	Plumb,	Trigg,
Brady,	Goff,	Pulitzer,	Turner,
Caldwell,	Hill,	Randall,	Wade,
Cole,	King,	Ranney,	Wait,
Cox,	Landes,	Reese,	White, A. C.
Croxton,	Libbey,	Romeis,	

So the bill was passed.

The Clerk proceeded to read the names of members voting on the passage of the bill.

Mr. BEACH. Mr. Speaker, I move that the recapitulation of the names be dispensed with.

Mr. DUNHAM. I object, Mr. Speaker.

The Clerk completed the reading of the names.

Mr. ADAMS, of New York. Mr. Speaker, in behalf of my colleagues Mr. ARNOT and Mr. SPRIGGS, I desire to say that Mr. ARNOT is at home sick, unable to attend the sessions of the House. If he were present, he would vote "ay" on the passage of this bill. Mr. SPRIGGS is unavoidably absent, having gone to attend the funeral of Governor Seymour. If he were present, he also would vote "ay."

The following additional pairs were announced:

Mr. KING with Mr. WADE, upon all political questions, for the rest of this day.

Mr. SCOTT, of Pennsylvania, with Mr. FELTON, of California, on this vote.

The result of the vote was announced as above recorded.

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

Upon the latter motion a division was demanded.

The House divided; and there were—ayes 118, noes 6.

So the motion to reconsider was laid on the table.

Mr. TIMOTHY J. CAMPBELL. Mr. Speaker, I move that the House do now adjourn.

The SPEAKER. The gentleman from New York [Mr. TIMOTHY J. CAMPBELL] moves that the House do now adjourn. Pending that motion the Chair will lay before the House certain personal requests.

LEAVE OF ABSENCE.

By unanimous consent leave of absence was granted as follows:

To Mr. BOUND, until the 22d instant, on account of important business.

To Mr. EDEN, for ten days.

To Mr. GREEN, of New Jersey, until Thursday next, on account of important business.

To Mr. BURROWS, from to-morrow until Wednesday next.

Mr. KELLEY. Mr. Speaker, I ask leave to have printed in the RECORD some remarks on the bill for the relief of Fitz-John Porter.

Mr. STEELE and others objected; but the objection of Mr. STEELE was afterward withdrawn.

Mr. KELLEY. Mr. Speaker, the gentleman from Indiana [Mr. STEELE] withdraws his objection.

The SPEAKER. Other gentlemen have objected. The gentleman from Illinois objects.

Mr. TIMOTHY J. CAMPBELL. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; and accordingly (at 5 o'clock and 20 minutes p. m.) the House adjourned.

PETITIONS, ETC.

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

By Mr. J. A. ANDERSON: Papers relating to the claim of Mary Clark—to the Committee on Claims.

By Mr. W. W. BROWN: Petition of Williamsport Assembly Knights of Labor, praying that the Oklahoma country may be opened up for homestead settlement—to the Committee on the Territortes.

By Mr. BURROWS: Petition of 401 representative citizens of Michigan, for scientific temperance instruction in all schools supported by the Federal Government—to the Committee on Education.

Also, petition of C. H. Osborn and others, and of Jasper White and others, against the suspension of silver coinage—to the Committee on Coinage, Weights, and Measures.

By Mr. BYNUM: Petition of 239 soldiers and 326 citizens of Hancock County, Indiana, asking Congress to grant a pension to all soldiers who served in the late war—to the Committee on Invalid Pensions.

By Mr. CANDLER: Papers relating to the claim of F. H. Nichols, of Forsyth County, Georgia—to the Committee on War Claims.

By Mr. CATCHINGS: Papers relating to the claims of Jane E. Simes, of Norah Walsh, and of John Kane—to the Committee on War Claims.

Also, papers relating to the claim of Anna E. Smith, of Adams County, Mississippi—to the same committee.

By Mr. CURTIN: Petition of 230 representative citizens of Centre, Pa., for scientific temperance instruction in all schools supported by the Federal Government—to the Committee on Education.

By Mr. DARGAN: Four petitions of citizens of North and South Carolina, for the improvement of the Waccamaw River—to the Committee on Rivers and Harbors.

Also, petition of W. E. Hardwick and others, and of W. F. Dargan and others, for the improvement of Winyaw Bay and the rivers tributary thereto—to the same committee.

By Mr. DAVENPORT: Petition for amendment of patent laws from citizens of Yates County, New York—to the Committee on Patents.

By Mr. A. C. DAVIDSON: A bill making appropriations to continue the work on the Cahawba River, Alabama—to the Committee on Rivers and Harbors.

By Mr. DIBBLE: Petition of Paul T. Bowen and others, committee

of District Assembly No. 66, Knights of Labor, asking that public buildings, museums, and libraries be opened on Sundays, holidays, and evenings—to the Committee on Public Buildings and Grounds.

By Mr. DINGLEY: Petition of Local Assembly No. 3368, Knights of Labor, and of citizens of Hurricane Island, Me., for passage of bill prohibiting employment of convict labor on Government work, &c.—to the Committee on Labor.

Also, petition of T. J. Southard and 80 others, of Richmond, Me., for improvement of Kennebec River between Augusta and the lower end of Perkins's Island—to the Committee on Rivers and Harbors.

Also, petition of J. H. Kimball and 150 others, of Bath, Me., for improvement of Kennebec River between Augusta and lower end of Perkins's Island—to the same committee.

By Mr. DORSEY: Petition of John A. Staley and 180 citizens of Nebraska, asking passage of increase pensions—to the Committee on Invalid Pensions.

By Mr. ERMENTROUT: Memorial of W. Atlee Burpee & Co., of Philadelphia, against the passage of the Senate bill doubling rates of postage on deeds—to the Committee on the Post-Office and Post-Roads.

Also, memorial of the Berks County Agricultural and Horticultural Society, of Pennsylvania, requesting an appropriation of $500,000 for the suppression of pleuro-pneumonia—to the Committee on Agriculture.

Also, memorial of the Master Plumbers and Gas-fitters' Protective Association of the District of Columbia, against any change in the present lien law of the District—to the Committee on the District of Columbia.

By Mr. FREDERICK: Petition of M. N. Strickling, of Blairstown, Iowa, for relief as postmaster—to the Committee on the Post-Office and Post-Roads.

By Mr. EUSTACE GIBSON: Petition of Frank Kennedy and others, for the establishment of a marine hospital at Point Pleasant, W. Va.—to the Committee on Military Affairs.

By Mr. HAHN: Papers in the case of Myra Clark Gaines, to accompany House bill—to the Committee on Private Land Claims.

By Mr. HEMPHILL: Petition of R. I'on Lowndes, for lock in Mosquito Creek, South Carolina—to the Committee on Rivers and Harbors.

By Mr. D. B. HENDERSON: Paper from D. G. Scott, of Dubuque, Iowa, in relation to providing for better security for depositors in national banks—to the Committee on Banking and Currency.

Also, papers supporting H. R. 5829 in favor of Mena Holmes—to the Committee on Invalid Pensions.

By Mr. JOSEPH: Papers relating to the claim of S. E. D. Parker—to the Committee on Indian Affairs.

By Mr. KLEINER: Papers relating to the claim of Crawford Brown—to the Committee on Claims.

By Mr. LANHAM: Papers in the case of James Mann—to the Committee on Indian Affairs.

By Mr. LORE: Petition of John R. McFee and 312 others, for an appropriation to complete the improvement of Indian River, Sussex County, Delaware—to the Committee on Rivers and Harbors.

By Mr. LYMAN: Petition of citizens of Cass County, Iowa, concerning the abolition of the Presidency—to the Committee on the Judiciary.

By Mr. McCOMAS: Petition of Knights of Labor of Westernport, Md., for the organization of Oklahoma Territory, &c.—to the Committee on Territories.

Also, petition of citizens of Montgomery County, Maryland, asking for constitutional amendment in favor of woman suffrage—to the Committee on the Judiciary.

By Mr. MAYBURY: Petition of Lavinia Robinson, for a mother's pension—to the Committee on Invalid Pensions.

Also, petition of Theodore Munger, of Detroit, Mich., for the allowance of bounty for improvement in the manufacture of sugar—to the Committee on Ways and Means.

By Mr. MILLIKEN: Petition of William Wilson and others, of George E. Weeks and others, of E. Stone and others, and of P. G. Bradstreet and others, for the improvement of the Kennebec River between Augusta and the lower end of Perkins's Island—to the Committee on Rivers and Harbors.

By Mr. MILLER: Petition of C. Cowan, for pay as postmaster at Lockport, Tex.—to the Committee on the Post-Office and Post-Roads.

By Mr. MITCHELL: Papers relating to the claim of John W. Dear—to the Committee on Claims.

By Mr. MORGAN: Petition of James L. Webb and 312 other citizens, for the improvement of Bayou Cassity, Mississippi—to the Committee on Rivers and Harbors.

By Mr. MORRILL: House concurrent resolution of the Kansas Legislature, asking for sale of Fort Dodge military reservation—to the Committee on Military Affairs.

By Mr. MORRISON: Petition of sundry citizens of Illinois, for a bridge across the Mississippi River at Alton, Ill.—to the Committee on Commerce.

By Mr. MORROW: Petition of George A. Norton, assistant quartermaster, for relief—to the Committee on Military Affairs.

By Mr. MURPHY: Memorial of Scott County (Iowa) bar, for increase of United States circuit judges' salaries—to the Committee on the Judiciary.

By Mr. NELSON: Petition of George W. Smith and others, for additional pension legislation—to the Committee on Invalid Pensions.

By Mr. CHARLES O'NEILL: Resolution of the Board of Trade of Philadelphia, favoring the passage of the Dingley shipping bill and the bill of Senator FRYE upon the same subject—to the Select Committee on American Ship-building and Ship-owning Interests.

By Mr. J. J. O'NEILL: Paper to accompany bill for the relief of Maj. Frank Backof—to the Committee on Military Affairs.

By Mr. PARKER: Petition of S. C. Crane, for an appropriation to make good the readjusted back salaries of postmasters—to the Committee on the Post-Office and Post-Roads.

By Mr. PERRY: Petition of citizens of Columbia, S. C., for the improvement of Winyaw Bay, South Carolina, and its tributary rivers—to the Committee on Rivers and Harbors.

Also, petition of John C. Strain, late postmaster at Cross Hill, S. C., for the passage of a joint resolution for relief of postmasters—to the Committee on the Post-Office and Post-Roads.

By Mr. PRICE: Petition of Alexander Baker, of Juneau, Wis., in favor of the passage of Senate bill No. 958, to increase the pensions of Union soldiers who have lost one eye—to the Committee on Invalid Pensions.

Also, petition of August Hanstead and 63 others, asking for the legislation recommended by the national pension committee of the Grand Army of the Republic—to the same committee.

By Mr. RANNEY: Petition of James H. Work and others, regarding the appointment of a commission on fisheries—to the Committee on Foreign Affairs.

By Mr. T. B. REED: Petition of masters and ship-owners of Harrington, Me., for relief to the cooperage trade—to the Committee on Ways and Means.

By Mr. ROCKWELL: Petition of George M. Stearns and others, of the bar of Western Massachusetts, for holding terms of the United States courts at Springfield, Mass.—to the Committee on the Judiciary.

Also, memorial of citizens of Adams, Mass., concerning the abolition of the Presidency—to the same committee.

By Mr. SKINNER. Memorial of J. W. Saunders and 139 others, asking an appropriation for the improvement of navigation of Bogue Sound from Beaufort to Swansborough, N. C.—to the Committee on Rivers and Harbors.

By Mr. SPRINGER: Petition of C. W. Gauther, of Detroit, Mich., asking that fresh and frozen fish be placed on the free list—to the Committee on Ways and Means.

By Mr. STRAIT: Petition of Ruby Gale and 50 others, citizens of Faribault, Minn., praying for the amendment of the Constitution granting to women the right of suffrage—to the Committee on the Judiciary.

By Mr. J. M. TAYLOR: Papers relating to the claim of John W. Rosaman, of Madison County, Tennessee—to the Committee on War Claims.

By Mr. O. B. THOMAS: Petition of members of Post No. 63, Grand Army of the Republic, of Wisconsin; and of 200 members of Grand Army of the Republic of Elroy, Wis., praying for the passage of a bill embracing the recommendations of the national pension committee of the Grand Army of the Republic—to the Committee on Invalid Pensions.

By Mr. VAN EATON: Papers in the claim of Rebecca E. Jackson, of Amite County, Mississippi—to the Committee on War Claims.

Also, papers in the claim of William Jenkins, of Amite County, Mississippi—to the same committee.

By Mr. VOORHEES: Papers relating to the claim of John Bradley—to the Committee on Claims.

By Mr. WILLIAM WARNER: Petition of James Clark, Edward Speirs, and 100 others, indorsing the recommendation of the national committee of the Grand Army of the Republic—to the Committee on Invalid Pensions.

Also, resolutions of Bar Association of Kansas City, Mo., favoring increase of United States district judges' salaries to $5,000 per year—to the Committee on the Judiciary.

By Mr. A. J. WEAVER: Petition of W. D. Clark and 100 others, asking for the passage of the Oklahoma bill introduced by Hon. J. B. WEAVER—to the Committee on the Territories.

By Mr. WELLBORN: Papers in the case of A. B. Norton—to the Committee on Claims.

By Mr. MILO WHITE: Petition of 262 representative citizens of Minnesota, for scientific temperance instruction in all schools supported by the Federal Government—to the Committee on Education.

By Mr. WINANS: Petition of 420 representative citizens of the sixth district of Michigan, for scientific temperance instruction in schools supported by the General Government—to the Committee on Education.

The following petitions, praying Congress to place the coinage of silver upon an equality with gold; that there be issued coin certificates of one, two, and five dollars, the same being made legal tender; that one and two dollar legal-tender notes be issued, and that the public debt be paid

as rapidly as possible by applying for this purpose the idle surplus now in the Treasury, were presented and severally referred to the Committee on Coinage, Weights, and Measures:

By Mr. MILLS: Of citizens of Texas.

By Mr. PETERS: Of L. H. Owen and 15 others, citizens of Canton, Kans.

By Mr. A. J. WEAVER: Of Dr. W. P. Brooks and 50 others, of Helena, Nebr.

SENATE.

FRIDAY, *February* 19, 1886.

Prayer by the Chaplain, Rev. E. D. HUNTLEY, D. D.

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

JAMES G. FAIR, a Senator from the State of Nevada, appeared in his seat to-day.

COPIES OF REVISED STATUTES.

The PRESIDENT *pro tempore* laid before the Senate the following communication from the Secretary of State; which was read, and ordered to lie on the table and be printed:

To the Senate of the United States:

The Secretary of State has the honor to inform the Senate that its Library will be furnished with 40 copies of the Revised Statutes of the United States, in compliance with the request contained in the Senate's resolution of the 15th instant.

T. F. BAYARD.

DEPARTMENT OF STATE,
Washington, February 18, 1886.

SESSION LAWS OF ARIZONA.

The PRESIDENT *pro tempore* laid before the Senate a communication from the Secretary of the Interior, transmitting a letter from the secretary of Arizona, inclosing, as required by law, a copy of the session laws of that Territory for the year 1885; which was referred, with the accompanying papers, to the Committee on Territories.

PETITIONS AND MEMORIALS.

The PRESIDENT *pro tempore* presented resolutions passed at a mass meeting of citizens of Damascus, Ohio, in favor of the instruction of children in regard to the effects of intoxicants upon the human system; which were ordered to lie on the table.

He also presented a petition of members of the Chesterfield monthly meeting of Friends, State of Ohio, praying the passage of the bill (S. 355) to promote peace among nations, for the creation of a tribunal for international arbitration, and for other purposes; which was referred to the Committee on Foreign Relations.

He also presented a petition of Ironclad Assembly of Knights of Labor, No. 4261, of Ironton, Ohio, praying the passage of the bill for the restoration of wages in the Government Printing Office; which was referred to the Committee on Printing.

Mr. EDMUNDS. I ask leave to present two papers, the affidavit of Anson H. Weed, of Vermont, and the certificate of Dr. L. M. Bingham, of Burlington, Vt., in support of the pension claim of Sarah J. Foy, now before the Committee on Pensions. I move the reference of the papers to the Committee on Pensions.

The motion was agreed to.

Mr. EDMUNDS presented the petition of James S. Furniss, of Burlington, Vt., late a private in the Seventy-fourth Regiment New York Volunteers, praying to be allowed a pension; which was referred to the Committee on Pensions.

Mr. MILLER, of New York, presented a petition of workingmen of New York and Brooklyn who are or have been in the employ of the Government, praying for an adjudication of certain claims arising under the eight-hour law; which was referred to the Committee on Education and Labor.

Mr. BERRY presented a petition of citizens of Benton County, Arkansas, praying for the opening to settlement of the Oklahoma lands in the Indian Territory; which was referred to the Committee on Indian Affairs.

Mr. CAMERON presented a resolution adopted by the Board of Trade of Philadelphia, Pa., favoring the passage of a bill for the benefit of the shipping interests of the country; which was referred to the Committee on Commerce.

Mr. WILSON, of Iowa, presented the petition of A. M. Frew and 120 other citizens of Washington, Iowa, praying for the opening of the Oklahoma lands in the Indian Territory to settlement; which was referred to the Committee on Indian Affairs.

He also presented a resolution adopted by Buena Vista Grange No. 544, Patrons of Husbandry, of Jasper County, Iowa, favoring the continued coinage of silver; which was referred to the Committee on Finance.

Mr. COCKRELL. I present a petition praying for the enactment of a law requiring scientific temperance instruction in the public schools of the District of Columbia, and in the Military and Naval Academies, the Indian and colored schools, supported wholly or in part by money from the national Treasury. This petition is signed by 22 clergymen, 20 physicians, 13 lawyers, 47 teachers, 154 business men, and 32 officers of temperance and other societies, having the signatures of 288 representative citizens. The committee having reported the bill, I move that the petition lie on the table.

The motion was agreed to.

REPORTS OF COMMITTEES.

Mr. MORRILL, from the Committee on Finance, to whom were referred the following bills, reported adversely thereon, and they were postponed indefinitely:

A bill (S. 1032) to refund duties upon goods on shipboard when the tariff act of March 3, 1883, went into effect;

A bill (S. 459) authorizing the Secretary of the Treasury to overrule and reverse the decisions of all inferior officers of the Treasury Department in respect to all matters of account;

A bill (S. 558) to refund internal-revenue taxes in certain cases; and

A bill (S. 956) for the relief of Thomas C. Killie.

Mr. MORRILL. I am also directed by the Committee on Finance, to whom was referred the bill (S. 395) to admit free of duty a certain set of altars for the Catholic church of St. John the Evangelist, in the parish of La Fayette, Louisiana, to report it adversely on the unanimous agreement that the Senate committee can not report a tariff bill, and on the agreement of several members of the committee that it would not be judicious to report it any way. I move that the bill be indefinitely postponed.

The motion was agreed to.

Mr. MORRILL, from the Committee on Finance, to whom was referred the bill (S. 449) to reimburse the depositors of the Freedman's Savings and Trust Company for losses incurred by the failure of said company, asked to be discharged from its further consideration, and that it be referred to the Committee on Claims; which was agreed to.

Mr. MORRILL. I am directed also by the Committee on Finance, to whom was referred the bill (S. 559) for the relief of George F. Roberts, administrator of the estate of William B. Thayer, deceased, surviving partner of Thayer Brothers, and others, to ask to be discharged from its further consideration, and that it be referred to the Committee on Claims.

Mr. HOAR. There is an enormous burden upon the Committee on Claims and a number of cases which have been referred to that committee the Senator himself has desired to have referred to the Committee on Finance. I think before making these new references the Senator should state to the Senate, so that the Committee on Claims themselves may know, what is the character of the claim, so as to see whether it comes within their jurisdiction.

Mr. MORRILL. I think the Senator will be satisfied that the bill ought to go to the Committee on Claims. Senate bill 559 is to pay a claim for leakage of distilled spirits as long ago as 1864. I presume the Senator will agree that the Committee on Claims has jurisdiction of that bill. Senate bill 449 is in relation to the Freedman's Savings Bank.

Mr. HOAR. Not long since the Committee on Claims reported a bill to repay to a person the amount of drawback where, by the dishonesty of his clerk, the fees had not been paid, although the clerk had been sent with the fees to the custom-house to make the entry, and the Senator thought that that bill ought to be considered by the Committee on Finance and objected to the consideration by the Senate of the report of the Committee on Claims. If a claim growing out of the collection of the revenues of the country or of the enforcement illegally or improperly of taxes belongs to the Committeee on Finance, I do not see why a claim to revise the matter of allowance for the leakage of whisky should not go there. Certainly the members of that committee, as far as we know them, are amply competent to deal with that general subject.

Mr. MORRILL. The bill to which the Senator refers will receive early attention. Upon the reading of it at the desk it struck me as being a bill that should be taken charge of by the Finance Committee.

Mr. HOAR. What is the distinction in principle between that bill and the one just sent back from the Committee on Finance for reference to the Committee on Claims?

Mr. MORRILL. A claim that is twenty years old ought to be investigated by the Committee on Claims undoubtedly.

Mr. HOAR. Then a claim growing out of the administration of the revenue laws which is fifteen years old belongs to the Committee on Finance, and one twenty years old belongs to the Committee on Claims. Is that the idea? I should like to have some principle stated by that committee.

Mr. MORRILL. I shall satisfy the Senator on that point.

The PRESIDENT *pro tempore*. The Committee on Finance will be discharged from the further consideration of the bill and it will be referred to the Committee on Claims if there is no other motion made. That change of reference will be made.

Mr. MORRILL, from the Committee on Finance, to whom was referred the bill (S. 1118) authorizing the Secretary of the Treasury to deliver to the rightful owners the contents of certain boxes deposited in the Treasury Department by the Secretary of War, reported it without amendment.

Mr. MORRILL. I am directed by the Committee on Finance, to whom was referred the bill (S. 950) to authorize suits to be brought in