PETITIONS, ETC.

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

By Mr. BLAINE: Petitions of the Methodist Episcopal church of North Yarmouth, Maine, and of citizens of Fairfield, Maine, for a commission of inquiry concerning the alcoholic liquor traffic, to the Committee on the Judiciary.

By Mr. CALDWELL: The remonstrance of Willard Warner and others, of Alabama, against the imposition of duties on tea and coffee and revival of internal taxes, to the Committee on Ways and Means.

By Mr. COX: Several remonstrances of tobacco manufacturers and dealers in the city of New York, against an advance in the existing rate of tax upon tobacco, to the same committee.

By Mr. GARFIELD: The petition of V. D. Stockbridge, for an appropriation of $3,000 for the transfer to the Patent Office of the copyright and remaining copies of his digest of patents relating to breech-loading fire-arms from 1836 to 1873, inclusive, to the Committee on Patents.

By Mr. HAGANS: The petition of Riley H. Smith, of Tyler County, West Virginia, for a pension, to the Committee on Invalid Pensions.

By Mr. HAZELTON, of New Jersey: The petition of the New Jersey State Temperance Alliance, for a commission of inquiry concerning the alcoholic liquor traffic, to the Committee on the Judiciary.

By Mr. LAMPORT: The petition of the Easton Monthly Meeting of Friends and of Good Templars, and other citizens of Easton, New York, of similar import, to the same committee.

By Mr. LOWE: Resolutions of the Legislature of Kansas, in reference to Louisiana affairs, to the select committee on that portion of the President's message relating to the condition of the South.

Also, resolutions of the Legislature of Kansas, memorializing Congress to grant to the Atchison, Topeka and Santa Fé Railroad right of way through the Indian Territory to Fort Smith, Arkansas, to the Committee on the Public Lands.

By Mr. MORRISON: The petition of the heirs and legal representatives of John Rice Jones, deceased, concerning unsatisfied private land claims in the State of Illinois, to the Committee on Private Land Claims.

By Mr. SAWYER: The petition of C. R. Gallet, mayor, and 197 citizens of Portage City, Wisconsin, asking, in the interest of cheap transportation, that appropriations be made to complete the improvement of the Fox and Wisconsin Rivers within four years, to the Committee on Commerce.

Also, the petition of citizens of Appleton, Wisconsin, for the repeal of the 10 per cent. reduction of duties made in 1872 and against a duty on tea and coffee, to the Committee on Ways and Means.

By Mr. SCUDDER, of New York: The petition of citizens of New York, for a commission of inquiry concerning the alcoholic liquor traffic, to the Committee on Reform in the Civil Service.

By Mr. SMITH, of Virginia: Paper relating to the claim of Dr. J. N. Powell, of Henrico County, Virginia, for relief, to the Committee on War Claims.

By Mr. STANARD: Resolutions of the Legislature of Missouri, protesting against further tax on tobacco, to the Committee on Ways and Means.

By Mr. STORM: The memorial of manufacturers and importers of and dealers in drugs, perfumery, &c., praying Congress to repeal Schedule C of the internal-revenue laws, to the same committee.

By Mr. WALLS: Papers relating to the claim of Mrs. Caroline Clark, of Fernandina, Florida, to the Committee on War Claims.

By Mr. WHEELER: The petition of the trustees of the Saint Regis Indians of New York, for the donation of a flag, cannon, &c., to the Committee on Indian Affairs.

By Mr. WHITELEY: The petition of A. Burgess, for an addition to the Army appropriation bill of an item for the trial by the Ordnance Department of the Burgess magazine arms, to the Committee on Military Affairs.

IN SENATE.

WEDNESDAY, *February* 17, 1875.

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

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

HOUSE BILLS REFERRED.

The following bills were severally read twice by their titles, and referred to the Committee on Claims:

A bill (H. R. No. 633) for the relief of Randall Brown, of Nashville, Tennessee;

A bill (H. R. No. 1283) for the relief of Thomas Day, of Indiana;

A bill (H. R. No. 2689) for the relief of Emille Lapage, surviving partner of the firm of Lapage Brothers;

A bill (H. R. No. 2688) for the relief of Albert F. Yerby, administrator of Addison O. Yerby, deceased, or whom it may concern;

A bill (H. R. No. 2690) for the relief of Mark Davis; and

A bill (H. R. No. 2691) for the relief of Mrs. Flora A. Darling, of New Hampshire.

The bill (H. R. No. 4727) explanatory of the act passed June 20, 1874, was read twice by its title, and referred to the Committee on the District of Columbia.

The bill (H. R. No. 4001) to provide for the redemption of overdue bonds of the United States known as Texas indemnity bonds, was read twice by its title.

The PRESIDENT *pro tempore*. The bill will be referred to the Committee on Finance.

Mr. HAMILTON, of Texas. I suggest that that bill go to the Committee on Claims. It is a claim of the State of Texas against the Government of the United States.

The PRESIDENT *pro tempore*. That reference will be ordered.

EXECUTIVE COMMUNICATIONS.

The PRESIDENT *pro tempore* laid before the Senate a letter of the Secretary of War, transmitting copy of communication from Captain J. B. Campbell, commanding Sitka, Alaska, in regard to the illicit traffic in liquor in Alaska, for consideration in connection with the letters of the 3d ultimo and 4th instant, relative to the arrest of John A. Carr and the sale of liquor in Alaska; which was ordered to lie on the table and be printed.

PETITIONS AND MEMORIALS.

Mr. RAMSEY presented a petition of a great number of citizens of Northern Dakota, praying that in the contemplated division of that Territory the city of Fargo, on the Red River, may be made the capital of Pembina; which was referred to the Committee on Territories.

He also presented a petition of physicians of Minnesota, asking for such legislation as will the better promote the efficiency of the Medical Corps of the Army; which was referred to the Committee on Military Affairs.

Mr. COOPER presented a petition of physicians of Tennessee, in behalf of the Medical Corps of the Army, praying for such legislation as will the better promote the efficiency of that corps; which was referred to the Committee on Military Affairs.

Mr. FRELINGHUYSEN presented a memorial of citizens of Bridgeton, New Jersey, remonstrating against the restoration of the duties on tea and coffee or any revival of internal taxes and praying for the repeal of the 10 per cent. reduction of duties upon foreign goods made by the act of 1872; which was referred to the Committee on Finance.

Mr. FRELINGHUYSEN. I present also the petition of manufacturers and importers and of wholesale and retail dealers in drugs, perfumery, &c., asking the repeal of that part of the internal-revenue law known as Schedule C, by which a tax collected by stamps is imposed on articles in which they deal, giving for a reason that all other taxation on manufactures is repealed; that the tax is vexatious and involves unnecessary expenditure and loss; that the law is deficient in precision, and is the occasion of entrapping dealers. I move its reference to the Committee on Finance.

The motion was agreed to.

Mr. CRAGIN presented a letter from the Secretary of the Navy, addressed to the chairman of the Committee on Naval Affairs, in relation to the Ridgeway Battery; which was referred to the Committee on Naval Affairs, and ordered to be printed.

Mr. TIPTON presented a petition of members of the Nebraska State Medical Society, praying for such legislation as will the better promote the efficiency of the Medical Corps of the Army; which was referred to the Committee on Military Affairs.

Mr. SCOTT presented three petitions, of citizens of Pennsylvania, praying that in consequence of the prevailing prostration of all branches of business and the increasing distress throughout the country a bill be passed in aid of the speedy completion of the Northern Pacific Railroad now pending before Congress; which were referred to the Committee on Railroads.

He also presented a petition of citizens of Blair County, Pennsylvania, praying that the aid of the national credit be extended to the completion of a great southern line of railroad to the Pacific; which was referred to the Committee on Railroads.

Mr. CAMERON presented a petition signed by the workmen of the Lochiel Iron-Works, near Harrisburgh, Pennsylvania, praying that the aid of the national credit be extended to the completion of a great southern line of railroad to the Pacific; which was referred to the Committee on Railroads.

He also presented a petition of citizens of Philadelphia, praying the passage of the bill in aid of the speedy completion of the Texas Pacific Railroad now pending before Congress; which was referred to the Committee on Railroads.

He also presented a memorial of citizens of Blandon, Berks County, Pennsylvania, remonstrating against the restoration of duties on tea and coffee or any revival of internal-revenue taxes and praying for the repeal of the 10 per cent. reduction of the duties upon certain foreign goods made by the act of 1872; which was referred to the Committee on Finance.

Mr. WEST presented a petition of the medical faculty of the State of Louisiana, asking for such legislation as will the better promote the efficiency of the Medical Corps of the Army; which was referred to the Committee on Military Affairs.

He also presented the memorial of Mrs. Catherine M. Pritchard, of New Orleans, Louisiana, praying to be paid certain rentals, costs of repairs, &c., upon her property in New Orleans occupied by the United

States during the rebellion, or that her claim for the same be referred to the commission of claims or to the United States Court of Claims for adjudication; which was referred to the Committee on Claims.

Mr. FERRY, of Connecticut, presented a memorial of the physicians and surgeons of the Connecticut Medical Society, in behalf of the Medical Corps of the Army, praying for such legislation as will the better promote the efficiency of that corps; which was referred to the Committee on Military Affairs.

Mr. FLANAGAN presented a petition of citizens of Texas, praying for the establishment of a post-route from the town of Longview, Gregg County, to Clarksville, Red River County, in that State; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. CONKLING presented the petition of John F. Henry and others, manufacturers and importers of drugs and perfumery, praying the repeal of Schedule C of the internal-revenue law, imposing a stamp tax on articles prepared by them; which was referred to the Committee on Finance.

Mr. CLAYTON presented nine petitions of members of the medical profession of the State of Arkansas, praying for such legislation as will the better promote the efficiency of the Medical Corps of the Army; which were referred to the Committee on Military Affairs.

REPORTS OF COMMITTEES.

Mr. ANTHONY, (Mr. MORRILL, of Vermont, in the chair.) The Committee on Printing, to whom was referred a motion to print the report of the Sergeant-at-Arms of the Senate, giving an account of the property belonging to the United States in his possession, have instructed me to report back the same and recommend that the report be printed. This I do for the same reason that we recommended the printing of the other lists of the same kind, because our democratic friends are afraid that mischief will happen if it is not done, not because I think it is of any use, but they seem to think it is.

The motion to print was agreed to.

Mr. ANTHONY. The same committee, to whom was referred a resolution to print one thousand copies of the President's message on Louisiana affairs for the use of the Senate, have instructed me to report back the same and recommend the adoption of the resolution. I ask for its present consideration.

The resolution was considered and agreed to, as follows:

Resolved, That one thousand extra copies of the message of the President in response to the resolution of the Senate relating to the employment of the Army in Louisiana be printed for the use of the Senate.

Mr. HITCHCOCK, from the Committee on the District of Columbia, to whom was referred the bill (S. No. 1303) to authorize the board of audit of the District of Columbia to receive, audit, and adjust certain claims for damages by reason of the change of grade of Pennsylvania avenue, reported it without amendment.

Mr. WASHBURN, from the Committee on Claims, to whom was referred the bill (S. No. 534) to pay Samuel Adams for services rendered in exploring the Colorado River and its tributaries, submitted an adverse report thereon; which was ordered to be printed, and the bill was postponed indefinitely.

Mr. WEST, from the Committee on Appropriations, to whom was referred the bill (H. R. No. 4529) making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1876, and for other purposes, reported it with amendments.

Mr. CRAGIN, from the Committee on Naval Affairs, to whom was referred the bill (S. No. 838) for the relief of William J. Healy, late assistant paymaster in the United States Navy, reported adversely thereon; and it was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. No. 1207) to restore Lieutenant George M. McClure to the active list of the Navy, reported adversely thereon; and it was postponed indefinitely.

He also, from the same committee, to whom were referred the following petitions, asked to be discharged from their further consideration; which was agreed to:

The petition of L. J. Draper, late assistant surgeon United States Navy, praying to be restored to his former rank and position in the Navy, from which he was dismissed by the Secretary of the Navy in 1865;

The memorial of Charlotte S. Dupont and others, heirs of General A. Henderson, United States Marine Corps, praying to be allowed the difference between the pay of a colonel and the pay of a brigadier-general, on account of services rendered by General Henderson from January 1, 1846, to January 6, 1851;

The petition of John D. Smith, acting assistant surgeon of the United States Navy, praying to be placed on the retired list of the Navy;

The petition of H. L. Gamble, widow of the late Lieutenant-Colonel John Gamble, United States Marine Corps, praying compensation for the capture by her husband, during the war of 1812, of the vessel Seringapatam;

The petition of R. L. Laws, commander in the United States Navy, praying to be restored to the position in the Navy that he occupied prior to July, 1866, next below Captain W. W. Low; and

The petition of Captain Alexander C. Rhind, now on the active list of the Navy, praying to be restored to his proper position on the Navy Register next below Captain Aaron K. Hughes.

Mr. FRELINGHUYSEN, from the Committee on the Judiciary, to whom was referred the bill (S. No. 937) repealing a portion of the act entitled "An act making appropriations to supply deficiencies," approved March 3, 1873, and disapproving and annulling a portion of the act of the Legislative Assembly of the District of Columbia of the date of August 23, 1871, reported it without amendment, and submitted a report thereon accompanied by a joint resolution (S. R. No. 18) authorizing the relinquishment to the United States of certain lands in the city of Washington ceded to the Washington Market Company by the act of May 20, 1870, incorporating said company.

The joint resolution was read and passed to a second reading, and the report was ordered to be printed.

Mr. ANTHONY, from the Committee on Naval Affairs, to whom was referred the bill (S. No. 1198) authorizing the President to nominate Henry S. Wetmore a lieutenant in the Navy upon the retired list, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

He also, from the same committee, to whom was referred the petition of Frederick Francis Baury, praying to be commissioned a lieutenant in the United States Navy and placed on the retired list in consequence of wounds received in the line of duty, submitted a report, accompanied by a bill (S. No. 1319) to provide for the appointment of Frederick F. Baury on the retired list of the Navy.

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

Mr. MERRIMON, from the Committee on Claims, to whom was referred the petition of Turner Merritt, praying compensation for one hundred and thirteen bales of cotton taken by order of General Banks for the use of the United States Army for the construction of fortifications at Port Hudson, Mississippi, submitted a report accompanied by a bill (S. No. 1320) to refer to the Court of Claims the claim of Turner Merritt.

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

Mr. RANSOM, from the Committee on Military Affairs, to whom was referred the bill (S. No. 910) for the relief of William G. Ford, administrator of John G. Robinson, deceased, asked to be discharged from its further consideration and that it be referred to the Committee on Claims; which was agreed to.

Mr. SPRAGUE, from the Committee on Appropriations, to whom was referred the bill (H. R. No. 4677) making appropriations for the payment of invalid and other pensions of the United States for the year ending June 30, 1876, reported it without amendment.

Mr. JONES, from the Committee on the District of Columbia, to whom was referred the memorial of the members of the fire department of the District of Columbia, protesting against a decrease of their salaries and asking an increase thereof, asked to be discharged from its further consideration and that it be referred to the Committee on Appropriations; which was agreed to.

Mr. WRIGHT, from the Committee on Claims, to whom was recommitted the bill (H. R. No. 2101) for the relief of the owners of the steamer Clara Dolsen, reported it without amendment.

BUSINESS OF COMMITTEE ON FOREIGN RELATIONS.

Mr. CAMERON. I give notice that I will ask the Senate on Friday or Saturday to give half an hour to the Committee on Foreign Relations.

COAST SURVEY REPORT.

Mr. ANTHONY. The Committee on Printing, to whom was referred a motion to print the annual report of the Superintendent of the Coast Survey, have instructed me to report a resolution. Last year we printed no copies of the report of the Superintendent of the Coast Survey for the use of Congress, but printed three thousand copies for the use of the Coast Survey officer, and this resolution is the same. The committee felt instructed by the vote of the Senate last year not to report any for distribution by members. If any Senator objects to that, there is an opportunity to controvert it now.

The resolution was read, as follows:

Resolved by the Senate, (the House of Representatives concurring,) That there be printed of the report of the Superintendent of the Coast Survey for the year 1874 three thousand copies for the use of the Superintendent of the Coast Survey.

Mr. BAYARD. May I ask whether the Committee on Printing have considered how these public documents shall be transmitted through the mails? There was some provision made in regard to postage at a low rate upon the CONGRESSIONAL RECORD, containing the debates of Congress; but I must ask the Senator from Rhode Island, who has charge of this business, whether he considers it wise to continue the publication of these voluminous documents without providing methods for their transmission through the mails or for their distribution. There are now in the rooms of this Capitol, I suppose to speak moderately, a cord, more or less, of documents awaiting the order of any Senator who sees fit to prepay their postage to his constituents. There is no appropriation made for the payment of that postage, and as the benefit is the benefit of the constituent solely and in no degree of the Senator or Representative in Congress who is charged with their distribution, they remain undistributed.

I do not desire to embarrass the resolution, but I do desire to call attention to the fact that we are accumulating a vast bulk of these documents simply to lie and perhaps to rot in the vaults of the Capitol. Unless, therefore, there shall be some appropriation made for the transmission of these documents so that they may fulfill the theory

upon which they are printed, that it is for public enlightenment in regard to governmental affairs, I submit that it is scarcely worth while to waste the paper and the labor and the printer's ink and the binding in having them printed and published.

As this committee is a very capable one, I wish when it reports resolutions for the publication of these voluminous documents, it would report some means by which they can be circulated through the country, not at the individual cost of members of Congress.

Mr. ANTHONY. This resolution does not contemplate any distribution by members of Congress. The whole edition is given to the Superintendent of the Coast Survey for distribution. Of course, these maps are of no sort of use unless they are distributed to the mercantile and navigating interests of the country. I believe any public document can be sent now on a postage of ten cents; but, of course, if these documents are distributed except at the request of individuals who send the postage, I suppose the Government will have to pay the postage; and if the postage does not cost the Government anything except printing the stamps, it is not a matter of any great consequence. We have hardly reported anything this year for distribution by members of Congress.

The PRESIDING OFFICER, (Mr. MORRILL, of Vermont, in the chair.) The question is on the resolution reported by the Committee on Printing.

Mr. CONKLING. I wish to express my concurrence in all I heard of the remarks of the Senator from Delaware. The Senator from Rhode Island makes a tolerably good answer to the Senator from Delaware in this case because he says that somebody beside a Senator is to distribute these documents. From that it follows, as the Senator implies, that this other agent whoever he may be, is to be furnished from the public purse with the postage which will carry the documents. Were he a Senator, he would not be, of course, because in these times of high attainment in morals and in courage the Senate has not come up to the point of paying the postage imposed upon its members from the public purse. The Secretary of the Treasury might just as well be charged with the postage involved in conducting his Department. I know of no reason why his private pocket should not respond as does the private pocket of every Senator to the demand of postage. But he again is not a Senator and not a member of Congress; and therefore the sense of justice of the two Houses teaches them that it would be a gross imposition to visit upon him all the postage paid to the Post-Office Department for transmitting the business of the Department through the mail.

I rose, Mr. President, rather to call attention to this feature of the existing law than to say anything about this resolution; and as I am upon this subject, I venture to make one personal remark. Having kept myself or had kept an account of my own postage for one week, it amounted to nine dollars, including no documents, but relating to the correspondence which is sent to me, no part of it being my private correspondence, all being in respect of public and official matters. And yet, although we vote appropriations to enable other agents of the Government to distribute books, many of which are never read, and seeds many of which never come up, we omit as part of the reform which the abolition of the franking privilege commenced to furnish to members of this body or of the other House recompense in respect of the postage they are compelled to pay from their own pockets touching the affairs and concerns of the nation, and which have no more private relation to them than they have to the head of a Department or the clerk in a Department to which they are transmitted, or to the clerk of a committee of the Senate which considers them.

Now, Mr. President, I wish hereafter as often as I find the opportunity to vote against the publication of any more documents until, as the Senator from Delaware says, provision is made to carry those documents to those for whom in theory they are intended, and I wish on every appropriate occasion to ask the attention of the Post-Office Committee of the Senate and of the whole Senate to the question whether it is right, whether it is admissible, that the members of the Senate and the members of the House should be selected from the whole body of public officers as those who alone are compelled to pay the public postage from their private pockets. To Senators, if there be such, who can afford it readily, it is a matter of very little moment. Perhaps in the personal injustice it involves, it is trivial at all events, because the inconvenience of individuals must be admitted to be trivial when compared with the public interests. But as matter of right, as matter of self-respect, as matter of legislation and of public conduct, I submit it is worthy the attention of the Senate.

Mr. MORRILL, of Maine. I wish to inquire of the Senator from Rhode Island if this resolution proposes the publication of the usual number?

Mr. ANTHONY. The number that we printed last year. It is less than we have usually printed heretofore, and there are none for members of Congress as I stated. I quite agree with what the Senator from New York has said, but it does not apply to this document. There is provision made for distributing this document. Of course, it would be a very unwise expenditure of public money to go to the expense of surveying the coast and making the maps and charts, and then not place them in the hands of the people who navigate vessels. This is for the security of property and life.

Mr. MORRILL, of Maine. What is that provision for distribution to which the Senator refers?

Mr. ANTHONY. Distributed by the Coast Survey itself, which is provided with postage-stamps to do it, the same as we ought to be; I quite agree to that.

Mr. MORRILL, of Maine. Then, if it comes to that, it is simply another method of publishing documents or another method of distribution. I thought we had come to the conclusion, when the abolition of the franking privilege took place, that we would not publish any more documents for gratuitous distribution. Here are three thousand copies of this document to be printed for the use of the Superintendent of the Coast Survey. There is nothing said about distribution in any way. He has no means of distributing them unles we make an appropriation to him by which he can distribute them. That therefore is a gratuitous distribution, and I suggest of the most doubtful character, because it gives them to one officer of the Government to distribute as he pleases. It comes within the objection, it seems to me, of the general rule. If my friend will allow the resolution to lie over until to-morrow morning, I will look into it.

Mr. ANTHONY. I cannot object to that, but really this document ought to be printed, and the resolution has to go to the other House. You might just as well say that the people should pay for light-houses as pay for charts of the coast. It is intended for precisely the same purpose, for the security of navigation.

Mr. MORRILL, of Maine. The misfortune about that is that we did say we would not print any more documents for gratuitous distribution; and the people who want this, of course can afford to pay for it. That is the principle on which we have gone. This is a departure from that principle.

Mr. ANTHONY. The people who want light-houses might afford to pay for them, but we want these documents distributed whether the people wish them or not, because the information they contain is for the safety of life and property on the ocean. It stands on a different basis from almost any other document. The old custom always was to print a certain number for distribution by the Senate, a certain number for distribution by the House, and a certain number for the Coast Survey. We have struck off those for members of Congress.

Mr. MORRILL, of Maine. But this document is in no sense for general distribution; it is for distribution to a special interest in the country.

Mr. ANTHONY. Yes.

Mr. MORRILL, of Maine. That ought not to be a gratuitous distribution unless our whole theory is wrong, as I am half inclined to think it is; but we agreed when the franking privilege was repealed that we would not go into the publication of documents for gratuitous distribution, and yet every session that is insidiously coming back upon us, and everybody is having the franking privilege restored to him except only members of Congress, who, as the Senator from New York said, are not to be intrusted with anything like the distribution of documents.

Mr. ANTHONY. I assented to the Senator's remark that this document is for a particular interest. I should not have agreed to that assertion, for it is wrong. It is not for a particular interest, unless you mean that the safety of navigation is a particular interest. It is the interest of everybody who ever has life or property at sea. However, I will let the resolution lie over and call it up another time.

Mr. FRELINGHUYSEN. I should like to ask the Senator from Maine when Congress said that they would not print any documents for gratuitous distribution? I understood that Congress said that they would not intrust members of Congress with the distribution of documents unless they paid the postage. That is all we have ever said. We have never gone so far as to isolate this Government entirely from the people as to make all the information that the Government gathers valueless after it is obtained at an expense of millions.

The remarks of the Senator from Maine, and the Senator from New York also, criticising the abolition of the franking privilege I think do not come very well from them, because they voted for its abolition, and I do not see that they take any measures to restore that communication which ought to exist between Congress and the people. I know as well as every other Senator does that it is a great burden to the members of the Senate to have the franking privilege, but it is the right of the people to have the information.

Mr. MORRILL, of Maine. It is true, as the Senator says, that I voted to abolish the franking privilege, but I voted for it as some lady is said to have got married, under protest. [Laughter.] I stated at the time that such a hullabaloo had been got up by the press of the country against this privilege and against what was supposed to be its corrupt use, that Congress could not afford to stand under such an imputation, although I believed that that action was just as wrong as anything in principle could be. Still I was disposed, for the reason I stated, to vote for its abolition, and I have said ever since and on all occasions, and I continue to say now, that until that sentiment is corrected in the country Congress cannot afford to be peddling documents, publishing them, and distributing them either by themselves directly or covertly through the heads of the Departments.

Now we appropriate some $2,000,000 for postage for the Departments to make these distributions; but I will say to my honorable friend that the policy which I understand to have been established in regard to these documents is that we would not publish them for

gratuitous distribution, but that they should be published to the end that the people might have all the information that Congress had or the Government had upon public concerns, that it should be made accessible to persons who wanted it at the cost price. That is what I understand to have been the policy attempted to be established by Congress since the abolition of the franking privilege, and which it seems to me is exactly the proper thing to observe; but if this resolution goes over until to-morrow, I will endeavor to look into it.

Mr. ANTHONY. I wish to remind Senators on both sides of one fact, that at the last session the Committee on Printing reported a bill authorizing the sale of documents and tried very hard to get it through the Senate, but did not succeed; and I think the Senator from Maine did not favor it.

Mr. MORRILL, of Maine. I am not sure, but I think I did. I have always been with the Senator upon that question.

Mr. ANTHONY. Perhaps I am mistaken. If the Senator is with me, I shall feel still stronger that I am right.

The PRESIDING OFFICER. The Chair understands the Senator from Rhode Island to withdraw his motion for present consideration.

Mr. ANTHONY. I must, I suppose, if the resolution is objected to.

The PRESIDING OFFICER. The resolution will lie over.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. MCPHERSON, its Clerk, announced that the House had passed a bill (H. R. No. 4730) providing for the payment of certain employés of the House of Representatives; in which it requested the concurrence of the Senate.

ENROLLED BILLS SIGNED.

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

A bill (S. No. 1012) for the relief of the district judge of Vermont; and

A joint resolution (S. R. No. 15) authorizing Thomas W. Fitch, engineer of the United States Navy, to accept a wedding present sent to his wife, Mrs. Minnie Sherman Fitch.

BILLS INTRODUCED.

Mr. BAYARD asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1321) regulating the salaries of judges of the Court of Claims; which was read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed.

Mr. LOGAN asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1322) establishing rules and regulations for the government of the Army of the United States; which was read twice by its title, referred to the Committee on Military Affairs, and ordered to be printed.

Mr. FLANAGAN asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1323) to established a mail-route in Texas; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Post-Offices and Post-Roads.

Mr. FERRY, of Michigan, asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1324) for the relief of Walter J. Lee, late a second lieutenant in the Twenty-eighth Michigan Infantry; which was read twice by its title, and referred to the Committee on Military Affairs.

NAVY REGISTER.

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

Resolved, That five hundred additional copies of the Navy Register for 1875 be printed for the use of the Senate.

ARMY REGISTER.

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

Resolved, That five hundred copies of the Army Register for 1875 be printed for the use of the Senate.

UNION PACIFIC RAILROAD.

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

Resolved, That the Secretary of the Interior be requested to furnish to the Senate a copy of the last annual report of the Government directors of the Union Pacific Railroad.

MANAGERS OF VOLUNTEER SOLDIERS' HOME.

Mr. SPENCER. I am directed by the Committee on Military Affairs, to whom was referred the joint resolution (H. R. No. 135) appointing managers of the National Home for Disabled Volunteer Soldiers, to report the same back without amendment and recommend its passage. I ask for its present consideration.

Mr. DAVIS. I should like to know the necessity for that.

Mr. SPENCER. I will explain. These are the present managers of the present institution. Their time expires in April, and it is necessary that they should be continued in office. The resolution has come from the House of Representatives, been referred to the Committee on Military Affairs, and reported favorably.

There being no objection, the joint resolution was considered as in Committee of the Whole. It reappoints as managers of the National Home for Disabled Volunteer Soldiers, under the provisions of the act entitled "An act to amend an act entitled 'An act to incorporate a national military and naval asylum for the relief of the totally disabled officers and men of the volunteer forces of the United States,' approved March 21, 1866," John H. Martindale of New York, Hugh L. Bond of Maryland, and Erastus B. Wolcott, of Wisconsin, whose terms expired on the 21st of April, 1874.

The joint resolution was reported to the Senate without amendment.

Mr. SHERMAN. Is it correct that their terms expired in April, 1874?

Mr. SPENCER. I think that date is incorrect; I think it should be 1875; but I will inquire of the chairman of the committee.

Mr. SHERMAN. The correction ought to be made before the joint resolution passes to a third reading.

Mr. WRIGHT. I suggest that the bill be passed over informally for the present.

The PRESIDENT *pro tempore*. The joint resolution will be laid over.

Mr. SPENCER. The date in the joint resolution appointing managers of the National Home for Disabled Volunteer Soldiers, I find on inquiry of the chairman of the committee, is correct, and I ask that the joint resolution be disposed of.

Mr. DAVIS. I prefer that it should go over. I should like to be informed as to the necessity of it.

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

Mr. SPENCER subsequently said: I ask that the joint resolution in relation to the National Home for Disabled Volunteer Soldiers be disposed of. The Senator from West Virginia withdraws his objection.

Mr. DAVIS. I have examined the joint resolution, and I withdraw the objection, believing it might be injurious to disabled soldiers to insist upon it.

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

BUSINESS OF RETRENCHMENT COMMITTEE.

Mr. WRIGHT. I believe this morning, by the order of the Senate, is assigned to the Committee on Civil Service and Retrenchment; and as chairman of the committee I am entitled to the floor for the remaining part of the morning hour, and such other time as the Senate may give. I want to make a statement and then make a request.

A bill passed the House yesterday that will go to the committee this morning, and is a bill which it is important should be considered at this session if it can be. I ask now the consent of the Senate that we shall have Saturday morning instead of this morning and not lose our place, but take our place on Saturday morning in lieu of this morning, in view of the fact that this bill to which I have alluded will be referred to us. It is important that we should consider it, and the committee perhaps will not have an opportunity again to be heard unless at that time. Of course there are other committees to be heard between now and that time, but I ask unanimous consent that we have on Saturday morning the same time, instead of this morning.

The PRESIDENT *pro tempore*. The Senator from Iowa asks that Saturday instead of to-day be assigned to the Committee on Civil Service and Retrenchment. Is there objection? The Chair hears none.

Mr. WINDOM. That is for the morning hour only.

The PRESIDENT *pro tempore*. For the morning hour alone.

PEABODY SCHOOL IN SAINT AUGUSTINE, FLORIDA.

Mr. HOWE. What is the next committee?

The PRESIDENT *pro tempore*. The Committee on Printing.

Mr. HOWE. Mr. President, the other day I entered a motion to reconsider the vote by which a bill passed making a grant of land for a school in Saint Augustine, Florida. The Senator from Florida [Mr. GILBERT] is very anxious that that motion should be disposed of. The motion answers my purpose entirely if my purpose is to defeat the bill, but I do not wish that the bill should be defeated in that way. I should like to have a vote of the Senate. I call attention to it now, being perfectly ready to take the vote of the Senate on the question if it is the pleasure of the Senate to proceed to the consideration of the motion now.

The PRESIDENT *pro tempore*. The Senator from Wisconsin asks consent to take up the motion to reconsider the vote by which the bill (S. No. 782) to provide a site for a public free school in Saint Augustine, Florida, was passed. The Chair hears no objection, and the motion is before the Senate. The question is, will the Senate reconsider the vote by which the bill was passed?

Mr. HOWE. My object in reconsidering the vote by which the bill was passed is to once more ask the sense of the Senate upon the amendment which was moved by the Senator from Vermont, [Mr. EDMUNDS.] The bill proposes to grant some land, I suppose not very large in amount, perhaps not very valuable, to some individuals in the State of Florida for educational purposes, and the Senator from Vermont moved to amend the bill, making the grant conditional upon the fact that no person should be excluded from the school to be founded upon the grant, on account of color or of race. In this Senate in the early part of the year of our Lord 1875 that amendment was rejected. It was not at all strange that it should have been, because although I am now asking the Senate to reconsider that vote, I do not think there is one Senator in ten on this floor who knows what the proposition is. There probably was not more than one in fifty who knew what it was at that time.

As I do not think it worth while to spend much time in debating a question for the consideration of one-tenth of the Senate, I will content myself with what I have already said and ask the yeas and nays on the motion to reconsider.

The PRESIDENT *pro tempore*. The question is on the motion to reconsider the pending bill.

Mr. SAULSBURY. I should like to have the bill read.

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

The Chief Clerk read the bill.

The PRESIDENT *pro tempore*. On the motion to reconsider the Senator from Wisconsin has asked for the yeas and nays.

The yeas and nays were ordered.

Mr. BOUTWELL. I would be glad to know something of the value of this land. I have a belief, from a slight personal acquaintance with Saint Augustine, that there is no land there belonging to the United States that ought to be given away even for a school. There are one or two parcels of land within the limits of Saint Augustine, one of which I know to be essential to prospective use by and of value to the Government. I do not know where this lot of land lies, but I have no belief that the Government ought to give it away. In general the true rule for the Government in every city or considerable town of the country is to hold whatever land it possesses. When we come to purchase for public use we pay the very highest price; and when we happen to have a piece of land that is not in immediate use we are called upon to give it away. Saint Augustine is likely to be a place of considerable importance hereafter, although it is a place of small consideration now; and even though the amendment proposed were introduced—for which I shall certainly vote if I have an opportunity—I think the bill ought to be defeated; and it is a very poor way of administering public charity, a very poor way of supporting educational institutions, for the Government of this country to be considering whether it will make a small donation here or there. There are great principles of education which the Government of the country should keep in view. There may be great systems which the Government of this country can do something to introduce or maintain; but by donating a lot of land here, a lot of land there, the fruits of which generally get into the possession of classes in society or sects in religion, the object which the Government should have in view is prevented. Therefore I say that unless something can be shown which takes this proposed appropriation out of the general rule, it should not be made; and especially it should not be made if we are to set up in one of the towns of principal resort in the South a model for influence among the people of the South in the exclusion of colored children; and as the bill stands now it does exclude them. I am against the bill for two reasons: First, because it excludes them; and, second, for the stronger and more fundamental reason that it is an appropriation that ought not to be made.

The PRESIDENT *pro tempore*. The question is on reconsidering the vote by which the bill was passed.

The question being taken by yeas and nays, resulted—yeas 31, nays 25; as follows:

YEAS—Messrs. Alcorn, Anthony, Boutwell, Chandler, Conkling, Cragin, Dorsey, Edmunds, Fenton, Ferry of Michigan, Flanagan, Frelinghuysen, Hamilton of Texas, Hamlin, Harvey, Hitchcock, Howe, Ingalls, Jones, Mitchell, Morrill of Maine, Oglesby, Pratt, Ramsey, Robertson, Scott, Stewart, Wadleigh, West, Windom, and Wright—31.

NAYS—Messrs. Bayard, Bogy, Boreman, Clayton, Cooper, Davis, Dennis, Eaton, Gilbert, Goldthwaite, Hager, Hamilton of Maryland, Johnston, Kelly, Lewis, McCreery, Morrill of Vermont, Ransom, Sargent, Saulsbury, Schurz, Sherman, Sprague, Stockton, and Tipton—25.

ABSENT—Messrs. Allison, Brownlow, Cameron, Carpenter, Conover, Ferry of Connecticut, Gordon, Logan, Merrimon, Morton, Norwood, Patterson, Pease, Spencer, Stevenson, Thurman, and Washburn—17.

So the motion to reconsider was agreed to.

The PRESIDENT *pro tempore*. The question recurs on the passage of the bill; but the hour of one o'clock having arrived, it becomes the duty of the Chair to call up the unfinished business of yesterday, being the resolution for the admission of P. B. S. Pinchback, on which the Senator from California [Mr. SARGENT] is entitled to the floor.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. MCPHERSON, its Clerk, announced that the House had concurred in the report of the committee of conference on the disagreeing votes of the two Houses on the bill (H. R. No. 3080) to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases.

The message also announced that the House had concurred in the amendment of the Senate to the bill (H. R. No. 3915) to authorize the Secretary of War to give permission to extend the Hygeia Hotel at Fortress Monroe, Virginia.

The message also announced that the House non-concurred in the amendments of the Senate to the bill (H. R. No. 3912) to reduce and fix the Adjutant-General's Department of the Army, and asked a conference on the disagreeing votes of the two Houses thereon, and had appointed Mr. CLINTON D. MACDOUGALL of New York, Mr. WILLIAM G. DONNAN of Iowa, and Mr. JAMES W. NESMITH of Oregon, managers of the same on its part.

The message further announced that the House had passed a bill (H. R. No. 2978) to provide for the reorganization of the Treasury Department of the United States, and for other purposes, in which it requested the concurrence of the Senate.

PRESIDENTIAL APPROVAL.

A message from the President of the United States, by Mr. BABCOCK, his Secretary, announced that the President had yesterday approved and signed the act (S. No. 1076) to facilitate the disposition of cases in the Supreme Court of the United States, and for other purposes.

SENATOR FROM LOUISIANA.

The Senate resumed the consideration of the following resolution, reported from the Committee on Privileges and Elections by Mr. MORTON on the 8th instant:

Resolved, That P. B. S. Pinchback be admitted as a Senator from the State of Louisiana for the term of six years, beginning on the 4th of March, 1873.

Mr. MORTON. Before the Senator from California resumes his remarks, I beg leave to request the Senate to stay here without adjournment until this question is disposed of. The time of the session is now so short that I feel the necessity of making this request, and making it an urgent one, that the Senate will remain without adjournment until this resolution has been disposed of.

Mr. SAULSBURY. I hope the Senate will not do anything of the kind.

Mr. FERRY, of Connecticut. Mr. President, I certainly hope that the appeal which has been made by the Senator from Indiana may not be regarded by the Senate. This resolution was called up on Monday; the Senator from Indiana made a few remarks; the Senator from California occupied all the rest of Monday, the hour which we had yesterday after the morning hour, and he still has the floor for to-day; and now to insist that those who feel in conscience bound to oppose this resolution shall stay here to-night all night to make speeches to empty benches upon a subject graver than almost any that has arisen before this body, in my remembrance at any rate, seems to me monstrous.

I desire very briefly, for my physical strength will not permit me to speak at length upon this or any topic, to submit some views upon this subject. I do not feel that I can do so in the small hours after midnight; and although so important do I deem the vote upon this question that I will remain here to vote, yet to insist upon closing the discussion and closing this question without an adjournment will certainly deprive me, and I think others, of that which we are entitled to, a fair hearing in the Senate upon a question of the very gravest public importance.

Mr. SARGENT. Mr. President——

Mr. MORRILL, of Maine. Will the Senator allow me a word?

Mr. SARGENT. The Senator will see——

Mr. LEWIS. I ask the Senator to yield to me for a motion on a bill which is very important to the District, and will occupy no time.

Mr. SARGENT. After a remark I will yield to the Senator from Virginia. On Monday last after the close of the morning hour and after an hour and a half or two hours had been devoted to a thrilling discussion of a point of order, which was finally decided wrong, I obtained the floor to speak on the Louisiana matter. I was enabled to proceed for some time when I was interrupted by a message from the House announcing a very sad event, and the Senate at that time adjourned. On yesterday, after all the morning business had been gone through with, I was enabled to occupy a short time until again interrupted by a similar circumstance. I think that I am entitled to call the attention of the Senate to this to relieve myself of any reproach of having occupied the time of the Senate for two days and now proceeding to a third.

Furthermore, during the whole time which was at my disposal I had perhaps too good-naturedly yielded to Senators all around me who wanted to pass some little bill or get in some report or something of that kind, which were continually interrupting my progress. I will yield now with that good-natured purpose to my friend from Virginia, provided his bill will not cause discussion, remarking, however, that I presume I shall be able to conclude my remarks in half an hour after I begin.

Mr. LEWIS. I move to take up a bill reported from the Committee on the District of Columbia, being the bill (S. No. 1212) explanatory of the act passed June 20, 1874, in regard to paying for sweeping the streets of this city. When that bill is up then I wish to have the House bill which has already passed the House substituted for it.

The PRESIDENT *pro tempore*. The Senator from Virginia asks unanimous consent to lay aside the pending business informally and to take up the bill indicated by him.

Mr. EDMUNDS. Let it be read for information, subject to objection.

The Chief Clerk read the bill.

Mr. LEWIS. A bill passed the House yesterday which is identical to this. I move to take up the House bill instead of this Senate bill.

Mr. EDMUNDS. Then let us hear the House bill read for information.

The PRESIDENT *pro tempore*. The Chair is informed that the House bill has been sent to the printer.

Mr. LEWIS. Then I ask that this bill be read.

Mr. EDMUNDS. I wish the Senator from Virginia would explain this bill a little and state how much it involves.

Mr. SARGENT. This seems to lead to discussion. I insist on the regular order.

The PRESIDENT *pro tempore*. The Senator from California claims the floor.

Mr. SARGENT. When the Senate took its recess yesterday I was discussing the condition of affairs in Arkansas, and showing that an illegal Legislature, illegally supplanting a legal Legislature, and supplanting it in order to prevent a legal inquiry into the right of the governor of that State to hold his place, had called a convention for the purpose of overthrowing the constitution of the State. I say of overthrowing the constitution rather than of amending it, because there was no power in the constitution of the State existing authorizing a new constitution to be made in the manner proposed. The constitution of the State of Arkansas expressly provided the method by which it might be amended, and if there is no security or guarantee for organic law in the organic law itself, then we are governed by mere mob power; then there is no security for the stability of our institutions, and a whim of the populace or a breath of public opinion may at any time sweep away the most valuable barriers erected for public safety. Article 13 of the constitution which was supplanted provides that amendments to the constitution shall be proposed by the respective houses of the Legislature and subsequently those amendments submitted to the people, but there is no provision in the constitution for the calling of a constitutional convention for the purpose of an entire change of the instrument. Before that can be constitutionally done, by all the precedents which have ever been passed upon by courts, the constitution must be amended in this manner to confer this power upon the Legislature and upon such constitutional convention. The question is by no means new. It has been passed upon directly by many courts where the question has been raised. The supreme court of Illinois in the case of Field *vs.* The People, 2 Scammon, 79, passed upon a kindred question. I will refer only to the syllabus of the case, because I find on reference to the opinion that it is a fair rendering of the judgment of the court in the matter, and they exhaustively considered the subject. They say:

It is a general rule, that when a constitution gives a general power or enjoins a duty, it also gives, by implication, every particular power necessary for the exercise of the one or the performance of the other. But this rule is modified by this very rule, that where the means for the exercise of a granted power are also given, no other or different means or powers can be implied either on account of convenience or of being more effectual.

The constitution of Arkansas provided means by which it might be amended, and it was unconstitutional, a violation of the organic law, to take any other or different means upon any pretense that it would be more convenient or more effectual. The supreme court of Delaware, in 4 Harrington, advert to the question of the right of the people by a constitutional convention thus irregularly called to change the constitution of a State. In Delaware formerly there was no such power of amendment of the State constitution, and the court uses an apt illustration, familiar to them, in their reasoning in this case. In this case of Rice *vs.* Foster, 4 Harrington, 488, the supreme court say:

The legislative, executive, and judicial powers compose the sovereign power of a State. The people of the State of Delaware have vested the legislative power in a General Assembly, consisting of a senate and house of representatives; the supreme executive powers of the State in a governor; and the judicial power in the several courts mentioned in the sixth article. The sovereign power, therefore, of this State resides with the legislative, executive, and judicial departments. Having thus transferred the sovereign power, the people cannot resume or exercise any portion of it. To do so would be an infraction of the constitution and a dissolution of the government. Nor can they interfere with the exercise of any part of the sovereign power except by petition, remonstrance, or address. They have the power to change or alter the constitution; but this can be done only in the mode prescribed by the instrument itself.

The Senator from Ohio, [Mr. THURMAN,] when the President's message came in objecting to these illegal proceedings by which the government of Arkansas was subverted, was astounded by such declaration on the part of the President; and yet by the authorities, well considered, of various States of the Union where this question has been determined, it has been uniformly held that this would be an illegal subversion of the constitution of a State. I ask what is astounding in the President of the United States calling attention to this fact and asking that Congress take measures to remedy the mischief?

The supreme court of Delaware say:

The attempt to do so in any other mode is revolutionary. And although the people have the power, in conformity with its provisions, to alter the constitution, under no circumstances can they, so long as the Constitution of the United States remains the paramount law of the land, establish a democracy, or any other than a republican form of government. It is equally clear that neither legislative, executive, nor judicial departments separately, nor all combined, can devolve on the people the exercise of any part of the sovereign power with which each is invested. The assumption of a power to do so would be usurpation. The department arrogating it would elevate itself above the constitution; overturn the foundation on which its own authority rests; demolish the whole frame and texture of our republican form of government, and prostrate everything to the worst species of tyranny and despotism, the ever-varying will of an irresponsible multitude. The powers of government are trusts of the highest importance, on the faithful and proper exercise of which depend the welfare and happiness of society. These trusts must be exercised in strict conformity with the spirit and intention of the constitution by those with whom they are deposited.

Mr. BAYARD. As the Senator has referred to the decisions of the courts of my State, with which I am entirely familiar, I would beg leave to say to him that the members of the court that made the decision he has just cited held their offices under a constitution which was adopted in direct derogation of the requirements of the constitution that preceded it. The constitution of 1792 provided that certain articles should never be changed, and when the constitution of 1829 under which the court that gave this decision was appointed was adopted, it was in violation of the terms of the constitution that had preceded it. The case which he has cited has nothing to do with the question he is now discussing. It was a question there of the power of the Legislature to delegate their power to the people, so that they should give a law vitality by popular vote and let it depend on the popular vote for its force as a law. The court decided that that could not be. There was no question before them in the case of Rice *vs.* Foster as to the power of the State to change its constitution in a mode not pointed out by the constitution itself, and it was not before them, not considered, not decided. What has been read was an *obiter dictum* in the very strongest sense of the term, but the court that uttered it held their places under a constitution that had been adopted in violation of the provisions of the preceding constitution.

Mr. SARGENT. I do not desire to discuss the good or bad faith of the courts of Delaware; I do not wish to say whether by this decision they passed condemnation upon themselves or not; but I do say that they most distinctly lay down in aid of the main proposition in the case that there is no power to amend a constitution except through the method which the constitution itself points out. I know that there is another method not recognized by courts, that there is what may be called violent revolution and there is peaceful revolution. But I am talking about law, not revolutions, which are outside of and subversive of law. These were peaceful revolutions in the case of New York and Illinois, where, the constitution being changed otherwise than as provided by the instrument, the question was never raised in the courts or brought to the attention of Congress. There was general acquiescence and satisfaction of the people in the results; and such cases are merely instances, they are not precedents showing what the law is.

The supreme court of Massachusetts, on a question submitted by the house of representatives of that State, also sustained strongly the principle of the reasoning of this supreme court of Delaware. The questions submitted in that case were, whether the Legislature could submit to the people the proposition whether there should be a State convention for the reformation of the constitution, when there was no provision in the existing constitution authorizing such a body. And the supreme court of Massachusetts, advising, says in 6 Cushing, 575:

Under and pursuant to the existing constitution, there is no authority given by any reasonable construction or necessary implication by which any specific and particular amendment or amendments of the constitution can be made in any other manner than that prescribed in the ninth article of the amendments adopted in 1820. Considering that previous to 1820 no mode was provided by the constitution for its own amendment, that no other power for that purpose than in the mode alluded to is anywhere given in the constitution by implication or otherwise, and that the mode thereby provided appears manifestly to have been carefully considered, and the power of altering the constitution thereby conferred to have been cautiously restrained and guarded, we think a strong implication arises against the existence of any other power, under the constitution, for the same purposes.

I think that this is the current of decisions all the way through, and in no case can you find that a court stultified itself by saying that that is law which is in violation of law; that that is constitutional which is subversive of the constitution. The only thing that can be insisted on is that a constitution shall stand where there is a peaceable revolution in which the people acquiesce, the question not being raised; but such assumption fails where a forcible revolution like that which occurred in Arkansas happens, and the protests of the people bring it to the attention of Congress.

Mr. BAYARD. May I ask the Senator whether his position is that if a State constitution shall forbid the alteration of certain of its articles in any mode whatever, they are not to be changed at any time by any action of the people?

Mr. SARGENT. That would be anti-republican and might justify a peaceful revolution if the people should be satisfied so to change their organic law. Or it might justify a forcible revolution if the oppression was great. But in either case it would be the will of the people. But the will of the people was overawed in the case of Arkansas, as all the facts show, and there were no oppressive provisions in the constitution of that State.

Mr. BAYARD. The Senator thinks that an immutable condition in a constitution would be anti-republican?

Mr. SARGENT. I believe that the old constitution in Rhode Island discussed in Luther *vs.* Borden, with its disfranchising, unchangeable clauses, was anti-republican. I think an immutable constitution is anti-republican, because their institutions should not be beyond the legitimate control of the people. I have no question about that; but that was not the constitution of the State of Arkansas. In that constitution there was a specific and plain method by which the constitution could be amended, and ample means afforded to the people, and means which a few years before they had exercised to amend the instrument.

Mr. BAYARD. The Senator thinks an immutable provision in a State constitution is anti-republican. Does he consider that the United States, under its guarantee to each State of a republican form of government, may interfere at any time to change that constitution in those features?

Mr. SARGENT. The Senator might ask a great many questions. I am not here to discuss abstract propositions. When that proposition comes before the Senate I will discuss it. The Constitution of the United States simply guarantees a republican form of government, and if there is a republican form of government established by the people, established honestly and fairly, expressing the will of the people, it is within the guarantee of the Constitution. But the Sen-

ator will observe he is diverting me from the case of Arkansas whose every step was gained by force and aided by fraud. For instance, the very Legislature which passed through in one day the bill for the calling of a constitutional convention was surrounded by Baxter's troops, and no member of the Legislature or other person was allowed to pass through the lines without a regular pass from Baxter, and consequently there was no quorum present, for that and for other reasons, on account of the disturbed condition of affairs there. He gave passes to men who had been elected by an illegal election, where the people could not be registered, where the registry law itself had been tampered with; and this illegal body gave the first foundation for this whole proceeding. Do you call that acting on the will of the people? Is that the manner in which a republican form of government can be established or amended? To assert it is simply to assert an absurdity. The authorities are ample upon the question of the absence of right to alter a constitution without reference to a fair discretion of the people in accordance with the terms of the instrument which gives the power to amend. For instance, in 35 Pennsylvania Reports, 265, The Commonwealth *ex rel.* Baxter, the court say:

It is a natural principle of humanity that the will of a man is regulated by his habits, and that of a people by their settled customs and institutions; and without this neither can have any character by which their actions can be judged. Law means the settled customs and institutions of a people, and if these do not exist there is no law, and courts, if there be any, must be mere arbitrary powers. Law will have lost one of its essential elements when the mere will of the people shall prevail over the settled principles of their social life. Even a people, therefore, must conform to their own institutions if they are to have any government.

Here was an existing constitution of the State of Arkansas which had been in operation for years, which provided adequate means and a mode for its amendment, and as the supreme court of Pennsylvania says, if the people of Arkansas have any security for law it must be in accordance with law and the constitution should have been followed in order that the subsequent convention which assembled could be legal, or that any amendment of the constitution could be recognized by the United States or the people of that State as the constitution of the State.

But more than this, the constitution of the State provided that the ballot should be secret. The object of the secrecy of the ballot, especially in communities like this, or in any community, is obvious enough. It is that a man may not be deterred by intimidation or by social influence from casting his vote as he pleases, and this right was secured by the constitution of the State of Arkansas, which has been overthrown. By an ordinance of the new constitutional convention, providing the method by which this constitution should be submitted to the people, it was declared in section 14—

That the names of the electors shall be numbered, and the corresponding numbers shall be placed upon the ballots by the judges when deposited.

Thus creating a system of espionage over the voters of the State; thus giving the strong and influential classes, the property classes, the control of the poor classes, with ample means to know how they voted, to execute vengeance upon them if they did not vote as they desired. They struck down the secrecy of the ballot, and in defiance of the constitution itself.

I will not cite authorities to the point that an ordinance accompanying a new constitution cannot have the force of law to repeal provisions of the old constitution before it is replaced by the new. To insist upon that, I say, would be to insist upon an obvious legal absurdity—that a constitutional convention meeting to propose a new constitution can by an ordinance set aside the provisions of the old constitution before that constitution is replaced by the new or adopted by the people; and yet that is just the thing they did here in Arkansas and in the most vital point, by striking down the purity of the ballot-box by destroying its secrecy. In 13 New York Reports, page 27, in the case of the People *vs.* Pease, there is a discussion of the question as to the right of a citizen to the secret ballot under a law merely providing for the secrecy of the ballot, and the judge says:

I have already alluded to the policy of the law providing for a secret ballot. The right to vote in this manner has usually been considered an important and valuable safeguard of the independence of the humble citizen against the influence which wealth and station might be supposed to exercise. This object would be accomplished but very imperfectly, if the privacy supposed to be secured was limited to the moment of depositing the ballot. The spirit of the system requires that the elector should be secured then, and at all times thereafter, against reproach or animadversion or any other prejudice on account of having voted according to his own unbiased judgment; and that security is made to consist in shutting up within the privacy of his own mind all knowledge of the manner in which he has bestowed his suffrage.

That was the intention of the constitution of Arkansas, that the voter should be allowed thus to lock up in his own mind the knowledge of the manner in which he cast his vote; but all this was stricken down by the illegal proceedings which I have mentioned. This subject was discussed in 38 Black, Indiana Reports, 90–96, and the pertinency of the decision is so great, and it illustrates so fully the illegality of these Arkansas proceedings, as well as the wrongs that the actors inflicted on the voters of that State, that I take time to read the facts stated in the opinion, as well as the conclusions of the able judge who made it:

The complaint alleges in substance that on the 11th day of October, 1870, at a general election held pursuant to law for the election of divers officers, the defendant was the duly appointed inspector of elections for a legal precinct of Fairfield Township, in Tippecanoe County, known as precinct No. 2, and officiated as such; that on saidday the plaintiff was a resident of said township and a duly qualified voter, &c.; that he gave his ballot, which was in all respects a legal ballot, to said defendant as such inspector, and demanded that it should be put into the ballot-box without any distinguishing mark or number being placed upon it; but that defendant, as such inspector, against the protest of plaintiff, unlawfully numbered the same, &c., whereby plaintiff became damaged in his constitutional privileges and franchises, &c.

The defendant has demurred to the complaint for want of sufficient facts to constitute a cause of action against him. The question raised by this demurrer involves the constitutionality of section 2 of an act of the Legislature approved May 13, 1869, which section reads in these words, namely:

"It shall be the duty of the inspector of any election held in this State, on receiving the ballot of any voter, to have the same numbered with figures on the outside or back thereof to correspond with the number placed opposite the name of such voter on the poll-lists kept by the clerks of said election."

It will be seen that the acts of the defendant of which plaintiff complains are not only authorized, but enjoined, by the section quoted, and if the same is valid there is an end of plaintiff's case. It is claimed, however, that this law is void because in conflict with section 13 of article 2 of the constitution of Indiana. Section 13 reads thus:

"All elections by the people shall be by ballot, and all elections by the General Assembly, or either branch thereof, shall be *viva voce*."

I am not unmindful of the rule that all doubts are to be solved in favor of the constitutionality of legislative enactments. This rule is well established and is founded in the highest wisdom. But my convictions are clear that our constitution was intended to, and does, secure the absolute secrecy of a ballot, and that the act in question, which directs the numbering of tickets to correspond with the numbers opposite the names of the electors on the poll-lists, is in palpable conflict not only with the spirit but with the substance of the constitutional provision.

This act was intended to and does clearly identify every man's ticket, and renders it easy to ascertain exactly how any particular person voted. That secrecy which is esteemed by all authority to be essential to the free exercise of suffrage is as much violated by this law as if it had declared that the election should be *viva voce*.

I might go on from point to point, showing other monstrous illegalities. These conspirators stopped at no fraud or oppression. They subverted all the institutions of the State, made popular government a farce, corrupted the elections by illegally selected tools to do their will, and drove half the people of the State in despair from the polls.

The Senator from Ohio [Mr. THURMAN] is astounded that the President should call attention to these things. How enormous it is that he should be forever, and that republicans should be forever, complaining of things at the South! Why not let the old confederates trample down the rights of the people of the State, trample down their organic law, substitute for it another instrument without observing any of the forms that the constitution required, surround the Legislature or a mock Legislature with force, keep real legislators out, and then pass through under such forms a bill for a constitutional convention! Why should the President interfere in things of this kind? Why should he call the attention of Congress to them? We are astounded, say democratic Senators, at the presumption which can do it.

The republican party in Arkansas met in convention while these things were in progress before the vote came upon the new constitution and resolved, and published their address wherein they said all these things are illegal, these things are the fruit of force and fraud; we will not recognize these things as legal by our votes or our presence at the polls; and they staid away from the polls and thereby protested in the strongest manner. They are certainly nearly one-half of the people of the State, unquestionably a majority of the people of the State, judging by former elections. Thereby this great body of the people of the State protested in the strongest manner against the adoption of this constitution. It is claimed that it was adopted by a majority of the voters, notwithstanding nearly one-half of the voters of the State staid away from the election; while by the peculiar manipulations which the officers of the election who were creatures of Governor Baxter were able to carry on the vote of the State apparently was larger than at any former election or any subsequent election in that State, in itself evidence of the grossest frauds which were resorted to in order to give a color to these proceedings.

In the case which I cited before of the Commonwealth *vs.* Baxter, the supreme court of Pennsylvania, on page 264 of the thirty-fifth volume Pennsylvania Reports, say:

Majorities go for nothing at an irregular election; we cannot regard them even as majorities, for it is the right of orderly citizens to stay away from such elections.

They cannot be regarded as majorities; and instead of piling up 105,000 votes, by the thousands more than ever were before or since cast in that State, in order to make the color of a majority, if they had piled up a million votes in the State it would not have been a majority, no matter what vote might have been cast. Such majorities go for nothing, because the election was illegal and irregular; because it was not held by the officers who were appointed by law; because the registry laws of the State were repealed; because the method of casting the ballots was tampered with in violation of the constitution, by which private marks were put upon them to be recognized thereafter, and voters questioned as to the method of their voting; because the object of the election was illegal, there being no power in the convention that assembled to prescribe that object—that is to say, the adoption or ratification of this pretended constitution—and the republicans were perfectly right in staying away.

I know and have admitted that in some cases in the States a change of the constitution brought about through the means of a constitutional convention not contemplated by their existing constitution has been assented to by the people, and they have been treated as peaceable revolutions. No question with regard to them has been raised in the courts; the courts themselves have been organized under the new constitutions; and Legislatures have met, and the people have been satisfied, and all has passed on quietly. There has never before been any instance, however, where one-half or more of

the people of a State were complaining of the frauds and violences by which these things were brought about. In this very case in Arkansas, as part of the nefarious means which they used to stifle the voice of the people and prevent their asserting their rights, the conspirators abolished some of the courts, forbid others to take cognizance of questions arising out of the action of the convention, and enacted that no session of the supreme court should be held until after the election upon the constitution—until the whole thing had been put in motion and the time was passed when the people could have any legal assistance in arresting the despotic measures to which they were to be subjected. This suspension of the courts is in itself a badge of fraud. Why suspend the courts? Why take such action that the people cannot appear before the lawful tribunals and have the question tested? O, yes, Senators are astounded that the President of the United States calls attention to these enormities! Why, I ask again, should he not? He would be derelict to plain duty did he not. This was a revolution wrought in blood, amid tumult, amid armed forces surrounding the Legislature, dominating the wills of the people there. In the report which was made by Mr. WARD, and his report is well sustained by the testimony in the case, it is well substantiated by this volume of papers which I hold in my hand. [Exhibiting a package.] Here is a statement of murders by the hundred in different counties in the State of Arkansas, showing in detail the murders and murderous assaults that have occurred there for political purposes, of republicans, white and black, northern born and southern. The showing is terrible. Arkansas has a population of 122,160 blacks and 316,152 whites. The abstract of these papers shows that from the time of the reconstructed State government until the Garland usurpation was accomplished there were 789 murders and 380 assaults with intent to kill; 1,052 were committed by democrats and 117 by republicans; those who committed the murders were 1,078 white and only 82 black; the victims were 865 republicans and 304 democrats, nearly three to one, and many of the latter were killed in repelling their assaults. I will let the table be incorporated in my remarks.

Counties.	Murders.	Assaults with intent.	By whom committed.				On whom committed.				Total by counties
			Republicans.	Democrats.	White.	Black.	Republicans.	Democrats.	White.	Black.	
Arkansas	10	6	0	16	16	0	14	2	4	12	16
Ashley	8	4	0	12	12	0	11	1	4	8	12
Benton	17	3	1	19	20	0	17	3	6	14	20
Boone	12	3	2	13	8	2	13	2	6	9	15
Carroll	7	2	1	8	9	0	8	1	9	0	9
Clayton	3	3	0	6	6	0	3	3	4	2	6
Crawford	9	1	2	8	7	3	8	2	9	1	10
Calhoun	10	6	4	12	13	3	14	2	12	4	16
Columbia	18	4	3	17	18	2	18	2	18	2	20
Chicot	14	10	6	18	19	5	20	4	20	4	24
Clark	20	3	12	20	25	7	25	7	25	7	32
Crittenden	2	2	1	3	4	0	3	1	1	3	4
Cross	3	1	0	4	4	0	1	3	4	0	4
Conway	21	2	5	18	23	0	16	7	14	9	23
Drew	13	6	1	18	18	1	18	1	2	17	19
Desha	3	1	0	4	4	0	4	0	0	4	4
Fulton	4	2	1	5	4	1	5	1	5	1	6
Faulkner	8	3	3	8	8	3	11	0	9	2	11
Franklin	23	4	1	26	26	1	25	2	20	7	27
Greene	20	2	1	21	21	1	14	8	13	9	22
Garland	14	8	0	22	22	0	16	6	13	9	22
Hempstead	68	11	2	77	77	2	60	19	21	58	79
Independence	18	9	6	21	22	5	17	10	20	7	27
Jackson	3	1	0	4	4	0	4	0	4	0	4
Johnson	32	8	7	33	36	4	35	5	35	5	40
Jefferson	10	7	2	15	16	1	11	6	13	4	17
Lawrence	4	1	0	5	5	0	4	1	5	0	5
Lafayette	23	13	7	29	29	7	25	11	12	24	36
Lanoke	5	2	2	5	5	2	4	3	3	4	7
Little River	17	7	2	22	23	1	20	4	5	19	24
Lincoln	6	2	0	8	8	0	6	2	2	6	8
Marion	4	2	1	5	6	0	3	3	6	0	6
Mississippi	6	4	2	8	9	1	7	3	4	6	10
Montgomery	2	1	0	3	3	0	2	1	3	0	3
Monroe	5	2	0	7	7	0	7	0	1	6	7
Nevada	6	4	0	10	10	0	6	4	4	6	10
Ouachita	11	18	3	26	26	3	18	11	11	18	29
Polk	3	6	1	8	8	0	4	5	9	0	9
Phillips	44	3	8	39	39	8	28	19	21	26	47
Prairie	9	4	2	11	11	2	10	3	7	6	13
Pulaski	30	13	3	40	41	2	30	13	18	25	43
Pope	45	15	4	57	60	1	53	8	33	28	61
Pike	3	2	0	5	5	0	5	0	5	0	5
Perry	6	8	2	12	14	0	8	6	7	7	14
Sharp	5	1	4	2	6	0	2	4	6	0	6
Saint Francis	4	2	0	6	6	0	2	4	5	1	6
Saline	8	2	0	10	10	0	1	9	9	1	10
Sebastian	37	63	7	93	97	3	84	16	29	71	100
Sevier	34	20	0	54	49	5	35	19	19	35	54
Union	16	11	1	26	26	1	24	3	4	23	27
Van Buren	8	4	2	10	12	0	10	2	2	10	12
Washington	17	8	2	23	24	1	22	3	9	16	25
Woodruff	16	3	0	19	19	0	6	13	10	9	19
White	30	43	1	72	72	1	53	20	35	38	73
Yell	6	3	3	6	6	3	3	6	3	6	9
Total	789	380	117	1,052	1,078	82	873	294	578	589	1,167

The report of Mr. WARD sustains these documents and is sustained by them and by all the testimony taken by his committee; and he sums it up in strong and nervous language:

I think it sufficiently appears that, down to the close of the convention, the whole proceedings were void, because of the violations of all law; the frauds, violence, and intimidations practiced by Baxter and his coconspirators, and that the election to revise the constitution was held in violation of the existing constitution; that the convention, if properly called, exceeded its powers, and the election to ratify its work was void; and it cannot be successfully contended that the people of Arkansas have in any legal way under any forms of law expressed their wish to overthrow the constitution of 1868, or to set up the present usurpation.

If banditti, or a mob of armed men, may take possession of a State, depose its officers, arrest its judges, close its courts, intimidate its people through violence and murder, provide its own way of holding and its own officers to hold elections, and its own officers to declare the result, and the fruits of such defiance of all law are binding upon the people of such State and upon Congress, then the present pretended government of Arkansas is legitimate, and must be recognized as such, but not otherwise.

And I have not stated it too strong, for those who will read the extracts I have given from the mass of evidence taken by the committee must be satisfied there was a reign of terror throughout Arkansas during the period in which the so-called Garland government was being formed and set in motion, entirely inconsistent with a full and fair expression of the will of the people on that subject.

The capital city was overrun with the drunken and lawless Governor's Guard, which assaulted private citizens, abused and beat negroes, searched and rummaged private houses and private offices, and threatened everybody who opposed Baxter with arrest, imprisonment, or exile from the State.

At and about Pine Bluff, King White, a drunken, reckless man, proclaimed martial law, and arrested and imprisoned the leading men without shadow of cause; and then they were offered freedom on condition that they would support the movement for a new constitution.

North of the capital, in Conway and Faulkner Counties, Jeff K. Jones, upon whose head Baxter himself had set a price as upon an outlaw for the murders he had committed, had a gang of desperate men committing murder, arson, and violent acts of all kinds upon Union and Brooks men; and Baxter knew of these things, and made no attempt to restrain them or to arrest the murderer, Jones.

In Hot Springs and Perry Counties like unlawful violent acts occurred. Men in office were impeached without cause or notice and ejected by military power; property of private citizens was taken illegally and without compensation to the owners.

The judges of the supreme court were arrested by armed force, subjected to insults and abuse, concealed, and finally spirited away to be assassinated if an attempt should be made for their rescue or they attempt to escape.

False charges were made against obnoxious men, and the arrests made thereon were intended for and used to cover cold-blooded and cruel murder, as in the case of the colored man Ned Abes.

Mounted bands of desperate men roamed the country to awe and intimidate the colored people, even at their barbecues and jubilations.

Men high in command of the so-called militia and at the head and in presence of a strong force of their own men threatened quiet and peaceable citizens with death by hanging, as in the case of General Churchill at the barbecue on the 3d of July last.

Baxter himself was daily muttering his curses, and, surrounded by his troops, selected because they were desperate and would fire on the supreme court constantly, uttered his profane threats to arrest and hang or drive from the State the last Brooks man.

And this was the quiet which gave a "fair election;" this the condition of the people when their government was overthrown and a new one set up.

There is little to be added to such a showing as this. Under these circumstances, with confusion, intimidation, illegality, fraud, the State government of Arkansas was subverted, and in the direction which I mentioned yesterday. It was seized as part of a general plan to seize every one of the reconstructed States, in order to bring back a system of peonage there.

The same is true of Alabama, except that it has not yet proceeded to its full result. I have here a letter of a correspondent of the New York Times, a paper very hard to convince of the true condition of things in the South. The paper sent its own correspondent to Alabama to make a report that it could trust. That correspondent, writing under date of January 2, says:

Thousands of men voted the democratic ticket against their conviction from fear of violence or loss of employment, and many thousands more failed to vote at all from the same cause. The northern people can have no conception of the state of society here, and the testimony taken before the committee cannot but make a deep impression. The evidence fully shows that a republican form of government cannot be maintained in the State of Alabama without the aid of the United States troops.

The evidence shows that the churches and school-houses of the colored people were burned and destroyed by white democrats only because the colored people who worshiped and sent their children to school therein were republicans; that armed white democrats, in companies of hundreds, visited some of the more intelligent of these colored people, beat them, and drove them from their homes.

On the Georgia border white democrats came to this State and voted not only once, but in some instances three times, and led negroes to the polls and made them vote the democratic ticket. At Girard, in Russell County, the police from Columbus, Georgia, surrounded the polls and kept possession of them all day. It has also been found that the polls at Spring Hill, Barbour County, were destroyed by democrats and about six hundred votes lost to the republicans, and the son of Judge Kiels, who was the United States supervisor, was killed; also one hundred and fifty colored republicans killed and wounded at Eufaula, in the same county, on the day of election, by armed democrats, and upward of five hundred republican voters driven away from the polls.

Not a particle of evidence has been furnished by the Alabama democrats, or anybody else, that the United States troops in the slightest degree interfered with the election. On the other hand, the subordinate military officers were so bound up by General Order No. 75 that they did not feel authorized to do anything, or extend any help whatever to the election officers, except when called upon to assist United States marshals in the execution of writs issued by the United States courts. The proscription, social ostracism, withdrawal of business, and loss of employment among republicans, on account of politics, amounts to a reign of terror, and thousands of voters were lost to the republican party at the late election from these causes.

Alabama is in the same condition as some other States that have been brought more prominently into public notice. Here it is stated by one who heard the evidence that churches and school-houses of colored people are burned by white democrats, that colored men are beaten and driven from their homes, and that the northern peo-

ple can have no conception of the state of society produced by these frantic efforts to destroy republicanism in that State.

I say to the Senate and I say to the country that we are grappling with a barbarism at the South that will make the negro a savage and the South a desert. The Missouri Democrat, in a long editorial article recently summing up the condition of affairs politically and otherwise in the South, said:

Having daily communication with the people of the South, and feeling their spirit in this very State, *we tell the people of the North that equality of civil and political rights and even freedom of labor will go by the board*, unless some measures are taken to keep up other government than any that southern democrats will maintain. We believe, friends of the North, that this is the solemn truth, which long before the presidential election will force itself upon your reluctant recognition. Vicksburgh is only the vanguard of an army of riots.

I believe that it is the duty of the Senate to take warning by these things which are transpiring in the South. The evidence has been accumulating for years; our tables are piled with it. It comes to us upon every breeze which is wafted from the South. There can be no reason to doubt that unless this Congress shall take effectual means to check the outrages and wrongs in the South the very forms of republican government will be lost and the last rights of the people be trampled under foot; that one-half of the people of the South will have no political rights whatever, and that the blacks will be again reduced to slavery. For myself I desire most earnestly to assist in legislation that will check these evils and make this cowardly ruffianism unsafe; and I am determined, as far as I can, to stand by the helpless and oppressed there, and to sustain the Chief Magistrate of the United States in his efforts to restrain revolutionary disorder and enforce the laws in the South.

Mr. FERRY, of Connecticut, and Mr. STEVENSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. STEVENSON. Does the Senator from Connecticut desire to go on now?

Mr. FERRY, of Connecticut. I presume I shall not occupy the time of the Senate more than fifteen or twenty minutes. I should prefer to go on now.

Mr. STEVENSON. I shall with great pleasure yield to the Senator if I can have the floor afterward. With that understanding I yield with pleasure to the Senator from Connecticut.

Mr. FERRY, of Connecticut. Mr. President, I do not expect or intend to make any speech of an elaborate character to the Senate. Neither have I prepared any speech, nor have I the physical strength necessary to such an undertaking. But upon the resolution now pending before the Senate I have exceeding strong convictions and have felt that one entertaining such convictions ought not to be content with casting merely a silent vote, but that, however briefly and however feebly I may express myself, it is my duty to the Senate and my duty to the country to give some of the reasons why I cannot support the resolution reported from the Committee on Privileges and Elections.

Let me say in the outset, Mr. President, that I listened with almost painful interest on Monday when the Senator from Indiana opened his remarks, in the hope of hearing something which would elucidate the real inquiry before this body, and I must say that in that hope I was utterly disappointed. The Senator from Indiana seemed to me—it may be my fault—not even to touch the question which is really before us. What is the controversy? On the 4th of March, 1873, a vacancy occurred in this body which should have been filled by the election of a Senator from the State of Louisiana. There was no want of claimants. Two gentlemen presented certificates of election, Mr. McMillen and Mr. Pinchback, both in due form, both signed by a person designating himself as governor of Louisiana, both countersigned by another person designating himself as secretary of state of the State of Louisiana, and both authenticated by the great seal of that State. Thus both complied in all particulars with the act of Congress providing for the certificates of election in cases of the election of Senators. But the person designated as governor and the person designated as secretary of state on one of these certificates were different from the persons so designated on the other. Both certificates of election were referred to the Committee on Privileges and Elections; both are now before the Senate; and every word that the Senator from Indiana uttered the other day, and every precedent that he cited, and all the debates of past years that he caused to be read, apply with exactly the same force to the certificate of election of Mr. McMillen as to the certificate of election of Mr. Pinchback. How is it, then, that this committee presents itself before the Senate with a declaration that Mr. Pinchback is *prima facie* entitled to the seat, without a pretense of having gone outside of the certificates of election, and even denying the right to go behind them? Why not choose McMillen's certificate instead of Pinchback's? The truth is, sir, the case is peculiar and anomalous. Admitting all the precedents of the Senator from Indiana, we are nevertheless in this case absolutely compelled to go behind the certificate of election. We cannot help ourselves, for the question is, of the authorities signing the certificates, who was the governor and who was the secretary of state of Louisiana in January, 1873, when these certificates bear date? The certificates do not tell us. And we cannot decide between those certificates until we have ascertained which of the persons executing them possessed the authority to execute them under the Constitution and the laws of the United States.

So, sir, in reference to the resolution pending before us, we are from the very papers upon our table in reference to this election compelled to make inquiry whether, upon the certificate which the committee have reported back, William Pitt Kellogg was on the 15th of January, 1873, governor of the State of Louisiana; and in order to ascertain whether he was or not, we are at once plunged into the mire and degradation of the proceedings in that unhappy State in the autumn of 1872 and the commencement of 1873. We cannot evade it; we cannot get away from it. And inquiring into those proceedings, we have no further to go than the great volume of four or five hundred pages of testimony taken by our own committee, now lying upon our tables, and unfolding unto us the whole sickening history from its beginning to its end. Upon that testimony we have the elaborate report of that committee chosen from among the ablest and most trusted members of this body, and the evidence sustains every word of that report in all the strength of its language; and the passage of time and the developments of time during the last two years have only tended still more to verify the correctness of the conclusion of that report. I therefore am not called upon to go into the history of those transactions further than to find the facts regarding them as they lie upon our table in the evidence and in the report of that committee. What, then, are the facts? I shall not go over these at any length. It has been well called "a thrice-told tale."

Was William Pitt Kellogg elected governor of Louisiana by the people in the autumn of 1872? No, sir. The evidence in that volume demonstrates that of the votes cast he did not receive a majority, and the committee expressly find the fact. The Senator from Wisconsin, [Mr. CARPENTER,] the Senator from Illinois, [Mr. LOGAN,] the Senator from Mississippi, [Mr. ALCORN,] and the Senator from Rhode Island [Mr. ANTHONY] append their names to the finding of fact that in that election Mr. Kellogg was defeated. Were any returns canvassed by which he was returned as elected? None whatever. The pretended canvass by his returning board is delineated in the report of that committee in stronger language than I should care to use here. Was there any lawful returning board or board of canvassers that made such return? None. So that there is not, upon the actual facts existing, even the color of title of an election of the person whose name is signed to the certificate of election now reported by the committee as governor of Louisiana. How, then, came he to assume to place his name to this certificate? Again the record unfolds the facts.

There was an election in that State. The majority of the votes were against him. They may have been procured by intimidation, or force, or fraud. We now on this inquiry as to the capacity of Mr. Kellogg to sign and send hither such a certificate as he has done only are to ascertain the fact whether he did receive a majority of the votes or not; and the report of your committee and the evidence demonstrates that he did not. No returns of any elections were before the board which sent up a majority of the votes as having been counted by them to the Legislature of Louisiana, but the board itself was without a legal existence. But a body of men without authority, without legal existence as a returning board, by fraud, by falsehood, by forgery, by perjury, made out a return which was sent to another body designated as a Legislature, and that return founded solely upon the infamies which I have described is said by your committee and proved by the evidence to be the only color of title upon which Mr. Kellogg assumes this authority.

But this was not enough to give to him any substantive existence, as the executive of Louisiana, and he himself next appears upon the scene presenting himself before a Federal court with falsehood in his hand and perjury upon his lips to give that court jurisdiction, for in his bill he alleges for the sole purpose of giving that court jurisdiction that many thousands of voters had been deprived of the suffrage by reason of their race and color, in which there was not a shadow of truth, and he knew it at the time, and no effort has been made to substantiate it from that day to this—a bald pretext to give a corrupt judge jurisdiction of a cause over which he had no control, as the beginning of the conspiracy to install Mr. Kellogg in power. A Federal marshal, the leading manager in one of the political organizations of that State, obtains of the President by misrepresentation authority to use Federal troops to enforce the mandate of that court; and then, abusing the judicial process, if the mandate upon which these troops were employed could be called a judicial process and if it could be abused, the halls where the Legislature of Louisiana were accustomed to meet were seized by force and guarded by troops for weeks long.

The returns sent hither by the perjured returning board were indorsed by the pretended assembly. Kellogg was nominally installed in the office, and then under the protection of the Federal forces the usurpation was complete. From beginning to end, as demonstrated in the papers upon your table, fraud, falsehood, forgery, perjury, military violence, and forcible usurpation constituted the title of this man who signed this certificate of elections, and there is no man who can successfully show that he ever had any other title. He may have been defeated by intimidation and fraud. That may be true. If so, he had his appropriate remedy, which he did not choose to resort to. But that he ever had any other color of authority for the power which he assumes to exercise than that which the report of your committee ascribes to him, cannot be shown.

Now, if these things are true, the placing of his name to this paper, styled a certificate of election, adds not one whit of virtue to what that paper was when it was a white blank sheet. I know it has been said that this person was then and is now the *de facto* governor of Louisiana. If what I have stated and what the report of your committee demonstrates be true, he is in no legal sense, and he never has been, the *de facto* governor of Louisiana, for essential to a *de facto* government is a color at least of title; and this is a sheer usurpation carried out by force and initiated by forgery and perjury. That is all there is of it. There is not even the color of a title on which to build up a *de facto* government. If in reference to the citizens of Louisiana there may be something called executive authority which may be termed *de facto*, there is none capacified to send to the Senate of the United States certificates of election of a Senator in this body. There is no power either by the Constitution or the laws of the United States that can execute a certificate which we can recognize but the lawful executive of the State from which the claimant comes. When a Senator comes here with his certificate of election, the signature of the governor is not to affect simply the citizens of Louisiana. It is to create a part of the law-making power of the United States. It is to create a part of the Government of the United States, and we cannot here recognize anything to constitute a part of the Government of the United States to rule New York, and Indiana, and Connecticut, as well as Louisiana, except the lawful executive authority of the State from which the certificate proceeds. In no sense is there any validity attaching to the certificate of election which the committee have reported back and upon which they claim a *prima facie* case from Mr. Pinchback, because we are compelled to ask what is the authority of the persons signing this paper, and asking, we are compelled to find that they have no authority. Consider if a precedent like this were to be established, if a defeated party upon the official returns in any election may be permitted by forgery and perjury to make up a pretended return and then by violence to install in office the persons designated in that pretended return, and henceforth those persons are to be regarded by the Government of the United States as the lawful authority to sign certificates of election to those who are to participate in the government of the whole Republic, what a precedent you are setting for future time!

The Senator from California [Mr. SARGENT] has for two days been unfolding what seems to him—I believe to a distempered imagination, but what seems to him—a grand conspiracy throughout the States recently in rebellion by fraud, by intimidation, by violence to subvert their State governments and set up new ones in their stead. If they do so, what better precedent for a democratic President of the United States to follow than that which you are now proposing? To set up a defeated candidate, defeated in a popular election, to resort to fraud and perjury and violence to install its officers in power, and then to determine here that the very sanctuary of the law for the whole nation is bound to recognize such fraudulent and usurping authority; what are we to say four years from now, if the dreams of the Senator from California prove true? I have listened painfully during this session to members of the majority in this body quoting from the long catalogue of damning precedents of the old pro-slavery democratic party ascendency twenty and thirty years ago, not to justify, indeed, but to palliate and excuse similar atrocities to be committed now. I thought never to hear that in the legislative halls of this Government. Now, to add to that, it is proposed that you shall set the precedent of establishing this offspring of fraud and violence and usurpation here in the council chambers of the nation, not only to make this atrocious iniquity successful in setting up a usurping government in Louisiana, but to install it as a part of the government of the whole country. The stream cannot rise higher than the fountain, and the Senator that you would receive here on certificates of the authority foisted into power two years ago in Louisiana would be pointed at as an illustration of how in republican governments fraud and violence may achieve success.

Can it be possible, Senators, republican Senators, you whom I have heard here now during all this session deprecating this democratic conspiracy to seize the State governments of the South, and then to obtain their recognition by Federal authority, that you now and here are to set to them the precedent? If the facts of history are true, if the testimony of witnesses spread over five hundred printed pages is such that truth can be deduced from it, if the report of the ablest and the acutest of your members, after careful examination and elaboration of that testimony, are to be relied upon, of the facts of this case, when you get behind the face of this certificate, there can be no doubt.

And, Mr. President, I wish, as I close, to say a word or two to members of the majority of this body who may entertain such opinions as I entertain with regard to the claim of Mr. Pinchback to a seat in this body. I ask you not to sit here content with giving a silent vote. I cannot regard a favorable result of a vote of the Senate upon this resolution which shall seat Mr. Pinchback in this body otherwise than as a precedent pregnant with the most fearful consequences to the country. It is to substitute the system of Spanish-American governments for our own. We cling to law. We never permit violence to take its place if in our power, and the party that is defeated in an election by wrong under our system must resort to the due processes of law to obtain his rights; and if now, for the first time in our history, to quote the language of the Senator from Wisconsin, not now in his seat, [Mr. CARPENTER,] uttered in this Chamber a year ago, we are to adopt the principle of "fighting the devil with fire;" if when one party resorts to fraud in an election or intimidation the other may resort to perjury and usurpation, and the Government of the United States and the Senate thereof shall be bound to recognize it, who can foresee the end? I ask those who entertain such convictions as I entertain to speak to the Senate and to speak to the country before they permit such a precedent as this to be set; and I do believe that if the members of this body shall vote upon this question according to their own deepest convictions, no such disastrous precedent will be set, but we shall still remain a republic in which law and order alone shall be recognized at least in the highest legislative body in the land.

[Mr. STEVENSON addressed the Senate. His remarks will appear in the Appendix.]

Mr. HOWE obtained the floor.

Mr. MORTON. If the Senator from Wisconsin will yield for a moment, at the suggestion of a number of Senators on the floor, I move that the Senate take a recess until seven o'clock.

Mr. SCHURZ. Make it half past seven.

Mr. MORTON. I prefer to say seven o'clock.

Mr. HAMILTON, of Maryland. Pending that motion I move that the Senate adjourn.

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

Mr. HAMILTON, of Maryland. I ask for the yeas and nays.

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

Mr. STEWART, (when his name was called.) I have paired with the Senator from Ohio, [Mr. THURMAN.] If he were present he would vote "yea," and I should vote "nay."

Mr. HAGER. I am paired with the Senator from Illinois, [Mr. OGLESBY.] If he were present he would vote "nay," and I should vote "yea."

The roll-call having been concluded, the result was announced—yeas 22, nays 33; as follows:

YEAS—Messrs. Anthony, Bayard, Bogy, Cooper, Davis, Dennis, Eaton, Ferry of Connecticut, Goldthwaite, Gordon, Hamilton of Maryland, Johnston, Kelly, Lewis, Merrimon, Norwood, Ransom, Robertson, Saulsbury, Schurz, Stevenson, and Stockton—22.

NAYS—Messrs. Alcorn, Allison, Boreman, Boutwell, Cameron, Chandler, Clayton, Conkling, Cragin, Dorsey, Edmunds, Ferry of Michigan, Flanagan, Frelinghuysen, Harvey, Howe, Ingalls, Jones, Logan, Mitchell, Morrill of Vermont, Morton, Patterson, Pease, Pratt, Ramsey, Sargent, Scott, Spencer, Wadleigh, West, Windom, and Wright—33.

ABSENT—Messrs. Brownlow, Carpenter, Conover, Fenton, Gilbert, Hager, Hamilton of Texas, Hamlin, Hitchcock, McCreery, Morrill of Maine, Oglesby, Sherman, Sprague, Stewart, Thurman, Tipton, and Washburn—18.

So the Senate refused to adjourn.

The PRESIDENT *pro tempore*. The question recurs on the motion for a recess.

Mr. MORTON. I modify my motion so as to make the recess until half past seven o'clock.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. MCPHERSON, its Clerk, announced that the House had passed a bill (H. R. No. 4734) to establish certain post-roads; in which it requested the concurrence of the Senate.

ENROLLED BILLS SIGNED.

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

A bill (H. R. No. 2102) to incorporate the Capitol, North O Street and South Washington Railway Company;

A bill (H. R. No. 3080) to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases;

A bill (H. R. No. 3623) regulating fees and costs, and for other purposes;

A bill (H. R. No. 3825) to amend section 5240 of the Revised Statutes of the United States in relation to the compensation of national-bank examiners;

A bill (H. R. No. 3915) to authorize the Secretary of War to give permission to extend the Hygeia Hotel at Fortress Monroe, Virginia;

A bill (H. R. No. 4126) authorizing the Citizens' National Bank of Sanbornton, New Hampshire, to change its name; and

A bill (H. R. No. 4676) for the relief of actual settlers on lands claimed to be swamp and overflowed lands in the State of Missouri.

HOUSE BILLS REFERRED.

The PRESIDENT *pro tempore*. Before putting the question on the motion of the Senator from Indiana, the Chair will ask the indulgence of the Senate to submit the House bills on his table for the purpose of reference. ["Agreed."]

The following bills were severally read twice by their titles, and referred as indicated below:

The bill (H. R. No. 4734) to establish certain post-roads—to the Committee on Post-Offices and Post Roads.

The bill (H. R. No. 4730) providing for the payment of certain employés of the House of Representatives—to the Committee on Appropriations.

The bill (H. R. No. 2978) to provide for the reorganization of the Treasury Department of the United States, and for other purposes—to the Committee on Civil Service and Retrenchment.

The Senate proceeded to consider its amendments to the bill (H. R. No. 3912) to reduce and fix the Adjutant-General's Department of the Army disagreed to by the House of Representatives.

On motion of Mr. LOGAN, it was

Resolved, That the Senate insist upon its amendments to the said bill disagreed to by the House of Representatives, and agree to the conference asked by the House on the disagreeing votes of the two Houses thereon.

By unanimous consent, it was

Ordered, The President *pro tempore* appoint the conferees on the part of the Senate.

The President *pro tempore* appointed Messrs. LOGAN, SPENCER, and RANSOM.

AMENDMENT TO AN APPROPRIATION BILL.

Mr. INGALLS submitted an amendment intended to be proposed to the bill (H. R. No. 3821) making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1876, and for other purposes; which was referred to the Committee on Appropriations, and ordered to be printed.

RECESS.

The PRESIDENT *pro tempore*. The question recurs on the motion of the Senator from Indiana [Mr. MORTON] to take a recess until half past seven o'clock.

Mr. HAMILTON, of Maryland. On that motion I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. SAULSBURY. If it is the desire of the Senate to go on with the debate for a reasonable time, I make no objection; but it is evident that we cannot have a full attendance after the recess to sit this matter out to-night.

The PRESIDING OFFICER, (Mr. FERRY, of Michigan, in the chair.) The motion is not debatable.

The Chief Clerk proceeded with and concluded the call of the roll.

Mr. MORTON. Before this vote is announced, I beg to express the hope that Senators will be here promptly at half past seven o'clock.

The result was announced—yeas 34, nays 12; as follows:

YEAS—Messrs. Alcorn, Allison, Anthony, Boreman, Boutwell, Cameron, Chandler, Clayton, Conkling, Cooper, Cragin, Dennis, Dorsey, Ferry of Michigan, Flanagan, Frelinghuysen, Goldthwaite, Harvey, Howe, Ingalls, Jones, Logan, Mitchell, Morrill of Vermont, Morton, Pease, Ramsey, Sargent, Scott, Stockton, Wadleigh, West, Windom, and Wright—34.

NAYS—Messrs. Bayard, Bogy, Davis, Edmunds, Gordon, Hamilton of Maryland, McCreery, Merrimon, Norwood, Saulsbury, Spencer, and Stevenson—12.

ABSENT—Messrs. Brownlow, Carpenter, Conover, Eaton, Fenton, Ferry of Connecticut, Gilbert, Hager, Hamilton of Texas, Hamlin, Hitchcock, Johnston, Kelly, Lewis, Morrill of Maine, Oglesby, Patterson, Pratt, Ransom, Robertson, Schurz, Sherman, Sprague, Stewart, Thurman, Tipton, and Washburn—27.

So the motion was agreed to; and (at five o'clock and twenty-six minutes p. m.) the Senate took a recess until half past seven o'clock p. m.

EVENING SESSION.

The Senate reassembled at half past seven o'clock.

SENATOR FROM LOUISIANA.

The PRESIDING OFFICER, (Mr. FERRY, of Michigan, in the chair.) The Senate resumes the consideration of the unfinished business, which is the resolution to admit P. B. S. Pinchback as a Senator from the State of Louisiana, upon which resolution the Senator from Wisconsin [Mr. HOWE] has the floor.

Mr. HOWE. Mr. President, the pending resolution brings to the consideration of the Senate the election which took place in the State of Louisiana in 1872. The Senator from New York [Mr. CONKLING] the other day referred to that election as the dismal swamp in our politics. I think I have traversed that swamp; at least I know that whereas I was once on one side of the swamp I am now on the other side; wherefore I think I can tell the Senate something about that portion of our political geography. I concede that it is a tangle maze, but it is not without a plan; and I propose this evening for the first time to state my view of that plan.

It has been said that the story of that election is "a thrice-told tale." That may be true; and yet I want to tell the story once more. I shall of course have to say some things that have been said by others, and better said; but nevertheless the story I shall tell of that election is a story I have not yet heard told.

Mr. President, in the summer of 1872 Henry C. Warmoth was governor of Louisiana. He had been elected by the republican party in 1868. By the democratic party he was probably hated more thoroughly, if not more justly, than any man in the State. Suddenly, and some months before the election of that year, the voice of prophecy rang through the Union predicting that, however other States might go in November, the State of Louisiana would go for the democratic ticket, and that the Legislature of that State the winter following would send Mr. Warmoth to the Senate of the United States.

Close upon the heel of that prediction came intelligence that Governor Warmoth was doing his utmost to secure the success of that party which had so bitterly opposed him. The assertion was everywhere made that under the anomalous laws of Louisiana the result of an election there depended less upon the disposition of the voters than upon the resolution of the governor, that his control of the machinery of election was so absolute that victory was sure to alight upon whatever standard he carried.

If, as is stated, Warmoth did bargain to deliver the State to the enemy, he certainly did his best to keep the bargain. His first movement was to select one B. P. Blanchard for State registrar. Upon that officer by law devolved the duty of making a registration of the voters of the State. To aid him in that work he appointed a supervisor of elections for each parish in the State outside of New Orleans. Mr. Blanchard proved an able lieutenant, but not altogether a trusty one. He has since published under his own oath a detailed statement of the frauds he caused to be perpetrated in the course of registration. To repeat the catalogue here would be tedious. It is enough to say that if there is any single fraud possible in registration not enumerated in his schedule it is one invented since 1872.

His story is so monstrous that it would challenge credulity itself if it were uncorroborated. But it is so corroborated as to defy unbelief. The matchless rascality of the man is manifest, whether he did the things he swore he did, or swore he did the things he did not do. Such a man was not likely to be employed to serve the State, but very apt to be employed to betray it. And one who would betray his State would not hesitate to betray his coconspirators when inspired thereto either by thirst for gain or thirst for revenge. His story is corroborated by the circumstance that to many of the parishes in the State he sent practiced cheats from the city of New Orleans to act as supervisors of elections. That could not have been necessary for any honest purpose. Capable supervisors might have been readily found in every parish. Unscrupulous ones seem not to have been everywhere available. The great planters in the parishes were nearly all democrats but were not all rogues. New Orleans had a surplus and New Orleans was drawn upon to make up the deficiency. His story is corroborated also by numerous witnesses who testify to specific frauds in various parishes. By artifices too numerous to mention great numbers were excluded from registering who ought to have been registered; great numbers were registered who ought not to have been. By a singular coincidence it happened that the voters who were not registered were republicans, and the registered who were not voters democrats.

To show that he meant business and to prevent the unregistered from voting, Mr. Blanchard issued private instructions to his supervisors in the following terms:

You will please direct commissioners of election to receive no votes upon the affidavits supplied by the radical party under the enforcement act unless the person applying or offering to vote is *known* by *them* to have been wrongfully deprived of registration.

Mr. Blanchard's story is corroborated by the fact that he was asked to consent that one of the three commissioners of election at the different voting precincts should be a republican, and he refused it.

Such a minority representation could of course do no wrong. It could not even prevent wrong-doing. It could at most only aid the detection of wrong-doing.

His story was also corroborated by another circumstance. Under the enforcement act, so called, of 1872, the circuit court of the United States appointed supervisors of election in many of the parishes and voting precincts. Those officers could not control the voting or the counting of the votes. They could only scrutinize those acts. Accordingly Mr. Blanchard sent a secret circular to his supervisors, instructing them to count the votes for electors and members of Congress first, and then to count the votes for State officers, "bearing in mind," he added, "the fact that the United States supervisors of elections and deputy marshals have no right whatever to scrutinize, inspect, or be present at the counting of the State and parish vote." Clearly such inspection could have been objectionable only to a dishonest count. An honest count would have courted scrutiny.

His story is further corroborated by the strange results of registration in many localities. Of those results two specimens must suffice.

The parish of East Baton Rouge had a white population in 1870 of 6,471. The white voters registered in 1872 were 1,482. Its colored population was 11,342, and its colored vote registered was only 1,559, exceeding the white vote by less than one hundred.

The parish of Orleans had a total population in 1870 of 191,418. Its male population more than twenty-one years of age was 47,737. The male *citizens* more than twenty-one years of age were 38,586, showing that 9,151 males more than twenty-one years of age were unnaturalized aliens. Yet in 1872 the State registrar not only registered 20,581 colored voters, but registered 34,501 white voters. Thus the voters registered in 1872 numbered 17,496 more than the voters found by the census two years previous.

Unless Mr. Blanchard was more liberal in registering colored voters in the parish of Orleans than his subordinates were in any other parish, that whole excess must be charged to over-registration of white votes. *A witness testified that as many as one hundred and twenty-one were registered from a single residence in the city.*

Mr. President, in the light of such facts it is quite safe to conclude that if Mr. Blanchard ever consulted truth in any of his utterances, it was not when he swore he *would* discharge his official duties according to law, but rather when he swore he had discharged them in violation of all law. Such was the character of the State registrar and such the character of his work. The next step was to gather the

votes. The polling-places in the several parishes were selected by Blanchard's parish supervisors according to their uncontrolled discretion. It need only be observed that the discretion some of those supervisors displayed in the discharge of that duty proved that they were well fitted for the scandalous trust reposed in them. Each poll was presided over by three commissioners of election selected by Mr. Blanchard's parish supervisors.

The law charged the commissioners with very simple duties. They were to maintain order at the several voting precincts, receive the ballot offered by each qualified voter, deposit it in the box, and make three different records of that vote.

Of course the commissioners could not be cheated by republicans. They could cheat republicans in three ways: First, by receiving democratic votes from illegal voters; second, by refusing republican votes from legal voters; third, by allowing turbulence and tumult to deter republicans from offering their votes. That they did cheat by each of those methods has been testified not merely by scores but by thousands of witnesses. As an example of the first method of cheating I will cite Madison Parish. There the white vote registered was 360. The whole white population was but 936, and yet the democratic vote was returned at 828, almost three times the number of registered white voters, and almost equal to the whole white population.

As an example of the second method of cheating Caddo Parish is cited. There, while a white population of 5,913 was made to register 1,549 white voters and return 1,817 democratic votes, a colored population of 15,799 yielded but 3,339 colored voters and but 1,576 republican votes. C. W. Keating swore that he saw 363 turned away from one box in Caddo Parish who had tried all day to vote. In Bossier Parish alone over 1,300 republican voters swore their votes were rejected. In the case of Kellogg *vs.* Warmoth *et als.*, in the United States district court, the judge states as a fact, found that over 4,000 colored republicans from different parishes swore to their offer to vote and the denial of it.

Of intimidation examples were proved in a great many parishes in Jackson, in Saint Landry, in Livingston, in East Baton Rouge, in Bossier and others.

At six o'clock p. m. the polls closed, and the next step was to secure a count of the ballots. For that purpose the law required that "immediately upon the closing of the polls" the commissioners should seal the boxes and proceed with them to the parish supervisor. One would suppose that democratic officers, hungering for honesty as democrats claim to be, might carry sealed ballot-boxes from one town to another in the same parish without letting any ballots spill out or any leak in. But Mr. Blanchard's commissioners could not do even that. How many boxes were stuffed is not known; for no investigation has yet been made. Mr. Forman, of the Warmoth board of returns, testified that the boxes from one precinct in New Orleans and one in Jefferson Parish were stuffed; and other witnesses swore to the same treatment in East Baton Rouge, in Point Coupee, in Madison, in Grant, Webster, Saint Helena, and other parishes.

The next act upon the programme was to count the ballots, ascertain the number for each candidate, make triplicate statements of the result in tabular form, forward two statements to the governor by different conveyances, and file one with the archives of the parish. Even that duty was only partially performed. Six whole parishes were either not returned at all or returned in such a manner as to be excluded from count by the democratic board. One of those parishes was Iberville, which had a registered vote of 743 white, and 3,303 colored. Thirty-five printed pages of the report of the Committee on Privileges and Elections are occupied with affidavits and other papers to justify the exclusion of that parish from count.

One Thorp was the supervisor for that parish. He had been sent up from New Orleans. The republicans seem to have assumed he was sent, not for honest but for fraudulent purposes. They suspected that he meant to cheat in the count. They therefore tried to witness the count. They were kept outside of the court-house. They molested no one; they made but one demand, to wit, that the votes should be counted. Thorp and the commissioners of election kept them there until the night of the 5th, long enough to have counted the vote ten times. And then the commissioners from each precinct drew up a formal certificate that they were afraid to count—not afraid to refuse, but afraid to grant the only thing demanded of them—and so left. Madison Parish was registered at 360 white and 2,365 colored. It was counted by the democratic board at 828 democratic, and 1,227 republican votes. That return was made, not in Madison Parish, but, according to the testimony, in the city of New Orleans, and was a manifest forgery. Mr. John Ray stated before the Senate Committee on Privileges and Elections that the returns from other parishes were evident forgeries, and instanced Grant, Point Coupee, and East Baton Rouge as examples. He said the committee could be satisfied of the fact by an inspection of the papers. Whether they were so satisfied or not does not appear.

And here the fourth act in the farce of the election of 1872 ended. The performance of registering, balloting, counting, and returning was concluded. All these acts had been played under democratic management. It is not only manifest the republicans had not cheated, but it is evident they had no possible chance to cheat. The democratic party had on the contrary the fullest opportunity to cheat in every stage of the performance, and they availed themselves of it. The republicans had been denied registration and registered republicans had been excluded from voting. Republican votes cast had been abstracted from the boxes; democratic votes not cast had been thrust into the boxes. The count had been falsified and returns had been forged. All these villainies had been performed by Warmoth's subordinates. One thing remained to be done. To garner the fruits of all these frauds, it was necessary to read and add up the votes returned from the several parishes and proclaim the persons elected to the several offices. One would suppose it could matter but little who did that work. Republicans read like democrats—everything except the constitution. Both parties use the same system of arithmetic. Given the same returns to read and add up, it is hardly supposable that a republican and democrat would differ much in the result. But Warmoth well knew that nothing short of an unscrupulous canvass of the returns could utilize the mammoth frauds which had preceded the returns. To secure such a canvass he himself came to the front.

Then was seen in Louisiana such an exhibition of legerdemain as never had a parallel elsewhere. The limitations of the constitution were ignored; the commands of the statutes were defied; the sanctity of the courts outraged, the authority of commissions contemned.

The law of Louisiana confided the canvass of returns from the several parishes to a tribunal called the board of returns. That board in November, 1872, consisted of the governor, lieutenant-governor, the secretary of state *ex officio*, and of one John Lynch and one T. C. Anderson, by name. Of that number, the governor was the only one who had contracted to sell the State to the democratic party. In order to deliver the State according to contract he knew he must create a new board, and before he could create a new board it was necessary to get rid of the existing board. To that work he addressed himself. The law required the canvass to commence ten days after the election. Accordingly, on the 13th of November the board assembled. The governor, the lieutenant-governor, the secretary of state, and John Lynch only were present. Anderson and the lieutenant-governor had been candidates before the people at the preceding election. Warmoth had no difficulty in persuading his colleagues that those two members were disqualified for acting as returning officers. The law of the State so declared. Lynch and Herron, who was secretary of state, readily acquiesced in the proposition to drop Mr. Anderson and the lieutenant-governor from the board. But no magistrate was present, so the members were not sworn in, and without adopting any resolution the board adjourned to the next day. Thus in this new Genesis, "the evening and the morning were the first day."

On the 14th the board reassembled. The same persons were present, and a magistrate was also in attendance, who proceeded to administer the oath of office to Warmoth, to Herron, the secretary of state, and to Lynch. The lieutenant-governor declined to be sworn until the question of his disability was resolved. When a quorum had been sworn they resolved unanimously that Pinchback and Anderson were disqualified. Thus two vacancies were made. But the law required those vacancies to be filled by the remaining members of the board. Of those members Warmoth felt the majority to be unreliable for his purpose. Immediately after Herron had voted with Lynch and Warmoth to create two vacancies one Mr. Jack Wharton appeared upon the stage, who pulled out a commission from Warmoth appointing him to be secretary of state in the place of Herron, *removed*. The blow was sudden; it staggered the republican members, but it was not admitted to be a knock-down. Herron and Lynch denied the governor's power to remove the secretary of state; Warmoth and Wharton asserted that power. Herron and Lynch chose Longstreet and Hawkins to fill the two vacancies. Warmoth and Wharton chose F. H. Hatch and Durant Da Ponte to fill the same vacancies. Thus two sets of men appeared, each claiming to be the board of returns. Which was the legal board depended, of course, upon the question whether the governor could rightfully remove the secretary of state. If he could, then Wharton was secretary of state and Warmoth and Wharton had legally chosen Hatch and Da Ponte to fill the vacancies. If the governor could not make such a removal, then of course Herron was still secretary of state and Herron and Lynch had legally chosen Longstreet and Hawkins to fill these vacancies.

Right here it may as well be said as anywhere that the supreme court of Louisiana has since determined that the governor could not make any such removal. Believing such removal to be illegal, the Herron party commenced legal proceedings in the proper court of the State, designated as the eighth district court, to restrain the Wharton party from assuming to act as the returning board. That suit was commenced on the 14th day of November, and on the 19th the court pronounced judgment against the defendants, thus affirming the authority of the Herron board. But Warmoth was not the sort of governor to surrender to the judgment of a court. The court having adjudged the Herron board to be legal upon the 19th, on the next day Warmoth proceeded to change the law. To effect that, he drew from a pigeon-hole an old bill which had passed both houses of the Legislature during the previous winter; and then, after the Legislature which passed it had ceased to exist, he approved the bill and proclaimed it a law. By that maneuver he claimed to have repealed the previous act of 1870 under which the Herron board was created. But the constitution of Louisiana provides that—

> All officers shall continue to discharge the duty of their offices until their successors are inducted into office.

The bill which the governor approved on the 20th provides that

the board of returns should be elected by the Senate; and the senate was not in session and could not be convened until the returns were canvassed. The way before the governor seemed rugged. Grave difficulties still confronted him. What he must have was a new board to canvass the returns. The constitution of his State said to him the existing board of returns shall continue to discharge their duties until their successors are inducted into office. The new statute which he had just proclaimed said that the successors of the existing board could not be inducted into office until they had been elected by the senate. The genius of the governor was equal to the occasion. He straightway appointed himself to be a sort of deputy senate, and then proceeded to elect a board of returns. So appeared a new pretender to the functions of the board of returns for Louisiana.

In order that this new board might not be bothered by the district court in which Judge Dibble presided, the governor next proceeded to commission one W. A. Elmore to be judge of that court. He had precisely as much authority to issue such commission as he had to commission a chief justice of the Supreme Court of the United States. But he issued the commission. He sent Judge Elmore to the court-room "early," according to his own testimony. Accordingly when Judge Dibble arrived to open his court at the usual hour in the morning he found Judge Elmore already upon the bench. That there might be no more mistakes in serving process he also commissioned a sheriff. As suits to try the title to offices are prosecuted in the name of the attorney-general of the State, and as he did not want the title of any of his own friends questioned, he commissioned a new attorney-general. He commissioned many other officers. All this was done without any canvass of the vote by any board whatever, and was done in defiance of all the law there was in Louisiana. But in spite of all these acrobatic feats, the Herron board obstinately persisted in their right to count the votes.

Such, then, was the situation on the 21st of November. On that day Governor Warmoth issued his proclamation convening the General Assembly. The constitution of that State gives to the governor authority to convene the Legislature on "extraordinary occasions." Governor Warmoth seemed to think that *was* an extraordinary occasion. It is doubtful if so manifest a truth as that was ever shaken out from between his teeth before. Indeed, that was an extraordinary occasion. Nothing like it ever before occurred in the history of our States. It is to be hoped that nothing like it will ever occur again.

The occasion was this: An election had been held, every step in which had been imbedded in fraud. Of that election the governor held partial returns; of those returns he wanted enough counted to return a Legislature which would declare McEnery governor and send himself to the Senate of the United States. For that purpose he had improvised a board of returns. But the laws of Louisiana said his board should not canvass those returns. Those laws designated another board for that purpose. But Warmoth said the latter board should not have the returns to canvass. He had gone on commissioning officers as long as he dared without count of the returns. But there are limits beyond which the boldest criminals dare not go. Even Warmoth hesitated to appoint members to the Legislature of the State, although he claimed the right to appoint the men who should select the Legislature.

The occasion *was* an extraordinary one, but hardly so extraordinary as the way chosen by the governor to meet that occasion. The sole difficulty of the occasion was to get a Legislature counted in suited to his purposes. The way he took to meet the occasion was to summon a Legislature to convene *without any counting*. He might with the same propriety have called the assembly together without any election. Manifestly it was a call for volunteers. Defying the tribunal designated by law to ascertain and publish the results of the election, he summoned his retainers from the parishes to muster with his police of the metropolis and install the Legislature of his choice, regardless of the popular choice. The Legislature was summoned to meet on the 9th of December.

The interval was spent by the rival parties in various litigation, either to prevent things from being done or to test the validity of things done. After forcing Dibble from the bench no further change was made by Warmoth in the constitution of the courts, except that one of the judges of the supreme court was induced to resign his seat to become Warmoth's attorney and allow Warmoth to fill the vacancy. What the inducement was for that resignation does not appear. The suit between the so-called Herron board and the Wharton board was removed to the supreme court of the State. By that court it was held that the former and not the latter was the legal board of returns. Thus it was settled, if the courts of Louisiana can be allowed to interpret her own laws, that in spite of Wharton's appointment Herron continued to be secretary of state. That, in spite of Warmoth's conspiracy with Wharton, Herron and his associates were alone authorized to canvass the returns, and in spite of Warmoth's tampering with statutes, they alone continued to have that authority. That decision was not pronounced, however, until January. Wherefore between the 20th of November, when Warmoth attempted to abrogate the Herron board by repealing the statute which created it, until the 9th of December, when the Legislature assembled, two boards continued to make believe canvass the returns. One had partial returns before them but no authority to consider them. One had full authority to consider them but no returns to consider.

Notwithstanding these embarrassments both boards published before the 9th of December full lists of members elected to the senate and to the house. It is evident that in a contest very little weight could be given to either of those lists. To the list made by the Herron board it is well objected that the board had not adequate evidence before it on which to make a determination. It was denied the official returns. The same objection is urged against the determination of the other board. It had only partial returns. From some of the parishes it had received no returns, from some it had forged returns, from others it had returns notoriously and infamously false. Besides it had no authority to determine anything as to the result of the election upon any evidence whatever. One tribunal abused a jurisdiction it had, the other usurped a jurisdiction which it had not and abused it also. No law-abiding citizen can pay the slightest respect to the finding of the Warmoth board. But one person, at least, was bound to respect the findings of the other. That one person was the secretary of state.

The law of Louisiana is explicit. Prescribing the duties of the board in canvassing and compiling returns, it says:

> One copy of such returns they shall file in the office of the *secretary of state*, and of one copy they shall make public proclamation by printing in the official journal and such other newspapers as it may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person, and the name of the persons who have been duly and lawfully elected.
>
> The returns *thus made* and promulgated shall be *prima facie* evidence in all courts of justice and before all civil officers *until set aside after a contest* according to law, of the right of any person named therein to hold and exercise the office to which he shall by such returns be declared to be elected.

Nothing can be more explicit. Accordingly the Herron board filed its list of persons elected with George E. Bovee, who had in the mean time assumed the office of secretary of state under a judgment of the supreme court. The other board filed its list also with Mr. Jack Wharton, who still pretended to be secretary of state. The statute further declares—

> That it shall be the duty of the secretary of state to transmit to the clerk of the house of representatives and to the secretary of the senate of the last General Assembly a list of the names of such persons as *according to the returns* have been elected to each branch of the General Assembly. And it shall be the duty of the said clerk and secretary to place the names of the representatives and senators *so furnished* upon the roll of the house and senate respectively. And those representatives and senators whose names are so placed by the clerk and secretary in accordance with the forgoing provisions, *and none other*, shall be competent to organize the house of representatives and the senate.

Both Bovee and Wharton transmitted their several lists to the clerk of the house of representatives and to the secretary of the senate.

Which one of those rival secretaries the clerk of the house and the secretary of the senate would have recognized is not perhaps certainly known. It is known which ought to have been recognized. Louisiana said, speaking through her highest court, that Bovee was secretary. Nobody said Wharton was but Governor Warmoth.

But just here a new actor appeared upon the scene. Just at this point Judge Durell, of the United States district court, came to the front. Up to this point Warmoth had seemed omnipotent. Insensible to law, to right, to decency, he had trampled on the commands of the constitution, he had swapped judges, and dispensed commissions at will. Throughout the whole scene of anarchy and wild turmoil the democratic party had stood placid and serene. According to its mythology despotism all that time had slumbered, while the genius of liberty had laughed and clapped her hands. But suddenly the genius of liberty was seen to shudder and take her flight from Louisiana. Despotism in the form of Durell awoke and stalked into the arena. From that moment the memory of all previous crimes was obliterated; the stifled voters, the rifled ballot-boxes, the suppressed returns, the false and forged returns, were all forgotten; and the country from the Aroostook to the Belize, and from Key West to Sitka, has resounded with anathemas upon Judge Durell. Let it still so resound. It is not my purpose to defend Judge Durell. But it is my purpose to show that he did not "organize" the government of Louisiana; that he did not trench upon the authority of the State; that he did not divert by a hair's breadth the current of her laws. How came Durell on that scene, and what did he there? Let it be remembered that more than half the voters of Louisiana hold their right to vote not by the assent of the balance of her people, but under the sanction of the Constitution of the United States. Congress stands specially instructed to legislate for the enforcement of that right. Congress has legislated for its enforcement.

By the act of May, 1870, two great commanding guarantees are declared to that right of suffrage. The third section provides substantially that when by the laws of a State an act is required to be done as a condition for voting, an offer to do the act, if wrongfully denied, is equivalent to doing it. In other words, that an offer to register, by one qualified to register, shall, if wrongfully refused, be deemed equivalent to registry. The twenty-third section provides that if one be deprived of his election to any office, except that of elector for President, Vice-President, member of Congress, or of the State Legislature, by reason of the denial of suffrage to any citizen on account of race or color, his right to such office shall not be impaired thereby. And such person may bring an appropriate suit in the circuit or district court of the United States "to determine the rights of the parties to such office." No lawyer, who concedes the validity of that act, will deny that under its sanction the courts of the United

States had full jurisdiction to hear and determine the result of the election of 1872 for every officer voted for, with the exceptions named, if it was alleged that the result was controlled by the rejection of votes on account of color. And no lawyer will deny that on such hearing it was the duty of the court, to count in addition to all the votes actually cast for parties at that election, every vote actually offered and wrongfully rejected thereat.

Under the sanction of that act William P. Kellogg and C. C. Antoine severally commenced suits in the circuit court of the United States, District Judge Durell presiding. Kellogg's bill was filed on the 16th of November; Antoine's on the 7th of December. To one not familiar with Louisiana practice both bills seem crudely drawn. Very likely both would have been amended upon demurrer; very likely some of the averments would have been struck out upon motion. But no such motion was submitted, no demurrer was interposed. The court had jurisdiction of the subject-matter. Both bills contained the jurisdictional averments, that, among other frauds perpetrated or contemplated, was this: That ten thousand lawful voters had been denied registration and suffrage on account of color.

I was told that the honorable Senator from Connecticut, whom I do not see in his seat this evening, [Mr. FERRY,] said this afternoon that the only averment which gave the district court jurisdiction was an admitted perjury; that there was no pretense that any such voters were rejected. Why, Mr. President, the Senator from Connecticut has been as much misled on this point as I myself was several years ago. The testimony is past all denial that there were thousands of such votes rejected. But I did not expect to hear in the Senate that the jurisdiction of a court depended upon the truth of the averments made in the bill. I supposed, so far as the question of jurisdiction was concerned, if the bill contained the proper averments the court would assume them to be true rather than disclaim jurisdiction upon the assumption they were false.

Sir, the court had jurisdiction.

Whatever the court did in such a suit might be avoided for error, but it was not void. At least that is true so long as the court confined its action to the relief prayed in the bill. In one particular the court went beyond the prayer of the bill. To the Kellogg bill, McEnery, the democratic candidate for governor, was made defendant, with Warmoth and the Warmoth board of returns. A long catalogue of frauds was recited as having been perpetrated pending and subsequent to the election. And the bill averred that all those frauds were to be consummated by the canvass to be made by Warmoth's pretended board of returns. The court was asked to restrain that board from making a canvass and to restrain McEnery from entering upon the office under color of their canvass.

Antoine's bill was more sweeping in its averments and more abundant in supplication. In each case the restraining order was granted in the very terms asked for. Of this no complaint seems to have been made. The orders were not even appealed from; they were simply disregarded. But on the night of the 6th of December the judge issued an order in the Kellogg case not asked for by the bill. The material part of this order was as follows:

> It is hereby ordered that the marshal of the United States for the district of Louisiana shall forthwith take possession of the building known as Mechanics' Institute and occupied as the State-house for the assembling of the Legislature therein, in the city of New Orleans, and hold the same subject to the further order of this court, and in the mean while to prevent all unlawful assemblage therein under the guise or pretext of authority claimed by virtue of pretended canvass and returns made by said pretended returning officers in contempt and violation of said restraining order; but the marshal is directed to allow the ingress and egress to and from the public offices in said building of persons entitled to the same.

That order has been widely and fiercely denounced. I join in denouncing it. It was a political and not a judicial order. By it the judicial ermine was draggled in the mire of politics, and of Louisiana politics at that; but the order harmed no man; it deprived no single being of a single right.

It is said that order was void. I concede it for two reasons: First, because I think it was void; and, second, because, so far as its effect upon the character of the Legislature is concerned, it is wholly immaterial whether it was void or voidable. If voidable merely, it was a justification for those who enforced it; if void, it was no justification for any one. In neither case did it or could it extinguish any legal right. The whole scope of the order was to direct the marshal to take possession of the State-house and prevent *unlawful* assembling therein. The marshal was expressly directed to allow ingress to and egress from the offices to all persons entitled to the same. All it said or was intended to say is, allow all men to enter who have a right to do so; but let no man enter upon the authority of the Warmoth board. All the law in Louisiana proclaimed precisely the same thing; all the law in Louisiana declared that the Warmoth board had no authority to license any one to enter the capitol of the State. That has been declared by the supreme court of Louisiana in numerous cases. I speak in the language of law and of common sense when I say a void order of the court can foreclose no right. If that order was void, and in pursuance of it Marshal Packard kept any lawful member out of the State-house, he and all who abetted him, including the judge, are liable to the parties aggrieved in damages to be recovered in any court having jurisdiction. Yet I have not heard that any such suit has been commenced. Sir, none will be commenced by any one who is responsible for costs. Those loud lamenting innocents dare not sue the judge or the marshal for keeping them out of the State-house, because those men simply prevented their doing what the law of the State forbid them to do. They know if they had entered that building and attempted to control the organization of either house, every committing magistrate in the city was bound on complaint to issue warrants for their arrest.

On such arrest they could plead but one defense; and that was the canvass and return of the Warmoth board. Such defense was impotent; they knew it. The supreme court of the State has so especially instructed them and us.

But it is said Durell's order was actually enforced, and enforced by Federal bayonets. All that is true. Two soldiers crossed bayonets over the door of the capitol, and Warmoth's volunteers did not enter. But the man who does a thing is no worse than he who orders it done. If Durell's order impaired no right, executing it impaired no right. If under that order men were kept out of the State-house who had a right to enter, the right survived the order of the judge and the duress of the soldiers. If those restrained, on the contrary, had no right to enter, then wrong only was baffled at the door of the capitol, and right triumphed there.

The Court of Claims in this District has no equity jurisdiction whatever. It cannot rightfully issue an injunction in any case. But if it should issue an order, upon the assembling of the next House of Representatives, directing the marshal to permit every man to enter who had a certificate of election and to keep out all claimants who had no certificates, it is difficult to see who would be aggrieved by that order. The General of the Army might set a brigade of artillery to enforce it. Still the House would be organized by the very men to whom the law assigns that duty; and the lawyer who should declare such House to be organized by the Court of Claims would be hooted out of professional circles. And even if the Court of Claims should do what Durell did not do; if it should order that all who held certificates of election should be kept out and only defeated candidates be admitted to the House, does any lawyer suppose the Army could vitalize such an order as that; that a House of Representatives could be organized in pursuance of it? The first attempt to enforce it would be the signal for the arrest of every judge who issued the order and every man who attempted to execute it, whether in the uniform or out of it.

This is a Government of laws, not of force. The laws are administered by a variety of agents. Each one of these agents is protected so long as he keeps within his prescribed sphere and does only what the law permits him to do. Not one of them has the slightest protection outside of that sphere. And of all those agents not one is so jealously watched or more rigorously restrained within its prescribed orbit than the military power. Everybody else may trespass and be regarded with some indulgence, but the soldier who steps an inch beyond the line prescribed to him has no forgiveness in this world and is begrudged forgiveness in the next. This truth has been strikingly illustrated during the past few weeks.

For years mobs, organized by a political interest and for a political purpose, have ravaged large districts of the country, have shed blood by the barrel and butchered men by the thousand. Except a little intermittent whining on the part of some petulant republican in Congress or an occasional lament from some republican newspaper, such crimes have created no concern anywhere. Patriot statemen seemed to think the tree of liberty grew all the more luxuriantly for being watered by the blood of the helpless. The few who complained have been jeered by the taunt that they were trying to make political capital. A great soldier who called professional murderers "bandits" has been denounced in this Chamber as unfit to live. But, when the other day, five rioters had forced themselves in defiance of law into seats belonging to members of the Legislature of Louisiana and two soldiers at the request of the governor escorted them out without shedding a drop of blood, without making or even smoothing a wrinkle in their garments in doing so, a part of this Senate sprang to their feet as if they felt the Capitol begin to rock on its foundation. The Senator from Missouri thought he heard freedom shriek; the Senator from Delaware [Mr. BAYARD] imagined he heard the last groan of the expiring Constitution; the disturbed and overwrought fancy of the Senator from Ohio [Mr. THURMAN] caught the despairing wail of Louisiana herself, dying because her laws were enforced. The city of Boston a few years since saw her most renowned citizen brutally beaten in the Senate Chamber and her leading journal was moved to say only that the event was "unfortunate." But when Boston saw De Trobriand, at the request of the governor unloose the clutch of five malefactors who held Louisiana by the throat, she fainted from excess of sensibility and was only restored to consciousness when Wendell Phillips threw cold water in her face. Later still, the city of New York looked on unruffled while a political procession filed through her streets flaunting in God's sunlight a banner inscribed with "Kansas and Sumner—let them bleed." Yet when New York saw a few soldiers restore *peace* and *law* to the capital of Louisiana she made a respectable attempt at hysterics. Her great jurist, who has learnedly discussed the history of the Constitution, was scared into utter forgetfulness of its text. Her great attorney, who keeps on hand the largest and most varied assortment of legal opinions to be found anywhere, seized the occasion to put on the market some of his goods more faded and shop-worn than even the retail dealers in calico ever care to offer; and he whom, but a few days since, the Legislature of New York introduced to the coun-

try as her "most eminent poet," he who sang so sweetly of "Thanatopsis" and "A Forest Hymn," gave alarming symptoms that it was time for him once more to retire to the "Solitudes" and "reassure his feeble virtue."

Soldiers who were denounced as "Lincoln's hirelings," even when bleeding in the toils of civil war, must expect very bitter rebuke if they presume to disperse a mob.

Mr. President, under Durell's order no violence was done to any one. It surely sacrificed no life. It practically saved many lives. There is too much reason to believe that but for the presence of these soldiers Warmoth's volunteers, backed by his police, would have flooded the State-house. Then a collision between those having right to seats under the certificates of the legal board, and those claiming right under the certificates of the condemned board, is too probable. In that event the sacrifice of human life was sure to be the result.

Still Durell left the domain of the judge and entered that of the politician. For that act he has been driven from the bench, and his name is made a theme of reproach throughout two hemispheres. History will some time take note of the difference between the treatment accorded to Judge Durell and that accorded to the late Chief Justice Taney. In Kellogg against Warmoth and others a district judge, having jurisdiction of the case, issued an order said to be void. He did it for political and party reasons. All that may be admitted. But it impaired no individual right. It tended to preserve right. It did not insult Louisiana; it saved Louisiana from insult. It did not defy her authority; it preserved her authority.

But the case of Dred Scott against Sandford was not heard by a district court. It was tried in the court of last resort. That court avowed its utter want of jurisdiction. The issue was entirely feigned and purely political. The question decided was much disputed between political parties, but not at all disputed by the parties to the record. Dred Scott was made to claim his freedom. But he did not want his freedom. His former owner had tried in vain to drive him into freedom and into Illinois. Sandford was made to resist that claim. But he did not own Dred Scott. He, if a slave at all, belonged to the wife of a Massachusetts member of Congress. She for a long time was ignorant of the litigation; and when by accident she learned of it, she at once took steps to manumit the man. The facts in the case were agreed to by counsel and not proved by witnesses, and could not be proved by witnesses. Sitting upon the trial of that mock cause, the Chief Justice dared to say that no State could make of a man a citizen, privileged to sue in the courts of the United States, though the man was born upon her soil and born free, if he had any African blood in his veins; and he said all that in the teeth of many earlier decisions holding that a soulless corporation, a mere artificial person, created by the laws of the same State to make shoes or mop-handles, was such a citizen and privileged to sue in the Federal courts. And then, having declared that neither Dred Scott nor any of his race had any right to come into the Federal courts for judgment of any kind, the Chief Justice kept him there, made him the representative of his race, while he went on to pronounce a judgment as much more perverse and atrocious than Durell's order, as that order was more atrocious than Popham's judgment in the case of Monopolies. With nobody to speak for the great interests he undertook to doom, but such counsel as chose to appear for poor Dred Scott, he not only pronounced a judgment which consigned him to bondage, but one which annulled all the laws which Congress had enacted in the course of sixty years prohibiting slavery in the different Territories of the Union, and which refastened the chains upon all who by migration to such Territories had been emancipated.

It is doubtful if a judgment so sweeping or so malignant in its effects was ever before given, not excepting the judgment which Charles I extorted in favor of ship-money, or that challenged by James II in favor of the dispensing power. Taney survived that terrible decree. One great political party applauded it; another party regarded it only as a foul blot upon the escutcheon of a great jurist. In spite of it the Chief Justice went down to his grave still honored; and his country, while it reversed his shameful decree, has but lately ordered his statue to be placed with that of other chiefs in the hall of that court wherein he consigned a man, and thought he consigned an empire, to slavery.

Mr. Warmoth was defeated but not conquered. He rallied for one more effort. Louisiana, re-enforced by two soldiers, had maintained the supremacy of her laws. Louisiana law declared that those senators and representatives whose names are placed on the rolls by the clerk and secretary, respectively, in accordance with the certificate of the board of returns, "and none other," shall be competent to organize the house of representatives and senate. Precisely those senators and members, "and none others," had been permitted to organize the senate and house of representatives. But having failed to force his volunteers into the capitol, Warmoth made one last effort to jerk the capitol from under the Legislature. The Mechanics' Institute, so called, in the city of New Orleans, had been occupied as the capitol of the State. There her Legislature has assembled year after year. There the governor and other executive and administrative officers of the State had their offices. There the new Legislature convened pursuant to Governor Warmoth's proclamation on the 9th of December, 1872. But on the 11th of the same December the irrepressible governor issued his proclamation, naming the city hall as the capitol. There he betook himself, and there he assembled all his volunteers who had been excluded from the Legislature by the board of returns, and some who had not been so excluded. And as he had before in defiance of law attempted to make a board of returns and secretary of state, judges, sheriffs, and attorney-general, he now attempted to *make* a Legislature. On the 10th of January, nearly a month after the governor opened his side legislature, six senators deliberately withdrew from the senate sitting in Mechanics' Institute and repaired to the city hall. Nothing could more forcibly demonstrate the utter and wanton disregard of law which characterized the whole Warmoth party than that act of the seceding senators.

Louisiana has been paraded before the country and exhibited at every democratic fair as the much-suffering, long-forbearing victim of oppression because certain men were kept out of her Legislature, every one of whom her laws prohibited from entering the door. Yet when six senators, whose rights to seats were unquestioned, voluntarily withdrew therefrom, according to democratic diagnosis Louisiana was not hurt but healed thereby. Mere common sense would be apt to conclude that a State would suffer as much, when one she had commissioned as senator, withdrew from her service, as when one she had refused to commission, was excluded from that service. According to democratic dialectics Louisiana rejoices when her laws are defied and agonizes only when they are obeyed.

Yet those senators not only left the senate after they had acted with it for a month, but they assembled with a body which for a month they had denied to be a senate. A senator, even a Louisian senator, though a democrat, should be able to discover the senate-house in less than a month. But Senator Todd and his seceding colleagues seem to have believed the senate of Louisiana was an itinerant body and traveled with them; that where they went the senate went, and where they rested the senate rested. Those gentlemen left the senate and published to the world their reasons for going. Only one of those reasons demands my notice, and that only because it suggests the real difficulty in the Louisiana case. They make no question as to who composed the board of returns, but they pithily say "the question who constitutes the legal returning board is subordinate to the question what are the returns. The returning officers may count in or count out members, but the returns will show for themselves."

The very gist of the Louisiana case could not be more succinctly stated. A board of returns may count in men who are not elected and may count out men who are elected. Nowhere is that great fact better understood than in Louisiana. What they refuse to understand there is that the law of Louisiana declares the count of the board of returns to be *prima facie* correct, and that those, and only those "counted in" are allowed to take part in the organization of the Legislature. That a house and senate organized by those "counted in," to the exclusion of those "counted out," is the only authority to correct the count of the board of returns. The board of returns may certify that one is elected to the house when the returns in their possession show another to have been elected. But the law of Louisiana is explicit, and says even in that case the certificate is *prima facie* evidence of right to a seat, and the remedy for that foul wrong is for the house, when organized, to lay before the world the true returns, seat the true member, and consign the faithless board to infamy. If, as is possible, at least in Louisiana, the board returns a majority as infamous as themselves, that majority may confirm and not correct the outrage. The only redress for such a villainy is to appeal to the people at the next election. But if, as is possible, the people are as corrupt as the members of the board and the members of the house, then the State is hopelessly imbedded in corruption, and her people at least are unfitted for self-government.

"The returns will show for themselves," it is said. Only upon one condition will they show for themselves. They must be seen before they will show for themselves. The returns of the Louisiana election have not been seen, only in part; and no one yet surely knows how large or how small a portion of the returns have been seen. But even when seen the returns will only speak for themselves. They are not sure to speak for the parishes. Unhappily a parish supervisor can lie as well as a board of returns. Very strong proof is required to rebut the evidence that some of those supervisors did lie in 1872. And the returns when truthful are not conclusive of the vote of the precincts. The returns when true only show the state of the boxes when opened by the supervisor. The boxes may have been falsified by the commissioners before the supervisor saw them. Many of the boxes in 1872 were so falsified. Nor is the box when not stuffed conclusive of the election; ballots from illegal voters may be, and in Louisiana were, received into the boxes; ballots from legal voters may be, and in Louisiana were, excluded from the boxes.

Undoubtedly it is the duty of the house when a seat is contested to disregard the certificate of the board if it be contradicted by the returns. So it is the duty of the house also to disregard the returns, if it be shown by competent proof that they do not present the true state of the boxes when the voting closed. Even the boxes may be impeached by proof that illegal votes were deposited in them or legal votes excluded from them. The house of representatives, when organized and called upon to adjudicate between rival claimants to seats, has but one question to solve—what was the actual wish of the constituency? In the solution of that question the certificate of the returning officer, the return of the supervisor, ballots received by

the commissioners of election, are only so many different witnesses, and all those witnesses may be contradicted by the testimony of the electors, showing that some who voted were disqualified to vote, and others who were qualified were denied the right to do so. Whoever would impeach the judgment of the House must show not merely that it is not supported by one or the other of those witnesses, but that it does not conform to the will of the constituent body.

No man legally accredited was excluded from the capitol by the military guard employed by Marshal Packard in 1872. Every man so excluded on the 9th of December, 1872, and every man removed from the house on the 4th of January, 1874, was attempting a criminal usurpation. He was in open and flagrant revolt against the supreme authority of the State. He would have been no guiltier if he had attempted to force himself into a judicial office as Elmore did, or into an executive or municipal office as others did. It will not do to say they were in fact elected, for two reasons: First, because no one knows the fact to be so; and, second, because if the fact were known to be so, yet lacking the certificate of the returning officers, they could not be permitted to seats but by the vote of the house or senate after its organization.

In 1855 the vote for governor in Wisconsin was very close. The State canvassers were democrats. They gave their certificate to the democratic candidate. That certificate was *prima facie* evidence of his right to the office. But it was well known that in order to arrive at that result the State canvassers had added to the returns made by the different counties a few hundred votes said to have been given at isolated and unauthorized precincts not known to the county officers. They purported to come from localities where no poll could be legally held, where no vote was given, where no voter lived. They were certified by persons who could not be found. It was a patent, audacious fraud. But no man in Wisconsin thought of resisting by force the candidate who received the certificate. He was inaugurated with imposing ceremonies, both civil and military. But just as soon as the ceremony was concluded the true claimant filed an information in the supreme court. That information averred the true result and the unlawful intrusion. In about sixty days the court, after a full disclosure of the frauds, gave judgment for the relator. The intruder walked out and the lawful governor walked into the executive chamber.

But in Louisiana, upon the mere naked, unsupported assumption that men ought to have had certificates who did not have them, it is clamorously insisted they ought to have acted precisely as if they had them.

Those men attempted to seize by violence upon the high prerogatives of a Legislature. They were defeated.

And right here in the Senate Chamber, as if we were as deaf to the voice of law as Louisiana seems to be, while not one word of criticism has been bestowed upon those who attempted that daring crime, the utmost capabilities of our language have been exhausted to supply epithets sufficiently opprobrious to hurl at those who prevented it. It really seems as if in Louisiana, crime brought glory to a democrat, while to prevent crime makes a republican infamous.

Durell, wearing the mantle of a Federal judge, stepped in between the contending factions of Louisiana. He said, "Thus far, and no farther." He did not once put aside his mask to assure the crowd it was only Durell that roared and not the nation. The mob, conscious of guilt, mistook him for the nation, and straightway threats were changed to laments, bluster to entreaty, the hovering satellites of murder skulked to their holes, anarchy smoothed its wrinkled front, law and order reigned in New Orleans, peace staid her flight from the doomed city, and democracy, clothed in sackcloth, abandoned itself to despair.

Judge Durell has been crucified. That ought to be accepted as a sufficient atonement for his offense.

The board of returns has been loudly condemned for issuing certificates of election to parties without having the official returns. But they demanded those returns and were denied them. Why stone the board for discharging their duty upon the best evidence they had, and yet applaud the governor who refused them better evidence?

The board has been loudly condemned for counting votes which were never polled. They did that in two instances. Eleven hundred and fifty-nine votes were so counted from the parish of Bossier, and twelve hundred and six from Natchitoches. They were counted upon the affidavits of so many colored citizens, who swore they were qualified to vote and offered to vote, but were denied the right. It is not certain the board was authorized to count such votes. It is certain the Legislature would have been bound to count them if true.

There is every probability the affidavits were true. In the parish of Bossier 1,795 colored voters were registered, and the commissioners of elections admit that only 555 republicans of both colors were allowed to vote. So in Natchitoches, 1,875 colored voters registered and the commissioners admit the polling of only 555 republican votes of both colors. Why stone the board for counting votes which ought to have been received and yet applaud the commissioners of elections for refusing to receive them?

From the parish of Plaquemines similar affidavits were obtained which were not true.

One Theodore Jaques testified that he forged 1,313 such affidavits, and that he never saw the men whose names he signed to them. It is a monstrous story. Like Blanchard's story of his registry, its monstrosity alone gives it credibility. The man is evidently capable of just such conduct. Whether he did what he swore he did, or swore he did what he did not do, there would seem to be no limit to his capability for villainy. His avowed theory is "that all tricks are fair in politics." It is difficult to conceive what use they make of penitentiaries in Louisiana if such men keep outside of them. He told the Committee on Privileges and Elections he had concluded to quit politics and go to farming. Let us hope it is so. It is possible the generous soil of Louisiana will not shrink from such contact. That is probably the only form of matter that could endure it.

How many of those affidavits were counted does not appear. It is not certain any were counted. It is evident all were not. The supervisor of elections returned 1,034 republican votes from that parish. The board of returns returned only 2,163. If that board counted any of those affidavits, it is difficult to understand why they did not count the whole. If they counted none, it is not apparent how the return of the board was made to vary so much from the return of the super- the republican candidate for member of Congress. The republican candidate was returned elected by a majority of less than 100 votes. The jurisdiction of the House of Representatives over that single piece of rascality is complete. The House can adequately expose and if not adequately, can partially punish it.

A very few words will suffice to show how far the President is committed to the Government organized in pursuance of the finding of the board of returns. It will be remembered the President was not a member of that board. He had no communication with it. He exerted no control over it. He supplied none of the evidence upon which it acted. He withheld none of the evidence which it ought to have had. The board was purely a State tribunal. It spoke in the name of Louisiana, not in the name of the United States. Its decrees were Louisiana decrees, not United States decrees. Prior to the publication of their finding William P. Kellogg had commenced suit in the United States court to vindicate his title to the office of governor. The suit was expressly authorized by act of Congress. Process in the name of the United States, tested by the Chief Justice of the Supreme Court, issued in that suit on the 16th of November. The Attorney-General had been informed that Warmoth had disregarded the orders of the court. "That the enforcement laws had been defied by over one-half of Warmoth's election officers." That the United States circuit court had "restrained Warmoth and his canvassing board from canvassing votes pending a trial of rule for injunction." All this was known to the President. It was also known that Warmoth was running a private board of returns in defiance of Louisiana. That by the usurped authority of that board he had resolved to set up a government in accordance with the prophecies of the previous summer, and organize a Legislature which would elect McEnery for governor and himself for United States Senator.

Such was the situation when on the 3d of December the Attorney-General telegraphed to the marshal—

> You are to enforce the decrees and mandates of the United States courts, no matter by whom resisted, and General Emory will furnish you with all the necessary troops for the purpose.

That was all—that was the sole utterance prior to the organization of the so-called Kellogg government. That was all the President had to do with the organization of that government. That telegram was sent before Durell had issued his order to Marshal Packard, directing him to take possession of the capitol. The Senator from Kentucky [Mr. STEVENSON] this afternoon very candidly acknowledged that the President was bound to assume that the orders and decrees of the Federal courts would be correct and not incorrect. When he issued that order he had no intimation that any decree that was not valid had issued from the court or would issue from the court.

"You will enforce the decrees and mandates of the United States courts, no matter by whom resisted," said the Attorney-General.

That brief dispatch was eminently republican. I have no disposition to deny that. The republican party has for a long time rather made a point upon enforcing the decrees and mandates of the United States courts. It has expended a great deal of treasure, of blood, and of life to preserve in this great country that state of obedience to law which would enable the process of the United States courts to run everywhere throughout its limits.

Another Cabinet minister sent a similar dispatch into that very neighborhood a few years before. That minister did not content visor. It is said those affidavits were obtained to aid the election of himself with directing his subordinates to enforce the decrees of the court. Such decrees are express commands of the nation, attested by the highest judicial magistrate in the nation. Whoever resists such decrees is in open revolt against the authority of the nation. The Attorney-General merely told his subordinates not to surrender to such a revolt, but to enforce the national command in spite of the revolt. Secretary Dix was a little more explicit and more startling in his directions. He pointed his subordinates not to an express command of the nation, not to a sealed writ from a court, but he pointed them to a more insensible emblem of the national authority, a mere silken fabric, suspended from a wooden shaft, inscribed with only the simplest devices and with no commands, entitled to no sort of respect only from the fact that the nation had adopted it for its ensign and had ordered it to float from that shaft; and yet Dix told his subordinate if any man attempted to haul down that flag to "shoot him on the spot."

If Secretary Dix can be forgiven for ordering the man to be shot who insults the flag, surely the President ought to be forgiven for directing the decrees of the United States courts to be enforced.

The precise purpose of republican Presidents is to enforce the decrees of the courts. They are sworn to take care that the laws are faithfully executed. The laws cannot be executed unless the decrees of the courts are enforced. For that very purpose he has command of an Army and Navy. While President Grant continues to command the Army the decrees of the United States courts will be very apt to be enforced.

Democrats may reason differently of the duties of a President; they may suppose it to be the duty of a President to enforce the decrees of a caucus instead of the courts. The last democratic President we had, obedient to caucus, but regardless of law, kept the Army very still while a terrible rebellion organized for its bloody encounter. What countless millions a single regiment would have been worth in December, 1860, if thrown into Fort Sumter in command of General Sheridan, and under a President who had "confidence" in in him!

Sir, what use the next democratic President will make of the Army cannot perhaps be foretold with certainty. But it is already painfully evident that unless the democratic party shall be born again before such a President assumes command of the Army, the Ku-Klux of the Carolinas and the White Leagues of Louisiana will have nothing to fear from it, nor will the hunted peasantry of the South have anything to hope from it.

I repeat, sir, the only part the President enacted in the organization of the government of Louisiona in 1872 was to say that the decrees of the United States courts must be enforced. Before he was called upon to say or do anything further the Legislature of the State had assembled in pursuance of the proclamation of Governor Warmoth. In the senate appeared twenty-nine members; thirteen of them were senators holding over; eight were new senators whose elections were certified by both boards of returns; two were senators whose elections were certified by the legal board from districts in which the protended board returned no election; the remaining six were returned by the legal board from districts from which the other board returned other members.

In the house appeared and were sworn in sixty-nine members; thirty-three of them were returned by both boards; the rest were returned by the legal board only. The names of every one of those members in either house had been inscribed on the roll by the clerk or the secretary, the only officers who could rightfully put any name on the roll. Every name had been transmitted to the clerk or secretary of the senate by the secretary of state, and had been certified to him by the board of returns. Every one of them was therefore authorized by the very letter of the law to take part in the organization of their respective houses. Others having the same right to participate did not do so; not however because they could not, but because they would not. No representative ever appeared in any legislative body with more formal or legal credentials. There was but one power in Louisiana which could impeach the right of one of those members, and that was the house in which he took his seat. Whoever else denies to one of those members the character of representative, puts the law of Louisiana under his feet.

Against the authority of that Legislature so organized, in strict conformity to the laws of the State, Warmoth openly revolted.

On the very day it assembled, the house of representatives impeached him, and on the same day the two houses by joint resolution requested the President to furnish that protection guaranteed to every State when threatened by domestic violence. The President hesitated. On the 11th of December the Attorney-General replied to the request of the Legislature as follows:

> Whenever it becomes necessary in the judgment of the President the State will be protected against domestic violence.

The President was plied with entreaties from various parties to indicate which organization he would recognize. He was assured his decision would restore quiet.

On the 12th the Attorney-General telegraphed to the acting governor in these words:

> Let it be understood that you are recognized by the President as the lawful executive of Louisiana, and that the body assembled at Mechanics' Institute is the lawful Legislature of the State, and it is suggested that you make proclamation to that effect, and also that all necessary assistance will be given to you and the Legislature herein recognized to protect the State from disorder and violence.

A simple declaration of the Attorney-General in advance of the actual necessity for the employment of force, a simple proclamation making known what was the opinion already arrived at.

Still Warmoth refused to submit, and on the 13th General Emory, commanding the United States forces at New Orleans, telegraphed to the Adjutant-General of the Army as follows:

> There is imminent danger of immediate conflict between two armed bodies of men of some considerable numbers—one body of State militia representing Governor Warmoth, holding an arsenal; the other an armed body of police, representing Governor Pinchback. I have been appealed to to interfere. Shall I do so; and if I interfere, to which party shall the arsenal be delivered? The parties are face to face with arms in their hands. I beg an immediate answer. I sent an officer to try what can be done by persuasion to suspend the conflict until an answer can be received. There will be no resistance to the Federal forces.

That was from General Emory, and in reply to that dispatch, and on that very day, the Adjutant-General replied to General Emory:

> You may use all necessary force to preserve the peace, and will recognize the authority of Governor Pinchback.

There was the final dicision. The President might have decided differently; but he was compelled to decide. Appealed to for protection by those who claimed to represent a State, he could not escape the responsibility of giving judgment upon the validity of that claim. Whether he was active or passive, whether he spoke or kept silent, he concluded the right of the parties to the conflict. If he granted the protection asked for, he recognized the authority of the parties asking for it. If he denied that protection, he denied the right to ask for it. If he denied the right of one party, he of necessity affirmed the right of the other. To ignore the character of the body in Mechanics' Institute was to assert the representative character of that in city hall.

Such was the necessity which hedged the President in. The light in which he acted was very murky. Clouds and thick darkness denser than the fog which covers Newfoundland rested upon the case before him. Ingenious, unscrupulous men, hating light and courting darkness, had done their utmost to obscure the truth. Great pivotal questions arising upon the laws of the State which have since been decided by the supreme court were then in litigation. If under such circumstances he had erred, charity would have found some milder epithet than that of despot, knave, or blockhead by which to characterize him. But he did not err. He struck the truth of the case in the very white. He had no means of investigating the actual result of the voting at the different election precincts. He could rightfully inquire and determine only what the constituted tribunals of Louisiana said of that result.

The law was very plain that the Legislature of the State should determine the result of the election for governor and lieutenant-governor. But he found two different assemblies claiming to be the Legislature. The law was very plain that the secretary of state must furnish the list of senators and members elected. But he found two men claiming to be secretary of state. The law was very plain that only the board of returns could canvass the vote and inform the secretary of the result. But he found two tribunals claiming to be a board of returns. He decided that Lynch and his associates were the true board of returns; that Bovee was the true secretary of state; and he obediently followed their determinations. In both those conclusions he is supported by the highest judicial authority of the State.

All the authority there was in Louisiana declared the Legislature which made Kellogg governor and sent Pinchback to the Senate to be her Legislature. That declaration concludes this Senate or it does not. The determinations of State tribunals as to the result of a local election are or are not final. It has been ably maintained in this Chamber that under the power to guarantee republican forms of government to the several States Congress is charged with the duty of supervising all their elections, and to see that all the results attained are in accord with the will of their people. Others have urged that the power confided to this Senate to judge of the election of its members of necessity clothes it with the authority to inquire and determine the election of every member in that Legislature which sends a Senator here.

Mr. President, I do not now deny either of these propositions, nor do I affirm either of them; but upon this proposition I take my stand. If there be in the Senate or in Congress the power to review and reverse the determinations of a State as to the election of her officers, there is but one legitimate way in which to prosecute that review. We cannot correct the decision of a superior tribunal by the judgment of an inferior one. Still less can we correct the decision of a real tribunal by the declarations of a mock tribunal. We cannot impeach the canvass of a board of returns by the canvass of those who merely pretend to be a board of returns. Nor can we impeach the finding of the board of returns by the returns themselves unless we have true and full returns. Such returns the supervisors never made of the Louisiana election for 1872. The certificates of returning officers, of supervisors, and of commissioners may be contradicted by the testimony of the electors themselves. If the Senate has any duty in the premises it is not to inquire what this agent or that agent said about the election, but what the people themselves said at the election. If McEnery was elected governor in 1872 it is easy to show it, unless democrats have destroyed the records it was their duty to preserve.

The books of registration will show the name of every elector who was registered in 1872; the poll-lists will show the names of those who voted; they themselves can tell in case of dispute how they voted. Comparing the poll-lists with the registry you will have the names of those who did not vote. If any of those who did not vote tried to do so and were wrongfully denied the right, their votes must be counted as if they were cast. The act of May, 1870, expressly commands that. If Congress is the tribunal of last resort upon the election of a governor, or a sheriff, or a parish judge, Congress will undoubtedly see that the requirements of its own statutes are observed. No prudent democrat who is familiar with the circumstances surrounding the election of 1872 will court such an inquiry.

No such inquiry has yet been made. The Committee on Privileges and Elections were charged to inquire whether Ray or McMillen were elected to the Senate by the Louisiana Legislature of 1873. They appeared in January of that year; the term for which they claimed expired on the 4th of March following. Both of those claimants required a speedy determination, not a thorough investigation. Both protested against going back of the *prima facie* title. They

managed the contest; they marshaled the testimony, and when neither of them had more evidence to offer the inquiry closed.

It has been repeatedly asserted that the investigation of that committee proved McEnery's election. I undertake to say, sir, it stops very far short of showing any such thing. To my understanding it shows too clearly for doubt that Kellogg was elected. I do not forget the various and contradictory conclusions to which different members of that committee arrived. One member thought Kellogg was elected and the body sitting in Mechanics' Institute was the true Legislature. One thought McEnery was elected and the assembly at city hall was the Legislature. One thought the result of the election was so mixed that a special Legislature should be convened by act of Congress, *consisting of persons to be named in the act*, and that Legislature should determine who was elected. The rest of the committee concluded that the result was so mixed it never could be ascertained, and so advised that Congress should order a new election.

If I am ever found hereafter intolerant of any, even the wildest vagaries in human opinion, it will be a sufficient reproof to remind me that I voted in 1873 to order a new election in Louisiana. The report of the committee was made on the 20th of February. The session ended on the 4th of March.

The testimony occupied nearly a thousand pages. It was impossible to examine it. The committee was divided into four parties. I shut my eyes and went with the strongest party; perhaps not so much because it was the strongest party as because it was led by my colleague, [Mr. CARPENTER,] in whose fidelity as a republican and in whose accuracy as a lawyer I had then as I have still very great confidence. Besides, the eccentricities of Judge Durell and the villainies of Theodore Jaques had been brandished before my eyes until I had come to believe, the more my track diverged from theirs, the more likely I was to be right. Even in following the majority my greatest fear was that we might be unjust to McEnery.

The majority of the committee urged that democrats perpetrated fraud enough to vitiate their title under that election. But they did not point out the frauds. The chairman of the committee pronounced the election an "organized fraud," but he did not explain what that meant. Senator Hill thought the election in some parishes *unfair* and in others *fraudulent*, but upon the whole as fair as Louisiana is accustomed to see.

Senator Trumbull admitted that "fraud was practiced in some of the parishes and that irregularities existed in others," yet he concluded the election was not unfair in "more than two-thirds of the State," and he thought it ought to satisfy a reasonable Senate if it was fair in a third of the State.

All was vague, shadowy, and uncertain touching the wrongs committed at and prior to the election. But after the election the narrative assumed the utmost amplitude of detail. The mistakes of the board of returns, the antics of Durell, the forgeries of Jaques, the action of the President, were served up to us hot and smoking, were hashed and rehashed, and the whole castor of rhetoric was emptied into the mess for seasoning. So I lost my way; and I soon came to fear the majority of the committee had lost their way. My colleague knows that more than once I told him he had failed to convince me that McEnery was not elected, and he knows that when a year ago I commenced the examination of the testimony for myself, I expected to find the evidence of that election and was resolved in such case to declare it. But two candidates ran for governor. No one pretends there was a tie vote. It is morally certain one or the other had a majority of the votes cast on the 4th of November. Whoever had that majority was elected, unless colored votes were offered for the other candidate and illegally rejected, enough to overcome that majority. If such was the case, then the other candidate was elected.

If McEnery had 5,000 majority of the ballots cast for governor, but 5,001 votes were offered for Kellogg but rejected on account of color, then it is evident if the 5,001 votes had been received Kellogg would have been elected. It is also just as evident that in such case he was elected notwithstanding the rejection of those votes. The statute is peremptory. Kellogg's title to the office cannot be impaired by such rejection. And that is the language of your own law. If you want to go behind the decision of the Legislature of Louisiana, behind the certificate of the secretary of state, behind the certificate of the board of returns, behind the judgment of the supreme court of that State; if you want to go to the election precincts, go there and ascertain not only how many votes were given, but in obedience to your own statutes inquire also how many of those votes were legal and how many legal votes were rejected from those boxes. Until you have done that you must not undertake to control the decisions of Louisiana. If all voted who tried and were entitled to vote, you have only to count the actual votes to determine who was elected. If some were excluded from voting who were entitled to vote, you have only to add their number to the number of votes given to determine the result. In either case you have a result.

Either Kellogg or McEnery must have been elected in 1872. And it was not McEnery. I infer that from circumstances. First, I do not believe the real democracy of Louisiana wanted to triumph at that election. Victory could yield them no fruits. Victory meant only to make Greeley President, Warmoth Senator, and McEnery governor. The democracy of Louisiana had no use for either. Greeley they had hated from their earliest knowledge of him. Warmoth they had hated not so long, but with more singleness of heart. McEnery they had no use for. He is not of their kind. He talks well enough for their purposes, but when they wanted a governor for use last September they put McEnery to bed and brought Penn to the front. Penn they cherish. He is a young man of spirit and of mark. Take him out of Louisiana politics and he would be an ornament to his kind. Penn was all that victory could bestow upon the democratic party in 1872. But they could ill afford to swallow Greeley, Warmoth, and McEnery for the little flavor there was in Penn. It was taking altogether too heavy a dose of aloes for the small measure of rum.

I infer McEnery was not elected, because if he had been the fact would have been made certain. As I have shown, the whole machinery of the election was managed by democrats. If they had the votes to elect their candidate, they would have taken good care to preserve the evidence of them. Instead of manufacturing a board of returns with no will but his to count the votes, Warmoth would have submitted them to the count of the legal board and would have invited all New Orleans to see them counted.

Mr. President, I infer McEnery did not receive a majority of the votes cast; because if he had his friends would hardly have ventured upon all the villainy they practiced; they would have cherished and not debauched the boxes and returns which showed that election.

But, sir, even if he did receive a majority of the votes actually put into those boxes, I still insist he was not elected. The will of the people of Louisiana was not expressed through the ballot-boxes in 1872. It was excluded from them. I submit one single feature of that election to the Senate, and I challenge any candid Senator to deny that if Warmoth's supervisors truly reported the state of the ballot-boxes, it was only because the people were excluded from them.

In 1872 Louisiana was divided into fifty-six parishes. In twenty-seven of these parishes there is practically no dispute about the result. Those parishes are Ascension, Bienville, Caldwell, Cameron, Carroll, Claiborne, Calcasieu, Concordia, Feliciana East, Feliciana West, Franklin, Jefferson, La Fayette, Livingston, Ouachita, Plaquemines, Red River, Richland, Sabine, Saint Charles, Saint John Baptist, Saint Landry, Tensas, Vermillion, Vernon, Washington, and Winn.

There is evidence of bad conduct at some of the polls, even in these parishes; and the vote from one large republican precinct in Jefferson was rejected by Warmoth's returning officers because his commissioners had stuffed the box. But upon the whole the two parties differ but little in their count of the votes for governor in those twenty-seven parishes, and in every instance they returned the same members to the house of representatives.

Accepting, then, the work of the Warmoth party in those parishes as correct, we have this result.

The Warmoth board state the vote for governor as follows:

For Kellogg	22,960
For McEnery	18,078
Majority	4,882

Of the registered vote in the same parishes there were—

Black	34,391
White	22,816
	11,575

So a black majority of 11,575 is admitted to have given a republican majority of 4,882, exclusive of that majority thrown away in Jefferson.

This is not the result of a fair election, but the result of an election which bore some resemblance to a fair one.

No candid man will deny that if suffrage had been as free to black as to white in those parishes, as large a percentage of blacks as of whites would have voted. Still it is conceded that where there was a colored majority of 11,575 registered votes, there was a republican majority of 4,882 votes cast besides the Jefferson precinct.

Now, sir, look at the report from twenty-eight other parishes, the balance of the State except New Orleans.

In those parishes the white voters registered numbered 31,762; the colored 42,432.

The colored majority on the registry-books was 10,670. A cloud of witnesses have testified that every species of fraud and every kind of force were employed in these parishes to stifle the voice of the republican party. The board of returns deny the election of one single member from all the representative districts in those parishes whose election is asserted by Warmoth supervisors. Every member is disputed from twenty-eight parishes. Not one is disputed from twenty-seven parishes.

Now, I wish the country would heed what I am about to say:

Out of those 31,762 white voters registered, the Warmoth party claimed to have polled 25,391 democratic votes. Out of those 42,432 colored voters they concede a republican vote of but 19,272! In a district which registered a colored majority of more than 10,000 voters, there is claimed a democratic majority of more than 6,000 votes! Democrats controlled the registration. The whites were largely overregistered. The blacks were largely underregistered. Democrats controlled the election, and with a thrift unprecedented in politics they gathered five-sixths as many democratic votes as they had white voters upon their swollen poll-lists, at the same time they made that pinched and parsimonious registration of colored voters seem like a profligate waste of space on the registry-books by return-

ing less than half as many republican votes as they had colored voters.

In these fifty-five parishes the colored voters registered were 35,000 more than the republican votes therein. Can that be explained upon the hypothesis of an overregistry of colored votes? When legal voters of the unfashionable color followed the supervisor by the day to secure registration, did 35,000 such men get on to the books who did not belong there? Can it be explained upon the hypothesis that men who registered did not care to vote? But did men who were not anxious to vote travel miles and search for days to get their names on the poll-books? Does any man doubt, dare any man say he doubts, that twenty or even thirty thousand of those new-born and perhaps over-ardent citizens wished to vote, tried to vote, and did vote, unless they were denied the right? Were they denied the right? These democrats denied them, and no man's right to office can be impaired by such denial. Such is the law. Did they vote? These democrats stole their ballots from the boxes, and no man's right to office can be impaired by such a larceny. Such is the law.

That is the style of election championed by the democratic party in Louisiana and by their allies in this Chamber. Warmoth presided over that election. The voice of thirty-five thousand colored citizens was stifled in fifty-five parishes. Seven thousand more were hushed in New Orleans. Warmoth was the great magician whose pliant fingers manipulated the machine. The democratic party supplied the rapt and admiring auditory which filled every circle in the theater from the pit to the upper gallery. Such was the election by whose atrocious results Warmoth attempted to chain Louisiana. To force such infamous conclusions upon the people of the State Warmoth played the double *rôle* of anarch and monarch from November 13 to December 9; to consummate that smoking villainy he attempted, partly by force and partly by fraud, to supplant a legal board of returns by a sham one; to tamper with written laws, and, in the absence of a Legislature, to change them; to drag a judge from the bench; to eject a secretary of state from his office; to commission a crowd of his henchmen to fill the public offices; to pack the supreme court of his state; to defy its authority; to divide and destroy the Legislature; and even to disregard the mandates of the Federal courts. For enterprises infinitely less criminal Cataline was sent howling out of Rome. In these enterprises Warmoth was foiled. A blundering judge, more solicitous for the peace of the State than for the dignity of his office, the first magistrate of the kind probably which Louisiana ever saw, caused two soldiers to be stationed at the door of the capitol, and the conspiracy was dissolved into vapor. The cackling of geese at an unseemly hour, it is said, once saved Rome from her conspiring enemies. The terrified but not ungrateful city slew the conspirators and deified the geese. When a similar cackling saved New Orleans, the liberty-loving but ungrateful city wrung the neck of the goose and is doing her best to deify the disappointed conspirators.

Mr. President, I do not forget how largely my conclusions as to the result of the Louisiana election in 1872 are based upon the assumption that white citizens were generally democrats and colored ones were republicans. And this brings me to the pithy and altogether pertinent question asked by the Senator from Missouri the other day.

In tones which were restrained from derision only by that courtesy which never forsakes him, he said:

> But I ask you, sir, what kind of logic, what statesmanship is it we witness so frequently on this floor, which takes the statistics of population of a State in hand and then proceeds to reason thus: So many colored people, so many white; therefore so many colored votes, so many white votes, and therefore so many republican votes and so many democratic votes; and if an election does not show this exact proportion, it must be necessarily the result of fraud and intimidation.

I will tell the Senator what I think of that logic and of that statesmanship. The logic is unique. I admit it seems inconsequential, almost grotesque. But it is irrefragable. It cannot be confuted.

And that statesmanship! At the first glance it seems extremely whimsical, not to say absurd; but when we come to consider, it is frightfully practical. A man who goes about swathed in disinfectants when no contagion is near we cannot help but regard as a hypochondriac. But he who goes along the thronged thoroughfares without disinfectants when the atmosphere is surcharged with plagues is regarded as little less than a lunatic The statesman who argues that the republican vote should be nearly proportioned to the colored voters in Louisiana is simply one who does not close his eyes upon the most obvious, the pivotal fact in the politics of that State. The colored people of that State are republicans. The white people are as a rule democrats. If there were no reasons why it should be so, the evidence is conclusive that it is so.

A large majority of the voters are colored. And yet of the whole number, Mr. McMillen, the witness who claimed to be Senator under the election of the Warmoth legislature, testified he did not know one who voted the democratic ticket. Mr. Packard, the chairman of the republican State committee, testified he knew of but one, and he was one who tried to vote the republican ticket and could not do so for want of registration.

Democrats helped him to registration, and before the ink got dry on his certificate he voted the democratic ticket.

When two witnesses so well informed cannot recall in the aggregate but one colored man who voted the democratic ticket out of more than half the voting population, it is idle to pretend that many did vote it.

But there are obvious reasons why no colored man can vote the democratic ticket. The whole effort of the democratic party has been, and still is, to organize parties upon the "color line." It boasts itself the "white man's party." It champions a "white man's government." The domination of white over black is the very essence of the democratic party. Upon any policy but that no democratic party can be mustered. Do you think it can? If it can be, try it. Democratic supremacy means the subjection of the colored race and it means nothing else.

Upon every conceivable theory of political economy; upon every possible scheme of finance, whether affecting currency, taxation, or expenditures; upon every individual proposition for internal improvement or commercial progress; upon every plan suggested for the amelioration of all citizens of both races; democrats are divided, and hopelessly divided. On the contrary, so often as a policy is proposed or an idea suggested, which promises advantage to the white race from which the blacks are excluded, the democratic party with one mind embrace and with one voice applaud it.

Sir, it is not strange the colored citizen will not vote the democratic ticket. To do so, is to vote for his own exclusion from the civil state. The special wonder of after times will be that any white man could be found at this time to vote that ticket either.

History still points with loathing to those savage epochs when the Greek swelled with hatred of the helot; the Jew with hatred of the Gentile; the Roman with hatred of the barbarian; the Saxon with hatred of the Celt. But the instinct of self-preservation lay at the base of all those hatreds and partly excused them. The helot was a living menace to the Greek; so was the Jew to the Gentile, and the barbarian to the Roman, and the Celt to the Saxon; returned the hate they experienced, and to the extent of their opportunities repaid all the remorseless oppression they suffered.

But with what unutterable loathing will the future historian look back to these degenerate days, eighteen hundred years after Christ died, as much for the black man as for the white; look back to see four millions standing in the midst of forty millions, all alike citizens, distinguished from each other only in the accident of complexion; the few just snatched from the realm of chattels, very poor, very ignorant, very helpless, but with capabilities equal to the best. That is exemplified in a few individuals who, here and there, despite the most malignant fortune, have contrived to acquire the learning which enables them even in the parliament of the nation to maintain their cause successfully against the most practiced debaters there. The multitude very rich, very powerful; arrogant from centuries of culture and control. The few, threatening nobody, asking no special privileges, no nursing, no extraordinary aids; supplicating only to be let alone, to have all disabilities removed, to be allowed to stand up if they can get up, to go forward if they can get onward, to be allowed the free use of such faculties as generations of serfdom have left to them; to be admitted to the pale of an equal citizenship. And out of that multitude, so rich in capabilities, so abundant in resources, a great party organization having but one common boast, that they are themselves white; having but one common tie, that they hate the black; cherishing but one common aspiration, that they can still dominate him—that they can stand on his skirts now, and can get on his neck again presently—and animated with this single groveling hope they swagger of their Caucasian lineage; they preach the gospel of hate through Caucasian organs; they form, they arm Caucasian leagues, and throughout large districts have domesticated, not savage beasts, but the most savage crimes to drive the weakest and most helpless of our kind from all assertion of their citizenship.

There is no doubt colored citizens would vote with democrats only that democrats will not let them vote at all. And democrats cannot let them vote because they would then cease to be democrats. To be a democrat no longer means to be in favor of the people's supremacy. We have now a new dictionary given to us; to be a democrat now is simply to deny that colored citizens are people and to affirm that calling a professional murderer a bandit is a capital offense. It seems to me the Senator from Missouri will be wise to concede on the whole that the colored people of Louisiana are republicans. If they are not, why not let them vote? If they will vote the democratic ticket they will vote just as sensibly as that Senator does. If they will vote the republican ticket, they will in my judgment vote much more sensibly than he does.

Mr. President, the practical question born to us out of this election is, shall Mr. Pinchback be admitted to the Senate?

Now we know that Louisiana has but one Senator here. We know she is entitled to two. We know her Legislature must choose her Senators. We know her Legislature is the body which makes her laws, and we know the body which sent Pinchback here is the body which for two years made laws for Louisiana. How, then, shall we avoid seating Mr. Pinchback? Why, we can say, if we are as reckless about what we say as a Louisiana board of election commissioners, that we do not know whether the men who composed that Legislature really belonged there.

But if we say that we shall not tell the truth. We do know those men were enrolled as members by the clerk of the house, and the secretary, who were the only men in Louisiana authorized to make up such roll; that the names of those members were transmitted to those officers

by George E. Bovee, the secretary of state, and certified to him by John Lynch and his associates, acting as a board of returns. Still, if we choose, we can say that Bovee was not secretary of state and that Lynch and his associates were not the board of returns. In saying that we shall simply trample upon the authority of repeated decisions of the supreme court of that State. But we can say that the Legislature, the secretary of state, and the board of returns are contradicted by the certificates of the parish supervisors. There are three difficulties in the way of saying that.

First. We have not seen all those certificates, nor has any one else.

Second. They are already impeached.

Third. They are incompetent to contradict the board of returns. If we wish to contradict the board of returns, it can only be done by showing what the electors say and not what the parish supervisors say.

Well, sir, we can say, if we dare, that the electors of Louisiana did not choose the members of that Legislature. But we have two reports from the electors. That which comes to us through the Lynch board says these members were elected. It will embarrass us to rely upon that report. It will embarrass us still more to rely upon the report of the Warmoth board. That report does indeed declare that some of those members were not elected, but it declares that out of 99,000 colored voters registered, to say nothing of white republicans, only 59,000 republican votes are accounted for by that board.

More than 40,000 republican votes are not returned. A cloud of witnesses we know have testified that many of these votes were excluded from the boxes; many were abstracted from the boxes. We have made no attempt to ascertain how many were excluded, how many were stolen. Other witnesses we know have testified that many republican votes received and not stolen have been practically annulled by democratic ballots, not put into the boxes by democratic voters but stuffed into them by democratic commissioners. We have made no attempt to ascertain how many. Our way is full of difficulties. But let us not despair. When a thing must be done, there must be a way for doing it.

Driven to extremities, we can at last say: "True, a few thousand democratic voters were manufactured in Louisiana in 1872, but they were manufactured by Warmoth and his subordinates; that is no concern of ours. True, some thirty or forty thousand republicans were strangled at the same time, but they were strangled by Warmoth and his subordinates; that is no concern of ours. True, every tribunal in Louisiana has denounced the outrage; but we cannot listen to Louisiana. We cannot redress the wrong, and we will not let Louisiana redress it." Yes, Mr. President, we can say all that if we try very hard; and saying that we can send Pinchback home to Louisiana, limit the representation of the State in this Chamber to one Senator, and then we can hold up our heads with Warmoth and Blanchard and Thorp, the supervisor of Iberville, and their allies here and everywhere. Then we will be complimented by the reform press as friends of freedom and purity in elections; and then if we cannot get mustered into the ranks of the southern white-leaguers it will not be because our consciences are feared, but because our courage is distrusted.

Mr. HAMILTON, of Maryland. I offer an amendment to the resolution. After the word "be" I move to insert the word "not," so as to read:

That P. B. S. Pinchback be not admitted as a Senator from the State of Louisiana for the term of six years beginning on the 4th of March, 1873.

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

Mr. DAVIS, (at ten o'clock and twenty-five minutes p. m.) I move that the Senate adjourn.

The PRESIDENT *pro tempore* put the question, and declared that the noes appeared to prevail.

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

The yeas and nays were ordered.

Mr. ALCORN. The Senator from Alabama [Mr. GOLDTHWAITE] is paired with the Senator from Illinois, [Mr. LOGAN.] If the Senator from Illinois were here he would vote "nay," and the Senator from Alabama would vote "yea."

The question being taken by yeas and nays, resulted—yeas 23, nays 34; as follows:

YEAS—Messrs. Alcorn, Bayard, Bogy, Cooper, Davis, Dennis, Eaton, Fenton, Gordon, Hager, Hamilton of Maryland, Hamilton of Texas, Johnston, Kelly, McCreery, Merrimon, Norwood, Ransom, Saulsbury, Stevenson, Stockton, Thurman, and Tipton—23.

NAYS—Messrs. Anthony, Boreman, Boutwell, Chandler, Clayton, Conkling, Cragin, Dorsey, Edmunds, Ferry of Michigan, Flanagan, Frelinghuysen, Gilbert, Hamlin, Harvey, Howe, Jones, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Oglesby, Pease, Pratt, Ramsey, Sargent, Scott, Sherman, Sprague, Stewart, Wadleigh, West, Windom, and Wright—34.

ABSENT—Messrs. Allison, Brownlow, Cameron, Carpenter, Conover, Ferry of Connecticut, Goldthwaite, Hitchcock, Ingalls, Lewis, Logan, Patterson, Robertson, Schurz, Spencer, and Washburn—16.

So the Senate refused to adjourn.

Mr. ALCORN. Mr. President, as a member of the Committee on Privileges and Elections I regard it but proper and due to myself that I should say something upon the subject now under discussion. I was a member of the majority of that committee that reported two years since on the facts of this case. A member of the committee still, and not concurring with the majority that reported the resolution under consideration, and not having signed the minority report, I must, if I would have my position understood, now speak. To not speak I would be held to the report of the majority, which is not signed by the members concurring.

Mr. President, if I stood here as the attorney of Mr. Pinchback I should demur to the pleadings in this case. I should demur to the declaration for the reason that the case is not presented so as fairly to represent the interest of the petitioner. If the pleading was upon a bill in chancery, I would demur because of multifariousness. We are trying here two issues—the question of the validity of the Kellogg government and the question of Pinchback's credentials. Pinchback is required not only to carry his own sins, if he has any, but he has also to take upon his shoulders the Kellogg government. There may be those here who will not vote to recognize by this body the Kellogg government, holding that that government has no authority in law; that it does not exist by the authority of the people of the State of Louisiana expressed under the forms of the constitution of that State; but who, nevertheless, if the Senate were to pass upon that question affirmatively, would then hold the case adjudicated, and would feel authorized to look only to the credentials of Pinchback emanating from a governor having recognition as such in this body. There may be those who may hold objections to Mr. Pinchback's election upon personal grounds, upon grounds that are entirely legitimate for the Senate to consider, each Senator for himself, and yet who hold that the Kellogg government should be recognized by the Senate of the United States. If there be such Senators here, they will be voting upon a false issue and passing judgment upon an improper issue as the case now stands.

I am one of those who hold to the report of the majority of the Committee on Privileges and Elections made in February, 1873, and yet, if the Senate should decide to overrule the report of that committee, which it has not yet done; if the Senate should decide that that committee was in error, and that it was the judgment of the Senate that the Kellogg government should be recognized, I should take the case as adjudicated for me, should recognize the judgment of the court, and would then, as now informed, vote cheerfully to admit Mr. Pinchback to a seat upon his *prima facie* case.

If the Senate recognize the government of Kellogg as the government of Louisiana, there can then be no objection to having Mr. Pinchback sworn into office upon the certificate which is on the Secretary's table; but as we have not passed upon the Kellogg government, as that question has not been up to this time decided adversely to the report of the committee, and the report of the committee is *prima facie* the voice of the Senate, I hold myself to that report, believing it to be based upon the facts and the law of the case until it is reversed. I shall be very unfortunate indeed if my vote should go to exclude Mr. Pinchback from his seat, and subsequently the Senate should declare that the Kellogg government was a legitimate government and entitled to recognition in this body.

Upon this statement, I say, I would demur to the pleadings if I was here the champion of Mr. Pinchback, and insist that the issue should be properly joined and that a vote should be had and the merits of this controversy passed upon by the Senate in the order in which they come, namely: first, upon the question of the legality of the Kellogg government, and next upon the question of the credentials presented by the petitioner.

If the doctrine that we hear to-night promulgated is true, if the new lights that we have on the question of the Kellogg government and the Louisiana controversy are true, we have been guilty of a most gross injustice not only to Mr. Pinchback, who has been kept out of his seat for two long years, but we have been guilty of an act of most gross injustice to Mr. Ray, who was elected two years ago and more to the Senate from the State of Louisiana, under the same letter of authority, who came here and appealed to this body for admission as a Senator from that State, and continued so to appeal until his term of service had expired. Mr. Ray returned home with the certificate of his election by the Kellogg legislature in his pocket. The term of his office had expired; and now to admit Mr. Pinchback upon the same letter of authority and in the face of the objections that were urged against Ray's admission is to confess that we have wronged Mr. Ray, and we are not able to plead any new lights on this question, any newly discovered testimony. The same objections exist to the admission of Pinchback as were urged against Ray, no more and no less. How shall we stand justified in pursuing a course so vacillating as this upon a subject of such grave importance?

Why, Mr. President, was this case referred to the Committee on Privileges and Elections? For very good reasons. On the 15th day of January, 1873, John McEnery certified under what purports to be the great seal of the State of Louisiana, he signing as governor of the State, "That on the 14th of January, 1873, William L. McMillen was by the Legislature of said State duly elected a Senator of the United States" for the term beginning in March, 1873, and expiring in March, 1879. It will be remembered that he brought with him the certificate of that person who purported to be the governor of the State of Louisiana, John McEnery. At the same time that he came with this certificate bearing the great seal of the State of Louisiana, certified in due form of law, there came also Mr. Pinchback with a certificate of election from Governor Kellogg, that certificate bearing also the great seal of the State of Louisiana, and certified to in due form of law.

Here were two persons elected to the same office, each bearing a

certificate of election, the certificate in each case being in proper form and duly attested by the govenor of the State, or a person who claimed to be the govenor of the State, each bearing the great seal of the State. When these two certificates were presented here, the question was submitted to the Senate as to which of the two claimants was entitled to his seat. The Senate of the United States, being under the Constitution the sole judge of the elections and returns of its members, referred the credentials of these two claimants to the Committee on Privileges and Elections, and it was the duty of the committee to examine into the elections and returns of the claimants. To do this it was necessary that the committee should go back to the election by the people in 1872, and examine the returns and pass upon the question of the validity of the two governments. In doing that the committee were engaged for a month or six weeks of time. They took down testimony which covers more than a thousand pages of printed matter. Patiently that committee investigated the subject. With deliberation they considered their report, analyzed the evidence, and the majority of that committee declared that there was in truth no evidence sufficient for them to certify that either of these parties was entitled to be recognized, either the McEnery or the Kellogg government, and that neither Pinchback nor McMillen was entitled to be recognized.

Mr. MORTON. Will the Senator allow me to make a correction?

Mr. ALCORN. I am going to make the correction that I presume the Senator is now about to call my attention to; that is, that the case of Pinchback was not involved in that investigation.

Mr. MORTON. The Senator will allow me to say that the credentials neither of Pinchback nor McMillen were ever referred to that committee. They were not parties to the examination in any shape or form. The only proposition referred to the committee was whether there was a legal government in Louisiana, and the committee were instructed to inquire into that before any credentials came here at all.

Mr. ALCORN. Well, Mr. President, if my memory serves me aright, both Pinchback's and McMillen's credentials were referred to that committee, and the credentials in both cases were before us while we were investigating the Louisiana question. But that is not material to the point I make. What I state is upon my recollection. I am very sure, however, of the truth of what I say, and if the honorable Senator will examine the record he will find that all the credentials to which I have referred were before the committee. The honorable Senator from Vermont, [Mr. EDMUNDS,] who is ever ready with the "law of the case," refers me to the Journal of the Senate of 1872-'73, page 191. There I find the following entry:

Mr. WEST presented the credentials of W. L. McMillen, elected a Senator by the Legislature of Louisiana to fill the vacancy occasioned by the resignation of William Pitt Kellogg; which were referred to the Committee on Privileges and Elections."

This was on January 22, 1873, and the next paragraph shows that—

Mr. WEST presented the credentials of John Ray, elected Senator by the Legislature of Louisiana to fill the vacancy occasioned by the resignation of William Pitt Kellogg; which were referred to the Committee on Privileges and Elections.

It will be seen that both references were made on the same day. The report of the committee was made on the 20th of February, 1873, one month after the presentation of the credentials. The report commences in these words:

The Committee on Privileges and Elections, to whom was referred Senate resolution of January 16, 1873, as follows—

"*Resolved*, That the Committee on Privileges and Elections be instructed to inquire and report to the Senate whether there is any existing State government in Louisiana, and how and by whom it is constituted"—

and to which committee were also referred the credentials of John Ray and W. L. McMillen, both claiming the seat supposed to have been made vacant by the resignation of William Pitt Kellogg, a Senator of the United States from the State of Louisiana, respectfully submit the following report.

The record, then, does not corroborate the statement of my honorable friend from Indiana.

Mr. MORTON. Do you say that Pinchback's credentials were referred?

Mr. ALCORN. No, sir.

Mr. MORTON. He was no party to that examination.

Mr. ALCORN. I was going to say that so far as Mr. Pinchback was concerned he was not a party to that examination, but while he was not a party, certainly a case involving his credentials was tried. McMillen was a party to it, not by virtue of his election for the term beginning on the 4th of March, 1873, but he was a party to it on his credentials certifying that he had been elected to fill a vacancy occasioned by the resignation of Kellogg. Ray was a party to it representing the Kellogg government for the short term.

Mr. MORTON. Precisely; for the short term.

Mr. ALCORN. For the short term ending March 4, 1873; but in the examination of this question every fact that appertained to the credentials of Pinchback, every fact that appertained to the credentials of McMillen who was elected by the McEnery legislature for the long term, was passed upon by that committee, thoroughly investigated, and I have not heard it intimated that there were any new facts in this case. I have not heard it argued by any friend of Mr. Pinchback or any friend of McMillen that any newly-discovered testimony has been found; that there was a single particle of evidence to be brought forward in behalf of either of these contestants for the long term that was not passed upon by the committee of the Senate in investigating the question of the right of the contestants for the short term.

I say, sir, that the committee were most patient in their investigation, and if any committee that I have ever served upon were entitled to the commendation of the Senate for patience, for industry, and I would go further and say for impartiality, I think that committee are entitled to that plaudit.

The honorable Senator from Wisconsin who has just taken his seat, [Mr. HOWE,] and who delivered to the Senate an elaborate, able, well studied argument on this question, has based all that he said upon false premises, upon a supposition of facts that have no existence in law. As to the recognition of the Kellogg government by the President of the United States, I hold that has nothing to do with the investigation of this case by the Senate. The action of the President in no way binds this body. At the time these two governors were arrayed against each other in Louisiana, an appeal was made to the President of the United States in the interests of peace. The President was called upon to decide which of these two contestants was governor. He was called upon to decide without any of the proofs before him. He chose to direct that the Government of the United States should give its support to the decrees of the United States district court. He thought that was the safest course for him to pursue. He took what was before him, just what he saw. He had no time to investigate. He was required to choose then and there without investigation, and he chose to place his judgment precisely where the law required he should hold it, to wit, that he should support the decision of the courts of the country, and he was not the person to decide whether those decisions were in accordance with the Constitution and the laws, or not. That was for another and a different tribunal. The enforcement acts require that the President shall give the assistance of the Government of the United States to the support of the decrees of the courts of the United States, and when these two contestants were arrayed against each other, and the people of the State of Louisiana were threatened with the carnage that would result from a conflict between these two claimants, the President had to choose. Would it be possible that he, without the facts before him, would have ignored the decree of the court and have selected that as the most probable governor who had no decision in his behalf? Would not any sensible man who chose to perform his duty have decided in that case that he would follow the adjudication of the courts and that it was safest for him to place himself just there? This is just what the President saw; it was all he saw; and all he could do was to take what he saw. Subsequently the President characterized the election for governor in the State of Louisiana as "an organized fraud." He appealed to Congress, the body which had the right to examine the returns, investigate and pass upon these questions, to come in and take the responsibility from his shoulders and assume it for themselves; but Congress did not see proper to do this. I repeat, the President was called upon to decide between these two contending governments; he was required to pass judgment without delay. The case would admit of no delay. Delay would have been fatal to the lives of the people in Louisiana. The President decided promptly. Within five minutes he decided a question that Congress have been two years debating and have not yet decided. The Executive had to decide between contending factions with no time for investigation and before investigation. Congress propose to decide, if ever, after full investigation.

The majority of the Committee on Privileges and Elections proposed to assume the responsibility. They pointed the way that the Congress should go. But Congress saw proper to disregard their suggestion, as they had a right to do, and so the responsibility was left upon the President. I have not been able to see the wrong that the President did in the case. I have not been able to see how he could have done otherwise than he did. Here was the trouble: There were two governors elected, each claiming with seeming equal authority, each holding the great seal of the State, each with a secretary of state, and each sending here Senators with credentials alike authentic. The President decided in favor of the Kellogg government. It was impossible for him to have known of the enormity of Durell's decision. He only knew that a United States district judge had decided favorably to the Kellogg government, and he thought it safest, groping as he was his way in the dark, to follow the suggestions of the court, and here the sin committed by the President lies. I have not been able to see it. It has occurred to me that the President would have assumed a grave responsibility if he had disregarded the suggestions of a court where a legal question was involved as the essence of the right of contending factions to the government of the State. The court may be corrupt; its decisions may be in contempt of the law, but, other things being equal, in a contest depending upon the law it is perhaps safest to follow the suggestions of the courts. A court may decide corruptly, it may be grossly in error, but its decision is the law of the case decided until the decision is reversed. The trouble about this case was that the judge had no jurisdiction. He assumed an authority that did not belong to his court, but the President was not the judge of this. In this case there is a supervising authority, a supervising power. There is a court of appeal, and that court is the Congress of the United States, to which court the President appealed, declaring at the time his willingness to abide by and to perform the will of Congress. He went so far as to call the committee before him and urged upon the members his anxiety to have Congress take action and assume that responsibility

which properly rested with the legislative department of the Government.

So much upon that point. Now to the position assumed by the Senator from Wisconsin, [Mr. HOWE,] who has made an argument running from half past eight o'clock (spending the first hour of his address upon other points,) until half past ten to show that the adjudications of and the returns made by the Lynch board were legally had and properly made; and however false they may have been the secretary of state was bound by those returns and that we as Senators cannot go behind them. The Committee on Privileges and Elections elaborated the law creating that Lynch board, and I will take occasion now to call the attention of the honorable Senator to the points that were made by the committee upon this board, and I appeal to him as a lawyer to state here, upon his reputation as such, whether he believes that Lynch board had any legal existence at the time the adjudication of that board became a matter of history. What were the facts? In the first place, the law itself appointing that board was violative of the constitution of Louisiana, in direct conflict with the constitution of the State. Let us see how that is. The constitution of the State, article 4, provides as follows:

Returns of all elections for members of the General Assembly shall be made to the secretary of state.

There is a mandate in the constitution of the State of Louisiana imperative; but the Legislature of the State in the face of this peremptory declaration of the constitution undertook to declare by legislative enactment that the returns should be made to another and different tribunal. And yet the Senator from Wisconsin argues here, without ever noticing or referring to the constitution of Louisiana, that the Lynch board was the legal board and had a right to pass upon these returns. But the committee presented other objections to this returning board.

The constitution of Louisiana provides:

ART. 48. The supreme executive power of the State shall be vested in a chief magistrate, who shall be styled the governor of the State of Louisiana. He shall hold his office during the term of four years, and, together with the lieutenant-governor chosen for the same term, be elected as follows: The qualified electors for representatives shall vote for governor and lieutenant-governor at the time and place for voting for representatives; the returns of every election shall be sealed up and transmitted by the proper returning-officer to the secretary of state—

Not to a returning board, but—

to the secretary of state, who shall deliver them to the speaker of the house of representatives on the second day of the session of the General Assembly then to be holden.

The act of the Legislature appointing the Lynch board provided that the returns should be delivered to them. Here is the constitution and there is the act of the Legislature of the State of Louisiana in direct contradiction and conflict with that instrument. Senators here appeal to the law of the Legislature of Louisiana, but overlook the constitution of that State:

The members of the General Assembly shall meet in the house of representatives to examine and count the votes.

The Legislature was to count the votes.

The person having the greatest number of votes for governor shall be declared duly elected; but in case of a tie vote between two or more candidates, one of them shall immediately be chosen governor by joint vote of the members of the General Assembly. The person having the greatest number of votes polled for lieutenant-governor shall be lieutenant-governor; but in case of a tie vote between two or more candidates, one of them shall be immediately chosen lieutenant-governor by joint vote of the members of the General Assembly.

There is the provision of the constitution of Louisiana. How could you get a Lynch board or any other returning board in the face of that provision of the State constitution? Shall I insult the intelligence of Senators by arguing that a law passed in conflict with this provision of the constitution is without force, that it is a nullity, that it is entitled to the respect of no one?

Article 60 provides as follows:

ART. 60. He shall nominate, and, by and with the advice and consent of the senate, appoint all officers whose offices are established by the constitution, and whose appointments are not herein otherwise provided for: *Provided, however*, That the General Assembly shall have a right to prescribe the mode of appointment to all other offices established by law.

In March, 1870, the Legislature passed an act which provides that a returning board shall be organized. The fifty-fourth section of that act is as follows:

SEC. 54. *Be it further enacted, &c.*, That the governor, the lieutenant-governor, the secretary of state, and John Lynch and T. C. Anderson, or a majority of them, shall be the returning officers for all elections in the State, a majority of whom shall constitute a quorum, and have power to make the returns of all elections.

The constitution provided that the returns should be made one way; this act provides that they shall be made another way.

In case of any vacancy by death, resignation, or otherwise by either of the board, then the vacancy shall be filled by the residue of the board of returning officers. The returning officers shall, after each election, before entering upon their duties, take and subscribe to the following oath before a judge of the supreme or any district court.

* * * * * * *

Within ten days after the closing of the election said returning officers shall meet in New Orleans to canvass and compile the statements of votes made by the supervisors of registration, and make returns of the election to the secretary of state. They shall continue in session until such returns have been completed. The governor shall at such meeting open, in the presence of the said returning officers, the statements of the supervisors of registration, and the said returning officers shall, from said statements, canvass and compile the returns of the election in duplicate. One copy of such returns they shall file in the office of the secretary of state.

This is the first time that the secretary of state under this act of the Legislature of Louisiana is to have a sight of the returns. The constitution providing that the returns shall be made to him, the act of the Legislature provides that they should be made to this returning board, and that this returning board should certify one copy to the secretary of state and another to a different tribunal. This returning board, I repeat, was appointed in direct conflict with the constitution of the State. The constitution provided that the governor should have the nomination of all officers not otherwise provided for in that instrument. The constitution provided, however:

That the General Assembly shall have the right to prescribe the mode of appointment to all other offices established by law.

How "prescribe the mode of appointment?" By passing an act of the Legislature of the State appointing officers themselves, appointing them by an act of the Legislature in perpetuity, and then giving them power to perpetuate forever that organization? I again ask shall I insult the intelligence of Senators by arguing that the act of the Legislature of Louisiana under which this returning board was appointed was passed in contempt of the constitution of the State?

Who will claim that the Lynch board was entitled to the returns which they pretended to pass upon, in the face of the fact that the constitution of the State of Louisiana pointed out the manner in which returns should be made, and that manner was one altogether different from that followed by the Legislature of the State? It is preposterous. But there is another difficulty, even admitting that the Legislature had the right to appoint this returning board, admitting that they had the right to override the constitution of the State and prescribe a different mode for canvassing the returns than that provided by the constitution. The fact is the law itself under which this returning board was appointed was absolutely repealed before the board made a canvass of the returns; and yet the Senator from Wisconsin will argue here for two hours of time the legality of this Lynch board, when in the first place, I repeat, it was violative of the constitution, and when, in the next place, if it had any authority of law, the law had already been repealed before the canvass was made by that board. Do Senators stultify themselves in arguing the legality of this Lynch board, or is it on account of an obtuseness in my own mind that I cannot see that there is a single point that can be made upon which to hinge even a supposition or a probability that this board had any existence or authority in law?

But, sir, the committee found another fatal fact. Even now, admitting that the Lynch board was a board having authority to pass upon returns, and admitting that no repeal had taken place, the committee found upon their oaths that the Lynch board had not a single return! not one single return was ever in their possession. I do not suppose that up to this good hour they have had in their possession a single return of any voter who cast his ballot in that election.

Then the committee found, first, that the Lynch board was in violation of the constitution of Louisiana; second, that the law appointing them had been repealed; and third, that they never had any returns before them, and had nothing to pass upon When we found all this, we thought there was an end to the question of the legality of the Kellogg government. The committee had before them the returns of the Warmoth board. That board, equally illegal, equally without authority of law, had this in their favor: They had the returns, or what purported to be the returns, certified to by the returning officers; and the committee, having these returns before them, proceeded to examine them, and while there were many of them which were of doubtful authenticity, nevertheless, disregarding all of doubtful authenticity, and taking those which upon their face showed that they were properly authenticated, and which the testimony went to show were in truth and in fact legal and legitimate returns, they found that McEnery was elected governor of the State by a majority reaching to nearly 10,000, and that after having lopped off some 4,000 votes of doubtful authenticity, it left him still elected governor by about 6,000.

But the committee were of opinion, as I have said, that the Warmoth returning board was equally illegal with the Lynch board, and they were of opinion that the frauds were so evident, so unmistakable, so clearly established and proven, that they would report upon their oaths that there was in truth no election in that contest in Louisiana which was entitled to the respect of any set of gentlemen in all the world.

The Senator from Wisconsin attacks the testimony of Jaques who deposed before the committee to the fact that he had forged about thirteen hundred of the affidavits upon which the Kellogg government based its right to the offices in that State. Now, I could very readily see how any gentleman might suspect the testimony of a witness like this. That he was not entitled to credit upon his own statement appeared at the first presentation to be true; but a man may go into a court of justice and testify to a fact, and it may be shown that he is not entitled to be believed on oath; his testimony may be successfully assailed, successfully impeached, and yet if he is corroborated in his testimony the court will instruct the jury that they can take that testimony for what it is worth. This man Jaques, after having testified to the fact that he had made these false certificates which were sworn to, being interrogated further, pulled out of his pocket the certificate of the officer in due form of law corresponding exactly with the attestation to these affidavits;

he produced a handful of these with the officer's name attached and the seal of the court, saying to the committee that he had more of the same kind left.

Here was a corroboration which showed that the fellow was intrusted by the judge who signed the certificates and that he yet held the evidences of that perjury on the part of the judge in his possession, that he was an accredited agent at the time, and he offered the indisputable testimony of his agency in this way.

Mr. President, it was not my purpose when I arose to elaborate an argument on this question. I rose simply to put myself right before the Senate, to give the reasons briefly why I should follow up and stand by the report made by the committee, believing as I do that it cannot be assailed, that it has not been touched, and that every argument which has been made in support of the Kellogg government has been made in evasion of the facts and upon a misapprehension of the law.

The PRESIDING OFFICER, (Mr. SCOTT, in the chair.) The question is on the amendment offered by the Senator from Maryland, [Mr. HAMILTON.]

Mr. HAGER, (at eleven o'clock and thirty-seven minutes p. m.) I move that the Senate do now adjourn. I will state that I should like to speak upon this question, and I am very reluctant to do it at this late hour after such a prolonged session, and I ask therefore that the Senate adjourn.

The PRESIDING OFFICER. The Senator from California moves that the Senate do now adjourn.

Mr. HAGER. If the Senate do not adjourn, I will proceed now, but I would prefer an adjournment.

The PRESIDING OFFICER. The Senator from California moves that the Senate adjourn.

The question being put, there were on a division—ayes 13, noes 24.

Mr. DAVIS. Is there a quorum voting?

The PRESIDING OFFICER. There is a quorum voting, and the Senate refuses to adjourn.

Mr. HAGER addressed the Senate. Having spoken till seven minutes past one o'clock a. m., (Thursday, February 18)——

Mr. HAMILTON, of Maryland. If the Senator from California will yield the floor I will move an adjournment.

Mr. HAGER. I yield for that purpose.

Mr. SPENCER. I demand the yeas and nays on the motion to adjourn.

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

Mr. FERRY, of Michigan, (when his name was called.) I am paired with the Senator from Missouri, [Mr. SCHURZ.] Were he present he would vote "yea," and I should vote "nay."

Mr. SARGENT, (when his name was called.) I am paired upon this question with the Senator from Kentucky [Mr. MCCREERY] unless my vote shall be necessary to make a quorum of the Senate, in which case I am at liberty to vote. I will reserve it until I ascertain whether it is necessary under the circumstances.

The result was announced—yeas 11, nays 29; as follows:

YEAS—Messrs. Bayard, Cooper, Fenton, Gordon, Hager, Hamilton of Maryland, Johnston, Kelly, Merrimon, Ransom, and Saulsbury—11.

NAYS—Messrs. Anthony, Boreman, Boutwell, Clayton, Conkling, Cragin, Dorsey, Flanagan, Frelinghuysen, Hamlin, Howe, Ingalls, Jones, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Pease, Pratt, Ramsey, Scott, Sherman, Spencer, Sprague, Stewart, Wadleigh, West, Windom, and Wright—29.

ABSENT—Messrs. Alcorn, Allison, Bogy, Brownlow, Cameron, Carpenter, Chandler, Conover, Davis, Dennis, Eaton, Edmunds, Ferry of Connecticut, Ferry of Michigan, Gilbert, Goldthwaite, Hamilton of Texas, Harvey, Hitchcock, Lewis, Logan, McCreery, Norwood, Oglesby, Patterson, Robertson, Sargent, Schurz, Stevenson, Stockton, Thurman, Tipton, and Washburn—33.

So the Senate refused to adjourn.

Mr. HAGER resumed and continued his speech until one o'clock and fifty-five minutes a. m.

Mr. RANSOM. The Senator from California yields to me to move that the Senate adjourn. I submit that motion.

The PRESIDING OFFICER (Mr. COOPER in the chair) put the question on the motion.

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

Mr. EDMUNDS. You are too soon; there was but one vote for it.

Mr. SPENCER. O, you cannot adjourn.

Mr. HAGER. Very well; I will go on with my remarks.

Mr. HAMILTON, of Maryland. We had better adjourn.

The PRESIDING OFFICER. Senators who sustain the call for the yeas and nays will rise.

The yeas and nays were ordered.

Mr. FERRY, of Michigan. I am paired with the Senator from Missouri, [Mr. SCHURZ.] If he were here, he would vote "yea," and I would vote "nay."

The call of the roll was concluded.

Mr. SARGENT, (at the conclusion of the roll-call.) I am paired with the Senator from Kentucky, [Mr. MCCREERY,] unless my vote shall be necessary to make a quorum. As the roll-call stands my vote is necessary to make a quorum, and I vote "nay."

Mr. FERRY, of Michigan. I am paired with the Senator from Missouri [Mr. SCHURZ] on the main question and on adjournment; but to make up a quorum I vote "nay."

The result was announced—yeas 4, nays 33; as follows:

YEAS—Messrs. Cooper, Hager, Merrimon, and Ransom—4.

NAYS—Messrs. Anthony, Boreman, Boutwell, Chandler, Clayton, Conkling, Cragin, Dorsey, Edmunds, Ferry of Michigan, Flanagan, Frelinghuysen, Hamlin, Howe, Ingalls, Jones, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Pease, Pratt, Ramsey, Sargent, Scott, Sherman, Spencer, Sprague, Stewart, Wadleigh, West, Windom, and Wright—33.

ABSENT—Messrs. Alcorn, Allison, Bayard, Bogy, Brownlow, Cameron, Carpenter, Conover, Davis, Dennis, Eaton, Fenton, Ferry of Connecticut, Gilbert, Goldthwaite, Gordon, Hamilton of Maryland, Hamilton of Texas, Harvey, Hitchcock, Johnston, Kelly, Lewis, Logan, McCreery, Norwood, Oglesby, Patterson, Robertson, Saulsbury, Schurz, Stevenson, Stockton, Thurman, Tipton, and Washburn—36.

So the Senate refused to adjourn.

Mr. HAGER. Mr. President——

Mr. WEST. Mr. President, I rise to a question of order, that the Senator from California having yielded the floor twice is now amenable to the fourth rule of the Senate; that he is not entitled to be heard any further on this subject. And I want to say that although I shall not be inclined to insist upon it on the present occasion, I wish those who are practicing these tactics of moving adjournment on the other side to understand that any attempt of this kind repeated to call for an adjournment twice while a Senator has the floor will be insisted upon by the Senators on this side of the Chamber as a violation of the fourth rule; so that during a speech delivered by any one Senator he or his friends will be privileged to call for an adjournment once and no oftener.

Mr. DAVIS. I should like to know what the rule is that the Senator has been raising a point about.

The PRESIDING OFFICER. Does the Senator from Louisiana press his point of order?

Mr. WEST. I say I do not press the point of order, but I give notice that on the occasion of a repetition of this kind of tactics it will be pressed.

Mr. HAMILTON, of Maryland. What kind of tactics does the honorable Senator from Louisiana allude to?

Mr. HAMLIN. Withdrawing from the Senate and leaving us without a quorum.

Mr. HAMILTON, of Maryland. The republicans on this floor have twelve or fifteen over a quorum. We have sat here the whole evening listening to speeches and discharging our public duties, and it is their duty to be here as well as ours. They are not here to vote; and why should we be required to vote, Mr. President?

Mr. RANSOM. And, Mr. President, when I made the motion to adjourn there was no quorum in the Senate; there was not half a quorum in the Senate; there was not a third, or a fourth, or a fifth of a quorum present.

[Mr. HAGER resumed the floor and concluded his speech. His speech in full will be found in the Appendix.]

Mr. ANTHONY. Mr. President, if the vote can be taken I will not be tempted even by this crowded and attentive audience and these thronged galleries and this cheerful and appropriate hour to go on; but if it is not the pleasure of the Senate to take the vote, I shall make a few remarks explanatory of the vote I am about to give.

Mr. DAVIS. A vote to adjourn?

Mr. ANTHONY. No; I cannot give way to a motion to adjourn.

Mr. DAVIS. I asked if it was a vote to adjourn the Senator had reference to.

Mr. ANTHONY. No; a vote on the resolution. I will give way to that with great pleasure.

Mr. DAVIS. There is no danger of that yet.

Mr. ANTHONY. Inasmuch as I assented to the report of the Committee on Privileges and Elections, made two years ago, and which came to the conclusion that there was no legal State government in Louisiana, and recommending that an election be held under the authority of the United States, I deem it proper to state the ground on which I recognize the authority of William P. Kellogg as governor of Louisiana, and as a consequence therefrom the credentials of P. B. S. Pinchback as Senator from that State, entitled to his seat *prima facie*, and subject to future inquiry into his qualifications, election, and returns.

I shall not dwell upon the reluctance with which I assented to the interference of the Federal authority in the execution of the constitutional guarantee of a republican form of government to all the States. It is an authority not lightly to be invoked, nor carelessly to be exercised. Nothing but grave emergency can justify it; and then it should be employed with the utmost caution, with the least practicable interference in the affairs of the State, but with promptness and vigor, and with the irresistible might of the Federal Government. Once invoked and displayed, it should not cease till the purpose for which it was aroused has been fully accomplished, and the solemn guarantee of the Constitution has been fulfilled, and the power of the Federal Government as well as the republican rights of the State government have been vindicated.

It is natural that a Senator from one of the smaller States should feel especially sensitive upon this point. Yet the power which, if exercised capriciously or arbitrarily, would be fatal to the independence of the States is in its just and proper administration, their safeguard and protection, and is especially precious to the States which are weaker in population and consequently in military strength. It has been invoked by the State which I have the honor in part to represent. The response was not all that we thought we had a right to expect; and by our unaided strength, and surrounded by unfriendly public sentiment, we put down an insurrection which claimed to embody more than half the people within the military age. which pre-

tended to stand upon authentic organic law, and which, in the name of the law, had resorted to an armed defiance of the Government. Yet the moral support of the Federal Government, the assurance which our plain construction of the Constitution gave us that the Federal Government must interpose, in the last necessity, gave us a confidence which was of great assistance. This power, this duty, this prescribed obligation of the Federal Government is one of the most important rights of the States. The abuse of almost every power is injurious in proportion as its proper exercise is beneficial.

It seems to me that Louisiana presented a case for the proper interposition of the constitutional guarantee. The election had recently been held; it was marked by fraud, corruption, and violence on both sides; and while I had a clear opinion that those who voted for Kellogg and those who desired to vote for him but were illegally prevented were the majority, it was impossible to say that the will of that majority had been expressed in the authentic mode provided by law. But equally without authentication and equally tainted with fraud and corruption were the votes for McEnery, and in addition to all this it is clear to my mind that he was in the minority, and that the attempt to seat him was a gigantic fraud. On this point the Committee on Privileges and Elections say:

> The testimony shows that leading and sagacious politicians of the State, who were acting with Warmoth, entertained the opinion before the election that Warmoth's control of the election machinery was equivalent to twenty thousand votes; and we are satisfied, by the testimony, that this opinion was well founded. We believe that had registration been accessible to all, and polling-places been properly established, the result of the election would have been entirely different. And although we cannot approve of such a canvass as that made by the Lynch board, who seem to have acted upon the principle of "fighting the devil with fire," and circumventing fraud by fraud, and cannot say that Kellogg's government was elected, nevertheless we believe that Kellogg's government was defeated, and the popular voice reversed, by the fraudulent manipulation of the election.
>
> If the Senate should be inclined not to go behind the official returns of the election, then the McEnery government and Legislature must be recognized as the lawful government of the State, and McMillen, if regularly elected by that Legislature, should be seated in the Senate in place of Kellogg. *But your committee believe that this would be recognizing a government based upon fraud, in defiance of the wishes and intention of the voters of that State.*

Anarchy was threatened. There seemed to be not only no republican form of government, but no government in Louisiana. In this emergency it seemed to me that a prompt interposition of the Federal Government was the least objectionable measure, when no satisfactory measure of any kind presented itself.

Yet when the report was made I declared my hesitancy in words that I may be permitted to repeat, as they are recorded in the Congressional Globe:

> Mr. ANTHONY. I assented to the report of the majority of the committee, and I agree fully with the narration of facts stated and with the conclusions at which the committee arrive, that there is no government in Louisiana, and that neither of the gentlemen whose credentials have been presented was elected to the Senate; but I am so exceedingly reluctant to resort to the extreme measure of interposing the authority of Congress, under the guarantee of a republican form of government, that I shall reserve my judgment, if any better remedy can be proposed, to support it.

Two years have passed since then. The lapse of time, however it might disturb the expediency of a measure somewhat questionable at first, could not destroy the right or impair the obligation of Federal interposition if they existed. Nor am I prepared to say that the reasons which impelled my judgment to that course have lost their strength; nor that I would not now assent to that mode of relief and of extrication from this entangling question. But this appears to be impracticable. Two years before the Senate, it has not commended itself to the favor of the body; and I should have no expectation of its passage, should it be seriously pressed. I may say that, although there are Senators who still favor the measure, it has been practically abandoned.

In all this time Governor Kellogg has exercised the office of governor. The laws enacted by the Kellogg legislature have been executed by the proper officers and enforced by the courts; the President of the United States has continued to recognize him, and the House of Representatives has admitted to seats members who were elected under the same authority. While all this cannot conclude the judgment of the Senate, which is the sole judge of the election, qualifications, and returns of its own members, it naturally enters into the reasons for making up that judgment; and all this has gained force by the lapse of time.

But I rest my judgment mainly on that of the highest legal tribunal of the State. The supreme court of Louisiana has decided that Kellogg is the legal and constitutional governor. That question properly belonged to the court, and was fully argued and an elaborate opinion was delivered. The case was not directly before the court, but the same principles were involved, and the decision leaves no doubt of the opinion of the court upon the validity of Governor Kellogg's election, of his right to the office.

This decision derives no strength to my mind, although I infer that it should with some others, because the judges of the supreme court of Louisiana are all of southern birth, and all but one of them were born in the State of Louisiana. These are not carpet-baggers, as was Henry Clay in Kentucky, as was Andrew Jackson in Tennessee, and Thomas H. Benton in Missouri, and Stephen A. Douglas in Illinois, and Tristam Burges in Rhode Island, and Daniel Webster in Massachusetts, and as are a majority of the members of this body; for I believe that more than half the Senators have committed the grave offense of leaving the State of their birth and of rising to their present positions in other States. Three of the four judges of the supreme court of Louisiana are guiltless of this crime, and as the other was born in Virginia it may be pardoned in him; although it cannot be denied that he was a Union man, and it must be confessed that he was one of the seven members of the convention who refused to sign the ordinance of secession. He was elected to the convention as a Union man, and remained a Union man.

These circumstances, as I have said, are not needed to make me give faith and credit to the judgment of the court. But they silence the objections of those who have invented the term "carpet-bagger," and have made it the synonym of everything that is discreditable and vile. It is not a carpet-bag judgment.

Accepting the judgment of the supreme court, agreeing that Governor Kellogg's title to the office has been confirmed on the highest authority, it follows in my view that his official signature attested by the seal of the State is entitled to credit, and that unless its authenticity be questioned or it be invalidated, we must accord to it the same respect that we do to the signatures of the other governors and to the seals of the other States. On what different authority did any of us take our seats in this Chamber? This signature and this seal certify to us that P. B. S. Pinchback was duly elected by the Legislature of Louisiana a Senator in Congress for six years from the 4th of March, 1873. I think that he is entitled to his seat *prima facie*, subject to future investigation as to his qualifications, election, and return; that on such investigation he may, by the vote of the body, be ultimately continued in his seat or removed from it, as others have been continued or removed. I shall give my vote accordingly; and in voting to recognize the authority of Governor Kellogg to certify to us the election of Mr. Pinchback, I no not in any way commit myself upon the question that may be raised of the validity of his election.

Mr. President, no one can lament more than I do the situation of that portion of the country which, after waging an unsuccessful war upon the Government, is now involved in domestic strife, the consequence of that war; and I would much rather discuss the remedy for this unfortunate condition than the cause of it. The remedy, I frankly state, I do not see. When, under representative institutions, large constituencies are hostile to the Government of which they form a part and in whose councils they are entitled to share, when they have the right to participate in making, in interpreting, and in executing the laws which they do not mean to obey, and which they will not permit to be enforced within the region under their control, a problem is presented beyond my wisdom to solve, and a remedy is demanded which my statesmanship does not reach.

For the cause we need not go beyond the refusal of some of the States lately in rebellion to accept the situation and to consent to reorganization and reconstruction on the principles that prevailed in the war. Civil strife, unexampled in the magnitude of the destructive forces employed, was closed with a magnanimity that has no parallel in history, and which is most creditable to the American character. Not an ax was stained, not a gibbet was erected by the civil tribunals. No conditions were exacted of the conquered States that were not equally submitted to by the victors. The same rights were conceded to both. The same obligations were exacted of both. No penalty was imposed on those who had revolted against the Government but the concession of equality, but that they should extend to the whole people of their States the right which had been enjoyed by a class.

For the Government to have permitted the restoration of slavery, real or nominal, which had been the original cause of the revolt, and the destruction of which had been found necessary to the prosecution of the war, would have been madness; to have abandoned the emancipated race which had been faithful to the Government and to have left it without the means of self-protection would have been a national crime hardly inferior to that of slavery itself. There was no protection for this class, nay, there was no security for the results of the war, except in the enfranchisement of the colored race. It was not of itself a desirable thing to interpose the Federal authority over the suffrage of States; it was not a desirable thing to elevate to the suffrage a class which, long held in degradation, had not enjoyed the opportunities of qualifying itself for this great privilege. I am not of those who hold that suffrage is a natural right; it is a right derived from society, and society is the judge of those on whom to confer it and of the conditions which should accompany it.

In the case presented in the reconstruction of the States that had rebelled against the Government and that had been compelled by arms to submission to the laws, the enfranchisement of the negroes was a necessity. Inferior in the intelligence, wanting in the education, quite destitute of the training which should accompany the exercise of the suffrage, they were superior in their attachment to the Government and firm in their loyalty to the Constitution. It would have been better if the suffrage could have been limited to those who, whether white or black, united intelligence with loyalty; and if the other classes could have been kept back till they were fitted to exercise the political rights of freemen. But unhappily this would have confined the elective franchise to numbers too few to conduct a government republican in form. They would have amounted to no more than a respectable aristocracy. We had launched the ship of state, and we were compelled to intrust it to men well skilled in navigation, but who proposed to run the vessel on the rocks; or

to men little qualified to manage it, but who would do as well as they were able, and would learn as fast as they could. Neither was the crew which we would select; but between intelligent treason and ignorant loyalty who could hesitate?

It is not probable that in all the measures of reconstruction the wisest and the best were adopted. Such power of selection is not given to human judgment. Obliged to act when we required time for deliberation, compelled to decide at once, sometimes with imperfect information and with divided opinions among those whose united action was necessary to the success and even to the inauguration of measures, it is easy, in the light of subsequent experience, to criticise what was then done. It was not so easy to do it better at the time.

It was the judgment of some, conspicuous among them Charles Sumner and Thaddeus Stevens, that the Southern States should be governed as Territories until such time as they should manifest the conditions that qualified them for restoration to the privileges which they had spurned, and of which they had attempted to divest themselves by force of arms. But this plan, whether wise or not, was made impracticable by public opinion, which revolted at the dependent condition of States, and demanded their speedy rehabilitation, generously overlooking the cause which had brought them into their false position, and mistakingly confident that such magnanimity would be followed by a frank acceptance of the mild condition on which alone a reconstruction in conformity with the principles of the Union was possible. I think that history will justify the measures that were adopted in these difficult circumstances, and will applaud the men who adopted them; and if these measures have not accomplished all that was expected of them, the blame will be assigned, not to those who planned them, but to those who professed to accept them and refused to execute them.

Mr. President, I do not desire to contribute one harsh word to this debate. I would soften the acrimony of sectional strife. I have only love and affection for every section of this country, for every State of this Union. I would do anything in my power to reconcile to the flag which they abandoned, and to which they have been forcibly returned, the States that now stand restlessly and unwillingly beneath its folds. But I cannot shut my eyes to the events that go on before them. I cannot refuse my conviction of the logical results of those events.

I was a member of this body, and necessarily a close observer of public affairs, when the people of the South, after long preparation in the teachings of sophistical and unpatriotic men, threw off their allegiance to the Government and made war upon its authority, because a President not acceptable to them had been elected, although elected in strict conformity with the Constitution, and in the manner prescribed by law. He who does not see the same signs now is blind; he who does not hear the same sounds is deaf. The same wild, unpatriotic, boastful utterances in the press are applauded by the same treasonable populace to which they appeal. The same contempt for the northern section of the country is joined to the same reliance upon the northern democracy; and I will say in justice to the democratic party that I believe that reliance to be as mistaken now as it was then. And in a place where it is not proper for me to refer with more particularity to the proceedings, the same violent language is met with the same disapprobation by prudent men, and is encouraged by the same reckless and rebellious spirit by all classes, from the mob in the streets to the Legislatures of States, which hasten to pass resolutions of thanks for words that have called forth the censure of the body in which they were spoken.

This spirit and these more violent utterances do not, indeed, meet the approval of the majority of the southern people. They did not before. But the men who indulged in them controlled the majority and assumed the power. Not a State in the Union would have passed an ordinance of secession if the question could have been put to the people, fairly and without intimidation, not even South Carolina.

It has been said by a man who lived in a country much given to revolution and who had borne a conspicuous part in the overthrow of established authority, that not numbers, nor power, nor resources were the great element of success in civil commotions, but "audacity, audacity, always audacity." It was audacity that carried the Southern States into rebellion. It is audacity that is threatening them now. Had they showed half the courage, in the beginning, in resisting a wicked and irresponsible and self-constituted leadership at home, as they did afterward in contending against the lawful authority of the Government, what amount of blood and of treasure might have been saved! What disaster and humiliation might have been avoided! In Virginia a convention that had been elected with instructions to reject the ordinance of secession was frightened into it by men from South Carolina and Texas, sent there to excite a false opinion which should overawe the convention and force the delegates to the repudiation of their principles and their pledges. The history of rebellion, successful or unsuccessful, affords no stronger evidence of the power of audacity, no more humiliating exhibition of the weakness and cowardice of men intrusted with great responsibilities.

The same audacity now exalts its head, and since "history repeats itself," I cannot overcome the conviction that audacity will rule again; that the same bold, reckless, irresponsible minority will again get the control of prudent, conservative, and patriotic majorities. The wisdom, the prudence, the virtue, the patriotism, the wealth of the South in 1860, controlled even less than the numbers. It was the audacity of the worst and most dangerous elements of society that ruled. The man who was afterward vice-president of the rebel confederacy opposed the rebellion with arguments whose intrinsic force was backed by the influence of his powerful name. He said to the southern people you have known the Union only by its blessings, and then he yielded to the rebellion.

I have listened with respect to the assertions from Senators on the other side of the Chamber, who acted with the South and some of whom fought in the rebellion; and I have listened with full faith in the sincerity of their utterances when they declare their disposition for peace, and when they pledge their influence for the tranquillity of the South. They can pledge themselves, and I do not raise a doubt that they will keep their pledges. But they cannot pledge their constituents. If wise counsels and patriotic warning had prevailed in 1860, we should not have been called upon to reconstruct the Southern States.

The southern Senators were not in favor of the rebellion then. I can count on the fingers of this hand the genuine secessionists who sat in these chairs then, the men who really believed in the doctrine and who desired to see it carried into practice. Perhaps, if by any possibility these words should meet his eye, he would not thank me for saying it, but Jefferson Davis was not of the number. Impelled by a force which he lacked the magnanimity to oppose, and which he knew he could not successfully resist, he found himself in the front, and seemed to lead where he was driven, without being able to change the direction, much less to control the power which steadily urged him on. Tears were in his eyes when he left this Chamber and turned his back on the flag which he had followed in honor and in glory, and which his prophetic soul must have told him would wave in triumph over the treason and rebellion upon which he was rushing.

I make these remarks not willingly, but regretfully, and because I believe that they are true. The Senator from Georgia, in a speech to which I listened attentively, and in which, although I differed from him, I recognized much to admire in the moderation and patriotism of portions of it, closed by reverently repeating a passage from that great work which stands above all literature and all learning, which contains the whole body of divinity and the whole duty of man, the Sermon on the Mount, "All things whatsoever ye would that men should do to you, do ye even so to them." This great command is upon us all. No one can claim its benefits on the ground that he has fulfilled its obligations, and least of all can it be invoked in favor of those who have trampled on human rights, whose hands are red with the blood of the innocent and the defenseless.

Mr. DAVIS, (at two o'clock and fifty minutes a. m.) I move that the Senate adjourn, and ask for the yeas and nays.

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

Mr. FERRY, of Michigan, (when his name was called.) Being paired, I will not vote except to make a quorum. I will wait and see how that is.

The roll-call having been concluded,

Mr. FERRY, of Michigan. To make a quorum I vote "yea," as the Senator from Missouri would vote were he here.

Mr. SARGENT. I have leave of the Senator from Kentucky, [Mr. McCREERY,] with whom I am paired, to vote where it is needed to make a quorum, and I vote "nay."

Several Senators entered the Hall and voted.

Mr. FERRY, of Michigan. There being now more than a quorum, I ask leave to withdraw my vote.

The PRESIDING OFFICER. The vote will be withdrawn if there be no objection.

Mr. SARGENT. My vote not being necessary to make a quorum, I withdraw it.

The PRESIDING OFFICER. The vote will be withdrawn if there be no objection.

The result was announced—yeas 9, nays 33; as follows:

YEAS—Messrs. Alcorn, Cooper, Davis, Dennis, Gordon, Johnston, Merrimon, Stockton, and Thurman—9.

NAYS—Messrs. Allison, Anthony, Boreman, Boutwell, Chandler, Clayton, Conkling, Cragin, Dorsey, Edmunds, Flanagan, Frelinghuysen, Hamlin, Howe, Ingalls, Jones, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Oglesby, Pease, Pratt, Ramsey, Scott, Sherman, Spencer, Sprague, Stewart, Wadleigh, West, Windom, and Wright—33.

ABSENT—Messrs. Bayard, Bogy, Brownlow, Cameron, Carpenter, Conover, Eaton, Fenton, Ferry of Connecticut, Ferry of Michigan, Gilbert, Goldthwaite, Hager, Hamilton of Maryland, Hamilton of Texas, Harvey, Hitchcock, Kelly, Lewis, Logan, McCreery, Norwood, Patterson, Ransom, Robertson, Sargent, Saulsbury, Schurz, Stevenson, Tipton, and Washburn—31.

So the Senate refused to adjourn.

Mr. MERRIMON. Mr. President, in the remarks which I am about to submit I propose, in the first place, to address myself briefly to the merits of the resolution reported by the committee, and which involves the immediate subject under discussion, and then to submit some observations in reference to the military interference with the organization of the Legislature in Louisiana on the 4th of last month, and to reply also to the assaults made and aspersions cast upon the southern people generally before I take my seat.

The resolution and the report accompanying it, reported by the Committee on Privileges and Elections, is in these words. I ask the Clerk to read what I have marked.

The Chief Clerk read as follows:

The Committee on Privileges and Elections, to which were referred the credentials of P. B. S. Pinchback for a seat in the Senate from the State of Louisiana, have had the same under consideration, and submit the following report:

That the certificate of William Pitt Kellogg, then and now the governor of the State of Louisiana, which certificate is verified by the great seal of the State, shows that on the 17th day of January, 1873, Hon. P. B. S. Pinchback was elected to a seat in the Senate of the United States for the term of six years, beginning on the 4th March, 1873, by the Legislature of Louisiana, in manner and form as prescribed by the act of Congress regulating the elections of Senators of the United States. Upon this certificate the committee are of opinion that Mr. Pinchback has a *prima facie* title to admission as a member of the Senate, and that whatever objections may exist, if any, as to the manner of his election or as to the legal character of the body by which he was elected, should be inquired into afterward.

The committee therefore recommend the adoption of the following resolution:

Resolved, That P. B. S. Pinchback be admitted as a Senator from the State of Louisiana for the term of six years, beginning on the 4th of March, 1873.

Mr. MERRIMON. So that it appears that the proposition now is, without reference to the real controversy involved in the alleged election of Mr. Pinchback, to admit him as the sitting member upon what is commonly called a *prima facie* case. It may be well to inquire what is a *prima facie* case at the very outset. According to my understanding, a false conception has been embraced by Senators who have been willing, without much inquiry and reference to the credentials of Pinchback, to admit him as a member of this body.

What, then, is a *prima facie* case? It is where one claiming a legal right states facts which, if taken to be true, constitute that right in law. I believe, upon scrutiny, it will appear that that definition of what constitutes a *prima facie* right is correct. If it is correct, then let us see if the person claiming to be admitted as a member of this body does in fact present a *prima facie* claim. In order to do so these facts must concur:

First. He must have been elected by the Legislature of the State of Louisiana.

Secondly. That fact must be certified in due form by the governor of the State under the great seal of that State, and that certificate must be countersigned by the secretary of state.

A certificate purporting to be signed by a person claiming to be governor of the State and sealed with a seal purporting to be the great seal of the State of Louisiana and countersigned by a person purporting to be the secretary of that State has been presented to the Senate, and that certificate is to the effect that the Legislature of that State at a particular time did elect this person so claiming to be a Senator of the United States from the 4th of March, 1873, for six years next thereafter.

Now, sir, if the Senate shall take that to be true, then there is a *prima facie* case made; but it is only a *prima facie* case in the event that the Senate—and the whole Senate—shall take it to be true, for the very moment that a suggestion is made by a Senator that the facts embodied in the certificate are not true, that moment the *prima facie* case ceases to exist. It is not necessary that the whole Senate shall concur in saying this certificate is put in question. If any Senator shall suggest, by motion or otherwise, that the facts embodied in what purports to be the certificate are not true, or that any material fact contained in it is not true, that instant the *prima facie* case ceases to exist as a matter of law.

To make this idea a little plainer, suppose that I rise in my place as a Senator and suggest that what purports to be the seal of the State of Louisiana is not the seal? That moment the *prima facie* case ceases to exist. Suppose I suggest that the person purporting to be governor of the State was not the governor, or that the person purporting to be the secretary of state was not the secretary, or that the body which purported to have elected this party to be Senator was not the Legislature; that moment the *prima facie* case ceases.

Then, sir, was there any such suggestion here by anybody? It were folly to deny it. From the very moment that what purports to be the credentials of the person now claiming to be admitted as a Senator were presented, every fact contained in that certificate was questioned. It was denied that there was any such Legislature; it was denied that there was any such governor, that there was any such secretary of state; it was denied that what purported to be the seal was the seal; and at the same time, another person presented other credentials in which it was certified by another person, purporting to be the governor of the State, that another person was elected to be Senator for the same term and by the Legislature of the State of Louisiana. Those credentials were countersigned by a person purporting to be the secretary of state, and they purported to be under the great seal of the State. I hold those credentials in my hand now. If there is a *prima facie* case in the case of Pinchback, why, I ask, are not the credentials which I hold now, coming to the Senate in form, averring the facts necessary to show that Mr. McMillen was elected at the same time, a *prima facie* case in his behalf? But the answer to that is this: If the Senate will take these material facts as true, the *prima facie* case exists; but then the Senator from Indiana or some other Senator suggests that the seal is false, that the person purporting to be governor is not governor, that the person purporting to be secretary of state is not the secretary of state, and that in fact the body purporting to be the Legislature which elected McMillen was not the Legislature. Upon that suggestion I admit the *prima facie* case is gone; and so it appears that the *prima facie* case suggested in this report is no *prima facie* case, and that the report is false when it makes a suggestion that has no force or effect in law.

Now, sir, I maintain two propositions:

First. That it is within the legitimate power of the Senate to admit a person claiming to be admitted as a Senator upon what are commonly called his credentials; that is, the certificate of the governor, countersigned by the secretary of state under the great seal of the State, that a particular person was elected by the Legislature of a State at a certain time. I admit that the Senate has power upon the presentation of such credentials to admit a party to a seat without further question and to allow him to sit; but I insist that it is within the legitimate power of the Senate, and that it may be the duty of the Senate in many cases in the exercise of this power, not to allow a party so claiming to come into the Senate as a member of this body for any purpose until the validity of his election shall be questioned and thoroughly investigated and determined.

Secondly. I insist that in this case now before the Senate and under discussion, in the exercise of that power, the Senate ought not for grave reasons, to which I shall call attention presently, to admit this party to a seat one hour until the whole merit of his case shall be investigated and his right shall be fully and fairly determined.

I propose to make these two propositions good.

Under the Constitution every State in the Union is entitled to be represented in this body by two Senators, by virtue of the clause of the Constitution which I will now read. I read paragraph 1 of section 3 of article 1 of the Constitution, which is in these words:

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

What is the plain meaning of the right of a State created by this clause of the Constitution? It is that the Legislature shall duly elect two Senators; that that election shall be made to appear to the Senate according to law; and the State is not entitled to representation until that fact shall be made to appear to the satisfaction of the Senate. When the person applying to represent the State comes to the Senate armed with the evidence of his election—when he presents himself to the Senate armed with this evidence, then manifestly, if there were no other provision in the Constitution, the Senate would have the right to hear and determine the case of the applicant as to his right to be admitted and to have reasonable and due time to make that inquiry before admitting him to his seat. Indeed, it would be the duty of the Senate to make such inquiry. But those who framed the Constitution were not content that the law should imply this right on the part of the Senate as a body to admit new members. It made express provision in these words. I read a part of paragraph 1 of section 5 of article 1:

Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business.

So that by the paragraph which I have just read the power is expressly conferred upon the Senate to ascertain whether the person applying as a Senator-elect has been properly elected; and by reasonable construction, if not by the plain words, the Senate is to have reasonable time to make that inquiry. Nay, I go further, and say that as matter of law and right and duty the Senate is bound to make that inquiry, if there shall be any suggestion that the party is not lawfully elected, before he is admitted as a member of the Senate for any purpose. When the Senate shall recklessly admit one here when his right is questioned by a single Senator without that investigation, and allow him to vote upon the most important interests that the people or the nation could have to be passed upon, I say that the Senate is false to itself, false to its duty, and false to the American people. I repeat, and I do it earnestly, that whenever it is suggested by a Senator that one applying for admission to a seat in this body has not been lawfully elected according to the Constitution and laws of the United States and of the State which he purports to represent, the Senate is false to itself, it is false to right, it is false to the American people, if it shall allow him to sit and pass upon the rights of those people until they have tried his right and determined that he is so entitled.

Mr. President, let us examine for a moment and see what would be the consequences of such a practice. Take a distant State. Suppose that three or four or five men should get together and they resolve to perpetrate a fraud upon the Senate and upon the American people; one party claims that he is the governor, another claims that he is the secretary of state, and they forge a seal purporting to be the great seal of that State, and two of these men make the certificate required by law, to the effect that on a certain day the Legislature of that State did in fact elect A B, who is charged with these credentials, to be a Senator from that State; and suppose that that person, with that naked, absolute forgery, should come to the Senate and present these credentials: would not that person present as thoroughly a *prima facie* case as the credentials presented by Pinchback in this case? If the Senate, without inquiring into the character and validity of such credentials, were to admit that forger, that fraudulent person, to a seat in this body, would not any one conclude, would not the American people conclude that the Senate was a very silly and a very false body? Would it not be said at once that there was not proper inquiry; that the Senate was remiss in its duty—false in its duty? How much more censurable would it be if a Senator would rise up in his place and say, "This is a forgery; that party purporting to be the governor is not the governor; that seal purporting to be the seal is not the seal; that party purporting

to be the secretary attesting is not the secretary; the credentials are false and a forgery out and out;" and yet that would be a *prima facie* case just as this *prima facie* is made out! It seems to me such a practice would shock the common sense of all sensible men.

This case which I put shows the strength of the suggestion I have made in the outset touching what constitutes a *prima facie* case. It is *prima facie* no longer than it remains unquestioned, and there ought to be no *prima facie* case in the Senate. No credentials ought ever to be acted upon in the Senate until they are referred and a committee are satisfied by proper and satisfactory evidence that all the necessary facts are true. Then they can report to the Senate and it can act intelligently and with confidence.

I will suppose another case stronger than that. Suppose that I go over into the State of Maryland backed by a thousand armed men; I proclaim myself the governor; I undertake to administer the constitution and laws of that State; I do it by pure, naked usurpation; I organize a Legislature, I appoint a secretary of state, I devise a seal for the State, and by force of the armed men who are around me I administer the State government—under such circumstances, suppose I should send two Senators to this body, the credentials all proper and in form, making what is here called by the committee a *prima facie* case; would anybody pretend in that case that the Senate would or ought to admit the men whom I should thus send here, without a reference of the credentials and a solemn inquiry whether the facts contained in the certificates were true? Moreover, would not every sensible man be astounded if he learned that the persons whom I thus sent came and presented their credentials and a Senator rose in his place and suggested that the whole was the offspring of a naked usurpation in the State of Maryland; that it was done by one who had no authority whatsoever except authority asserted by naked force? And what would be said of the Senate if it were to do such a thing as that? Would it not be regarded as reckless practice, unreasonable and absurd? Yet this would be done if the Senate only looked to the form of the credentials. This is the practice contended for in this case.

Such a practice, such a doctrine, is too absurd to talk about. What astonishes me profoundly is, that it has been insisted upon at all by any one. I am more astonished that it should be insisted upon by one who is so good a lawyer as the Senator from Indiana. I venture to say that he will laugh at himself when he looks back ten years hence on this record, and he will say, "How is it possible that I ever could have consented to make such a report as that?" That will be the effect of it.

Mr. EATON, (at three o'clock and thirty minutes a. m.) Will the Senator yield for a motion to adjourn?

Mr. MERRIMON. Not yet.

Mr. EATON. The Senate is getting very thin.

Mr. MERRIMON. Now let us take the case in hand to illustrate my meaning and elaborate it a little more. Suppose that Kellogg is and was a usurper as it is alleged, and I believe it and shall be able to show it before I take my seat to any disinterested person; suppose the person purporting to be the secretary of state is a usurper; suppose what purports to be the seal is false; suppose that the supposed Legislature was no Legislature, and suppose that we take this so-called *prima facie* case to be the case before the Senate and we admit this person claiming to come in by virtue of the credentials; what is presented by this action of the Senate to the world and especially to the American people? A party coming here by the appointment of a naked, absolute usurper sits in the Senate, and votes upon the civil-rights bill; he votes upon the bill which it is said will be introduced to invest the President with power to suspend the *habeas corpus* in times of profound peace; he votes away millions and millions of dollars which the people are bound to pay, and yet it turns out at last, when we come to examine into the validity of the election, that he had no election at all. What would be said of the Senate in such a case? What a spectacle would be presented! It would be a mockery and a laughing-stock for every intelligent American citizen. That will be or may be the effect of the proposition before the Senate.

There can be no doubt, Mr. President, it seems to me, about the reason of the thing. I might go on and enlarge the argument upon the principle that I have thus submitted. But it is said the uniform practice of the Senate from the earliest period of the Government has been that way. That I deny flatly. I say it is not true, and I believe I am ready to show it.

I refer in the first place to a very early case, one that happened in 1794, a case from Delaware. I read now from the Annals of Congress, 1793-'95, page 74:

Kensey Johns appeared and produced his credentials of an appointment by the governor of the State of Delaware as a Senator for the United States, which were read.

Whereupon, it was moved that they be referred to the consideration of the Committee of Elections before the said Kensey Johns could be permitted to qualify, who are directed to report thereon; and it passed in the affirmative—yeas 13, nays 12.

So that it will be noted that Kensey Johns came to the Senate just as the person now claiming did, with credentials all in form and according to law and presented what is now called a *prima facie* case. In that case, almost in the beginning of the Government, before Kensey Johns was allowed to take his seat, the first thing that was done, and it seems even without suggestion that there was anything unlawful about his election, it was referred to a committee to inquire whether or not he was in fact and law appointed to be a Senator. Now let us see what happened after that? That was on March 24. On March 26 the Senate took this further action:

Mr. Bradley, from the Committee of Elections, to whom was referred the credential of Kensey Johns, appointed by the executive of the State of Delaware a Senator of the United States in place of George Read, resigned.

Ordered, That the report lie for consideration.

On the 28th the Senate took further action—I will thank gentlemen to stop talking, and I will be obliged to them if they will quit talking or go to the cloak-room and go to sleep.

Mr. NORWOOD, (at three o'clock and thirty-five minutes a. m., Thursday.) I ask the Senator from North Carolina if he will give way for a motion to adjourn?

Mr. MERRIMON. Not at present; I will by and by. I will ask the Clerk to read what I send to the desk.

The Secretary read as follows:

FRIDAY, *March* 28.

The Senate resumed the consideration of the report of the Committee of Elections, to whom was referred the credentials of Kensey Johns, appointed by the executive of the State of Delaware to be a Senator of the United States; which report is as follows:

The Committee of Elections, to whom were referred the credentials of an appointment by the governor of the State of Delaware of Kensey Johns as a Senator of the United States, having had the same under consideration, report:

That George Read, a Senator for the State of Delaware, resigned his seat upon the 18th day of December, 1793, and during the recess of the Legislature of said State.

That the Legislature of the said State met in January and adjourned in February, 1794.

That upon the 19th day of March, and subsequent to the adjournment of the said Legislature, Kensey Johns was appointed by the governor of said State to fill the vacancy occasioned by the resignation aforesaid.

Whereupon the committee submit the following resolution:

Resolved, That Kensey Johns, appointed by the governor of the State of Delaware as a Senator of the United States for said State, is not entitled to a seat in the Senate of the United States; a session of the Legislature of the said State having intervened between the resignation of the said George Read and the appointment of the said Kensey Johns.

On the question to agree to this report, it passed in the affirmative—yeas 20, nays 7; as follows.

* * * * * * *

Resolved, That an attested copy of the resolution of the Senate on the appointment of Kensey Johns to be a Senator of the United States be transmitted by the President of the Senate to the executive of the State of Delaware.

Mr. MERRIMON. In that case Kensey Johns came to the Senate with a certificate in form and when his credentials were presented it was moved to swear him in. That motion and his credentials were referred to a committee. That committee reported, having investigated the merits of his case, adversely; the Senate sustained that report, and he never took a seat in the Senate at all. There is a case directly in point, on all fours with the one now before the Senate.

It is said in this case by the Senator from Indiana that the credentials of Pinchback have been referred to the Committee on Privileges and Elections. Pray, I ask, what were they referred for? Was it to see that there was a certificate by one purporting to be the governor, countersigned by one purporting to be the secretary of state, and that it was sealed with what purported to be the great seal of the State and contained a certificate of facts necessary to constitute the right of the applicant? Sir, that is child's play; it is ridiculous nonsense; it is absurd; for if that was the inquiry it was as manifest to the Senate before it was reported as afterward. The Senate referred these credentials to the end that the committee should inquire whether the credentials were genuine, and if they went into that inquiry I ask why they did not go into the merits of this claimant's election? It was alleged that there was a usurpation in Louisiana. This committee has been negligent if they did not go into that inquiry. It is trifling with the Senate when they report back this resolution. However they intended it, it is not respectful to the intelligence of the Senate to make such a report as that. They have not discharged the duty with which they were charged. They were charged with the duty of inquiring whether these credentials were genuine, genuine not in one respect, but genuine in all respects; and if it was suggested, as it was suggested in committee as well as in the Senate, that the whole was a forgery and the offspring of usurpation, they came short of their duty in that they reported here that he ought to be admitted upon a so-called *prima facie* case. That is trifling with the Senate and it is trifling with the country. It deserves condemnation, and I do condemn it. The subject is too serious to pass over lightly.

That was an early case. I come down to a more modern case. I refer to a case from Connecticut, the case of Lanman. In that case Mr. Lanman also came to the Senate with his credentials all in form according to law, and so far as they showed upon their face he was duly appointed a Senator according to law from the State of Connecticut. When he came and presented his credentials to the Senate it was then moved that he be sworn in and allowed to sit as a member, but let us see what action the Senate took. On the 4th of March, 1825, the Senate took this action in that behalf:

The President laid before the Senate a letter from Hon. James Lanman, inclosing the credentials of his appointment by the governor of Connecticut, as a Senator of the United States, "to take effect immediately after the 3d day of March, 1825, and to continue until the next meeting of the Legislature," and expressing his readiness to receive the usual qualifications.

The letter and credentials were read.

Now see what followed and how courteously the Senate acted on that occasion:

On motion, by Mr. Holmes, of Maine,
That Mr. Lanman be admitted to take the oath required by the Constitution,
A debate ensued; and,
On motion,
Ordered, That the further consideration thereof be postponed until to-morrow.

On March 5 the Senate took this further action, and I will ask the Clerk to read that portion of the Journal which I have marked. That case was in 1832.

The Secretary read as follows:

The Senate resumed the consideration of the motion of yesterday,
That Mr. Lanman be admitted to take the oath required by the Constitution; and,
On motion, by Mr. Eaton,
Ordered, That the said motion, together with the credentials of Mr. Lanman, be referred to a select committee to consist of three members, to consider and report thereon.
Mr. Eaton, Mr. Edwards, and Mr. Tazewell were appointed the committee.
Mr. Van Buren submitted the following motion for consideration:
Resolved, That Hon. James Lanman have leave to be heard at the bar of the Senate on the question as to his right to a seat therein, under an appointment made by the executive of Connecticut.

MONDAY, *March* 7, 1825.

Mr. Eaton, from the select committee to whom was referred, on the 5th instant, the motion "that Mr. Lanman be admitted to take the oath required by the Constitution," together with the credentials of Mr. Lanman, submitted the following report:

That Mr. Lanman's term of service in the Senate expired on the 3d March. On the 4th he presented to the Senate a certificate, regularly and properly authenticated, from Oliver Wolcott, governor of the State of Connecticut, setting forth that the President of the United States had desired the Senate to convene on the 4th of March, and had caused official notice of that fact to be communicated to him.

The certificate of appointment is dated the 8th of February, 1825, subsequent to the time of notification to him by the President. The certificate further recites that at the time of its execution the Legislature of the State was not in session, and would not be until the month of May.

The committee have looked into the Journals of the Senate to discover if they could find any authority or decision by them on this question, and the following have been found recorded:

On the 27th day of April, 1797, William Cocke was appointed a Senator from that State by the governor of Tennessee, his term of service having expired on the 3d of the preceding March, and on the 15th of May took his seat and was qualified.

On the 3d of March, 1801, the seat of Uriah Tracy became vacant, the time for which he had been elected having expired. On the 20th of February preceding the governor of Connecticut reappointed him a Senator, and in pursuance thereof he was qualified and took his seat.

Joseph Anderson, a Senator from Tennessee, was appointed by the governor a member of the Senate on the 6th of February, 1809, and on the 4th of March after took his seat, the period for which he had been elected having on the preceding day expired.

John Williams, of Tennessee, on the 20th of January, 1817, was appointed a Senator in Congress, to take his seat on the 4th of March, when the term for which he had been elected would expire. Mr. Williams appeared, was qualified, and took his seat.

In none of those cases does it appear that there was any objection made or question raised except in 1801 in the case of Mr. Tracy, when the vote was 13 for and 10 against the right of the member to take his seat. Those are the only analogous cases the committee has been able to find.

By reference to the statute laws of Connecticut the committee find that in that State there is a law upon this subject which is in the following words: "Whenever any vacancy shall happen in the representation of this State in the Senate of the United States by the expiration of the term of service of a Senator, or by resignation, or otherwise, the General Assembly, if then in session, shall, by a concurrent vote of the senate and house of representatives, proceed to fill said vacancy by a new election; and in case such vacancy shall happen in the recess of the General Assembly, the governor shall appoint some person to fill the same until the next meeting of the General Assembly."

The report was read.

The Senate proceeded to consider the motion of the 5th instant, that the Hon. James Lanman have leave to be heard at the bar of the Senate on the question as to his right to a seat therein, and agreed thereto.

Mr. Edwards submitted the following motion; which was read:

Resolved, That the Hon. James Lanman, appointed a Senator by the governor of the State of Connecticut, be now admitted to the oath required by the Constitution.

And on the question to agree thereto it was determined in the negative—yeas 18, nays 23.

Mr. MERRIMON. There is another case directly in point. Just as in this case, when Lanman presented his credentials, in proper form, it was suggested that he was not lawfully appointed, and the Senate did in that case, as I have shown it ought to do and is bound by law to do in every case, refer the credentials for a purpose—referred them to a committee charged to inquire whether the party was entitled to qualify and whether he should come into the Senate and sit at all. On looking into it they found he was not qualified and he never did take his seat. How does that case differ from this? Here the claimant comes and presents his credentials. It is true the credentials are referred. That reference was not a mere matter of form. They were referred in good faith. Why? Because in the first place all credentials ought to be referred, and referred in good faith, for the purpose of inquiry; in this case for solemn and scrutinizing inquiry. Why? Because it is seriously suggested—not captiously, but seriously suggested—that the person who signs this certificate is not the governor of Louisiana, that the body which purported to elect him was not the Legislature of Louisiana, that the person who purported to countersign the certificate was not the secretary of state of Louisiana, and that what purported to be the great seal of that State was not the great seal. This objection was made in good faith, and when it was referred to the committee the members of the committee were charged upon their whole obligation to the American people to make solemn inquiry and report whether this party was in fact elected according to law in all respects, and not to come back with this false report of a *prima facie* case. This Senate, if it will do its duty to itself and the country, will rerefer this resolution—that is the proper motion to make—to rerefer it to this committee and charge the committee to do its duty before it can be discharged by the Senate.

Then, sir, there are two cases, one in the early life of the Government and another as late as 1825.

Now I refer to four other cases of more modern date. I refer first to the cases of *Fishback* and *Baxter;* and they occurred in 1864. I read now from Contested-Election Cases in Congress, from 1834 to 1865, at page 641:

IN THE SENATE, *June* 27, 1864.

Mr. Trumbull, from the Committee on the Judiciary, submitted the following report:

That the credentials presented are in due form—

The Senate will remember how much stress the Senator from Indiana laid upon "due form"—

purporting to be under the seal of the State of Arkansas, and to be signed by Isaac Murphy, governor thereof; and if the right to seats were to be determined by an inspection of the credentials—

These are important words, well considered by the committee—

Messrs. Fishback and Baxter would be entitled to be sworn as members of this body. It is, however, admitted by the persons claiming seats and known to the country—

These are important words again, written by one who well knew their weight and purport—

that, in the spring of 1861, the State of Arkansas, through its constituted authorities, undertook to secede from the Union, set up a government in hostility to the United States, and maintain the same by force of arms.

There is another case on all fours with the one before the Senate. These two persons, claiming to be Senators duly accredited from the State of Arkansas, presented their credentials. If the doctrine now contended for by the Senator from Indiana is true, what more was to be done with these credentials than refer them to the committee, and if they found them in form report them back and recommend that these two Senators be admitted to their seats and allow their cases to be inquired into in the future? It would have been ridiculous and absurd in that case as it is in this case. It was suggested upon the floor of the Senate when they presented their credentials that the State of Arkansas had been in rebellion; it was seriously questioned in good faith whether or not that State was entitled to representation; and therefore the reference was made and the committee were charged with the inquiry, and they could not report and be discharged from the duty assigned them until they did report on the merits of the election. In that case Fishback and Baxter were not allowed to take seats here. Their right was passed upon by the committee and the Senate, and having been passed upon adversely, they never took their seats; they never came into the Senate at all.

Then I refer to two more cases. In 1865 Messrs. Cutler and Smith came to the Senate with credentials in "due form," seeking to represent the State of Louisiana. When their credentials were presented and they were offered to be sworn, it was suggested again solemnly that that State also had been in rebellion, and before they could be admitted to seats it was not only well but it was lawful and there was an obligation resting upon the Senate to inquire before they were admitted whether they were lawfully elected, and so the reference was made in that case not to see whether their credentials were formal—no such purpose—but for the purpose of inquiring into the validity of that election; and the committee say in that case:

Messrs. Cutler and Smith, the claimants for seats, were duly elected Senators by the Legislature which convened on the 3d day of October, 1864, and but for the fact that, in pursuance of an act of Congress passed on the 13th day of July, 1861, the inhabitants of the State of Louisiana were declared to be in a state of insurrection against the United States and all commercial intercourse between them and the citizens of other States declared to be unlawful, which condition of things had not ceased at the time of the reorganization of the State government and the election of Messrs. Cutler and Smith, your committee would recommend their immediate admission to seats.

The persons in possession of the local authorities of Louisiana having rebelled against the authority of the United States, and her inhabitants having been declared to be in a state of insurrection in pursuance of a law passed by the two Houses of Congress, your committee deem it improper for this body to admit to seats Senators from Louisiana, till by some joint action of both Houses there shall be some recognition of an existing State government acting in harmony with the Government of the United States and recognizing its authority.

All these cases are in support of the argument which I have submitted in this behalf. Now, I know there are cases the reverse of them. I am advertent to the case of Shields. He presented his credentials in due form as Senator-elect from the State of Illinois. He came here with a high reputation as a military man, and he was exceedingly popular. It was at a time of high party excitement. He had covered himself with glory in the Mexican war. His credentials were presented, and not at the time but afterward they were questioned. His credentials were offered and with railroad speed he was sworn in. The question was raised that he was not eligible to be elected to the Senate, because he had not resided in this country a sufficient length of time. He was admitted, however, to sit as a member of the Senate. The case was referred to the committee. The committee examined into his case, as it was proposed to do in this case, and Shields was turned out of the Senate because he was not eligible to a seat in it at the time he was elected. He never was lawfully a member of the Senate, and yet he sat here for months and

months, passing upon the highest and most important rights of the American people. Does not that very case show that such a practice is a bad practice, that though it was done it was done wrongfully; and does it not show furthermore the propriety of pursuing the course I have insisted upon in all cases?

I am also aware of the case of Robbins from Rhode Island. Robbins presented what is called here now a *prima facie* case when he presented his credentials. I believe without a reference he was sworn in, and took his seat. After he was allowed to sit, his credentials were referred to a committee, and they inquired into his case. There was a long investigation. Finally the committee decided that he was duly elected, and reported in his favor. That case again shows the impropriety of such a course; for suppose the committee had determined that he was not elected—and there was much doubt about his right—then in that case he would have been sitting here for months, and voting upon the rights of the American people, and voting upon their obligations without number when he had no right to a vote. Suppose we admit Mr. Pinchback now to sit upon this resolution; he is to come into the Senate and vote upon important measures involving the salvation of this country; he votes upon measures that may precipitate civil war, and a civil war that may result in the disruption of the Government and its final destruction. After he has been sitting here six months the committee charged with the further investigation of his case may report that he was not duly elected, that he is not entitled to sit here, and he is turned out of the Senate; and yet in the mean time he might by his single vote have destroyed the Government. Sir, such a practice is too absurd, it is too unjust to be law.

Then, sir, I insist that I have maintained the first proposition that the Senate has power, nay, that it is its duty not to admit a person claiming a seat in the Senate simply upon its appearing to the Senate that his credentials are in form; that it has the power to examine into his right in the first instance and determine his right before he shall be admitted.

Now let us see if I can maintain the second proposition. I insist in this case that the Senate, by the highest and most solemn considerations, ought not to admit the person claiming to be admitted now as a Senator from the State of Louisiana. Why do I so insist? In 1872 an election was held in the State of Louisiana for a Legislature, for a governor, and for other State officers. The election was held according to law in that State. The commissioners who held the election, the supervisors who compiled the vote in the several parishes, and the only lawful returning boards that examined into the returns as compiled by the supervisors ascertained that John McEnery was elected governor and that the majority of persons who were candidates for the Legislature upon the McEnery ticket were elected. They ascertained that they were so elected by a majority of about 10,000 votes.

Mr. NORWOOD, (at four o'clock a. m.) I see the Senator from Indiana is coming in, and I suppose he is willing to agree to an adjournment. I ask the Senator from North Carolina to yield for an adjournment.

Mr. MERRIMON. I yield for that purpose and that purpose only.

Mr. NORWOOD. I move that the Senate do now adjourn.

The PRESIDING OFFICER, (Mr. DAVIS in the chair.) The Senator from Georgia moves that the Senate do now adjourn.

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

The yeas and nays were ordered and taken.

Mr. SARGENT, (after having voted in the negative.) I desire to withdraw my vote.

The PRESIDING OFFICER. The vote will be withdrawn.

Mr. FERRY, of Michigan, (after having voted in the affirmative.) I withdraw my vote, being paired with the Senator from Missouri, [Mr. SCHURZ,] except where my vote is necessary to make a quorum.

The result was announced—yeas 6, nays 32; as follows:

YEAS—Messrs. Davis, Dennis, Johnston, Merrimon, Norwood, and Thurman—6.

NAYS—Messrs. Allison, Anthony, Boreman, Boutwell, Chandler, Clayton, Conkling, Cragin, Dorsey, Edmunds, Flanagan, Frelinghuysen, Hamlin, Howe, Ingalls, Jones, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Oglesby, Pease, Pratt, Ramsey, Scott, Spencer, Sprague, Stewart, Wadleigh, West, Windom, and Wright—32.

ABSENT—Messrs. Alcorn, Bayard, Bogy, Brownlow, Cameron, Carpenter, Conover, Cooper, Eaton, Fenton, Ferry of Connecticut, Ferry of Michigan, Gilbert, Goldthwaite, Gordon, Hager, Hamilton of Maryland, Hamilton of Texas, Harvey, Hitchcock, Kelly, Lewis, Logan, McCreery, Patterson, Ransom, Robertson, Sargent, Saulsbury, Schurz, Sherman, Stevenson, Stockton, Tipton, and Washburn—35.

So the motion was not agreed to.

Mr. MERRIMON. It not only thus appears by the returns and the returns passed upon by the lawful authorities of the State of Louisiana—I wish I had time to give some of the details to verify the statement I am now making—but on account of a usurpation to which I shall have occasion to advert by and by, the matter of the result of that election came to be mooted in the Senate, and the Senate solemnly referred it to the Committee on Privileges and Elections, in December, 1872, to inquire whether there was any government in the State of Louisiana. That committee at that time, as it is now also, was a very able committee. It consisted of the present chairman, the Senator form Indiana, [Mr. MORTON,] the Senator from Wisconsin, [Mr. CARPENTER,] the Senator from Illinois, [Mr. LOGAN,] the Senator from Mississippi, [Mr. ALCORN,] the Senator from Rhode Island, [Mr. ANTHONY,] the Senator from Georgia, [Mr. Hill,] and the Senator from Illinois, [Mr. Trumbull.] A more able, competent, truthful, and reliable committee, I undertake to say, could not be selected in the Senate at this time or at any period in the history of the Government. They took the matter with which they were thus charged into solemn consideration. They examined it for weeks. They took evidence which fills a volume containing one thousand and ninety-eight pages. They considered that evidence; they carefully found the facts, then found their force and effect, which they embodied in a report to the Senate. In that report a majority of the committee, indeed all the committee but one, say they had the returns of that election before them, that they examined those returns, and their examination sustained the report made by the lawful returning boards in the State of Louisiana. They say furthermore that the McEnery ticket and those composing the "McEnery legislature" were elected by a majority of about 10,000 votes. They report furthermore that the election was held according to law. All of them so report except one member. If that is true, then John McEnery was the Governor of Louisiana, elected on the 4th of November, 1872, according to the constitution and laws of that State, and the McEnery legislature was the true and lawful Legislature, so ascertained to be according to the constitution and laws of that State. If that is so, then no other body in the State had any right to elect any one to represent that State in this Senate, and no other person purporting to be governor of that State had any right to certify the election of any one by that Legislature to the Senate of the United States, or to grant any credentials or evidence of election.

But, sir, it so happened that another person claimed to be the governor of that State, one Kellogg. He was the opponent of McEnery at the election in 1872, and he insisted that he was governor, and that the men who ran upon the ticket with him for the Legislature constituted the Legislature of that State; and although no authority whatsoever—I repeat those words, and I understand the measure of what I am saying—no authority whatsoever ascertained that Kellogg was elected to be governor or that the Legislature commonly called the Kellogg legislature was elected. I repeat it, sir, no authority ascertained that Kellogg was elected or that the "Kellogg legislature," so called, was ever elected; and the authorities of the State of Louisiana, all the proper authorities that examined into the question there, and this able committee here which I have named, charged by the Senate to inquire and ascertain here that Kellogg and the Kellogg legislature were not elected, and the most that any of them said was that he ought to have been elected, and that fraud was practiced in the election else he would have been elected. They said the negro vote of that State ought to have been cast for the Kellogg ticket and that that result was defeated by fraud.

I insist that that is not true, and that this report and the evidence taken by that committee show it. But suppose I admit for argument's sake that it was true; the election was not questioned by any lawful authority in the State of Louisiana. No lawful contest was ever inaugurated there. The election was not contested in any known to the law. It was never ascertained by any competent authority in the State of Louisiana that there was any fraud in connection with that election. No action was taken according to law in that respect. No action was taken here in Congress, if Congress had had jurisdiction of the matter, to ascertain that the election was consummated through fraud. So that it never was ascertained that Kellogg and the Kellogg legislature were elected by any authority.

Mr. MORTON. The Lynch board.

Mr. MERRIMON. That was no authority. The committee did not pretend that it had any legal existence; on the contrary, they said it was not lawful and had no authority. Then, sir, I can reply to the long speech of the honorable Senator from Wisconsin [Mr. HOWE] in a half dozen words. He says there were enormous frauds in the election. He belabors himself for two hours and a half to abuse the people of Louisiana, and especially the white people and the democratic party and the fusion party there, and he says the election was carried by fraud. I reply to his speech by saying I deny what you allege. But suppose I admit it; you fail to show, you cannot show, that Kellogg was elected by any lawful ascertainment. There was no inquiry according to law instituted to ascertain that he was deprived of the election through fraud, and therefore he was no more elected than if he had not been a candidate at all. If the Senator from Indiana and myself were candidates in the State of Indiana for the office of governor and I beat him through fraudulent means (which I am sure I never would do) and it were ascertained by the lawful authorities that I was elected governor, though in fact he ought to have received a majority of the votes or although in fact he may have received a majority of the votes—if it is ascertained by lawful authority that I received a majority, unless he should take steps to reverse it, on that ascertainment I would be governor to all intents and purposes, as every lawyer knows. So it was in Louisiana. McEnery having been ascertained to be elected according to the constitution and laws of Louisiana, he was to all intents and purposes the governor of Louisiana, and he remained so until the term of his office expired or he resigned, and Kellogg had no right whatever, nor could he have unless he took steps according to law to contest the election.

Then the inquiry arises, how did Kellogg happen to become the governor? He went on the idea which is gone on here to-night and which some Senators have been proceeding upon from the beginning

of this controversy, that he ought to have been elected because he ought to have received all the negro votes. He called upon the President of the United States to sustain him with the Army of the United States and the President did sustain him. He sustained him in opposition to the lawful governor of the State, and the President also sustained the Kellogg legislature, and sustains Kellogg to this day without any lawful sanction on the face of the earth, but in direct subversion of the Constitution and laws of the United States; and that is the single sanction for the credentials which are presented here and which this committee say constitute a *prima facie* case.

Six of the committee said in terms that Kellogg was not elected. The other member of the committee, the Senator from Indiana, did not say he was elected; he never said it, but he said he was in office; he was the *de facto* governor; he was exercising authority; the President had recognized him; and inasmuch as there was disorder there, the best thing Congress can do was to recognize him and sustain him, disregarding, however, the circumstances under which he came into power as the so-called governor.

So, then, we have virtually the judgment, the solemn finding and judgment of that able committee, that Kellogg is not and never was the lawful governor of the State of Louisiana.

Now the Senator from Indiana and others have said that he is the *de facto* governor. I deny it. He is not the *de facto* governor; he is a mere naked usurper, and every act he does and every act passed by the Kellogg legislature is absolutely null and void, as much so as if I had done what they have done.

Now what is a *de facto* officer? I am astonished to hear lawyers here of age, large experience, and learning talk so loosely about matters that they ought to be familiar with and with which they would be familiar if they would revert to principles. A *de facto* officer is one who comes in irregularly under a color of authority, and his acts as such are good for third parties and good for the public but never for himself and never as between himself and another. But that is not the case here. If what this committee says is true, if what the Senator from Indiana himself reported is the truth, he came into power not by color of authority at all. I challenge any Senator to point to the color of authority under which he came into power, and I shall be glad to hear it suggested no more until he does cite the authority. It is very easy to engage in empty declamation and to state things as facts which are not facts. When we debate principle let us debate principle, and here in this high place it seems to me we ought to debate principle and talk about nothing but principle. I am utterly disgusted with a clap-trap way of debating questions. Kellogg did not pass into that place by any color of authority at all, nor did the Kellogg legislature have any shadow of authority. There was no color of law which placed them in power, because others had been ascertained according to the constitution and laws of Louisiana to have been elected to fill the various offices I have mentioned. No lawful authority by any color of authority conducted Kellogg and his associates into office.

What is a usurper? Is a usurper a *de facto* officer? Any one who understands principle will not contend that he is. To put again in illustration of the case I put awhile ago, suppose that I were to muster in the city of Washington to-morrow a thousand men and arm them and I should go into the State of Maryland and proclaim myself governor, and I should appoint the necessary officers to administer the State government, and I should send a number of men to the capitol of the State and assemble them there as a Legislature, and by means of this armed force I should administer that government for a month or two months; would anybody who knows anything about principle pretend that in that case I would be the *de facto* governor of Maryland? It would, it seems to me, be absurd to say so. Why? Because I did not go in by even the shadow of color of authority; I should be a usurper, a naked usurper, and the lawful authority would have a right to resist me and resist me to the extent of taking life if need be, although I might be backed by the President and the whole Army of the United States.

I say, sir, as a matter of law that McEnery had the right, he had the constitutional and lawful right to use force to subvert that usurpation.

I maintain that Kellogg and his army there are guilty of murder. We have heard a great deal of declamation about murders in the South. I am talking in no declamatory manner, but in earnest now about murder. I repeat, sir, that Kellogg and the men who have backed him there have been guilty of murder in the case of every man whose life has been taken in that affair in the streets of New Orleans that we have heard so much declamation about. Every man who was there asserting the right of McEnery and who was killed by Kellogg and his forces was murdered in the technical sense, and Kellogg and his forces were guilty of murder; and because they were guilty of murder no man who killed one of them has been tried for crime, for when a court came to pass upon it, the court would have been bound to hold that there was no murder but that they had a right to assert the lawful authority.

Now, I want to show further what attitude some Senators stand in here. Several Senators have declared that they are going to support this proposition. I am astonished at their inadvertence. I am sure they would not do it if they would give this matter the consideration that it deserves. Will the Senate believe, will the country believe, that a majority of the Senators who have expressed their purpose to support this resolution to admit Pinchback as a Senator here have declared by their solemn vote that there was no government in Louisiana? If there be no government in Louisiana, if Kellogg was a mere usurper, if the Kellogg legislature was no Legislature, then it had no right to send Pinchback here. Now, let us see what these Senators have said and done. The Senator from Wisconsin [Mr. CARPENTER] felt anxious upon this subject. He said along with three others that there was no government in Louisiana, because he said that McEnery and the McEnery legislature were elected through fraud. They said so; but it seems to me in the judgment of any disinterested person their declaration had nothing to support it. They said it was so, and they assign this reason, that the negro vote, if it had been cast fairly, would have gone for the republican ticket and that would have elected Kellogg. *Non sequitur.* Why do I say so? In the election that took place there the democrats, the conservatives, and the liberal republicans fused and they had what they called a "fusion ticket," and that "fusion ticket" had the benefit of the influence of Governor Warmoth, and the committee itself says that the witnesses examined swore that his influence was equal to twenty thousand votes. Governor Warmoth had a perfect right to give his influence to any ticket that he pleased, and because he gave his influence to the fusion ticket he was not therefore fraudulent. If the negroes of that State confided in him, or any considerable number of them, or if he had influences which he could employ that were not unlawful in their character to bring them to the support of that ticket, he had a perfect right to do it. He had a right according to practice to use his official patronage for the purpose of carrying that ticket. There had been terrible misrule in that State before that time. Taking his influence and the misrule that had prevailed in that State before, and it was perfectly natural to anticipate the result that happened in that case. The people of all classes needed and wanted a change. This view is confirmed by the election that came off there last November. These republican Senators and republican politicians throughout the country have said that the last election was fraudulent because the democratic ticket carried the election, and yet that State was under the domination of this usurpation of Kellogg. The officers of this usurpation were all over the State; the Army of the United States was there all over the State; and the officers of the United States were there supervising the election. And yet the State at the late election went again overwhelmingly for the conservative party. The American people will not stand by and consent to admit that because the democratic ticket carried the election under such adverse circumstances, in the face of such influences and appliances as were used there by the Kellogg usurpation, therefore it is necessarily void. I do not believe the American people are so unwise as that; nor do I think that anybody believes any such thing.

But, sir, to get back—for this is a little digression—I want to show how certain Senators here voted, in view of what they declare now they are going to do under their obligation as Senators. Senator CARPENTER having in view the fact, as he suggested, that there was no lawful election in Louisiana in 1872 and that there was no State government there, introduced a bill into the Senate providing for a new election in the State of Louisiana under the auspices of the Federal Government. In that bill he uses this language in the first section of it:

> That the election held in the State of Louisiana on the 4th day of November, 1872, for governor, lieutenant-governor, secretary of state, attorney-general, auditor of public accounts, and superintendent of education, and for senators and representatives for the General Assembly of said State, is hereby declared to be null and void; and it is further ordered and declared that the persons who were entitled to hold the said State offices on the said 4th day of November shall continue in office and be recognized as the legal officers of said State by the Government of the United States until their successors are chosen and qualified in accordance with the provisions of this act.

By that section of that bill it was declared that there was no State government in the State of Louisiana. That bill came on to be voted upon finally on the 28th of February, 1873. Upon the final vote the vote resulted as follows:

> Those who voted in the affirmative—

That is, in favor of passing that bill and declaring in the most solemn manner by their votes that the section which has just been read was true, were these Senators—

> Messrs. Anthony—

We had the pleasure of hearing that Senator make a speech awhile ago, in which he takes back this vote, goes back upon his record, and—I say it in no offensive sense, stultifies himself—

> Messrs. Anthony, Carpenter, Corbett, Cragin, Ferry of Michigan, Frelinghuysen, Gilbert, Hamlin, Howe—

We had the misfortune to hear that gentleman go back upon his record this evening—

> Logan, Machen, Osborne, Ramsey, Sawyer, Sherman—

That Senator also went back upon his record the other day—

> Sprague, Stewart, and Wilson.

Now, notwithstanding the report of that committee that Kellogg was a usurper, that the Kellogg legislature was a usurpation; notwithstanding the committee so ascertained and reported; notwithstanding this bill that I have just read a section of declares that there was no State government there; notwithstanding the solemn vote thus sanctioning these declarations, these Senators have stood up in the

face of the country and declared to the American people that they are going to vote to admit a man sent here to be a Senator who purports to have been elected by that Kellogg legislature—that Kellogg usurpation. I ask the American people what they think of Senators who will thus stultify themselves?

But, sir, they did not do it once only. The Senator from Wisconsin [Mr. CARPENTER] was so impressed with his duty in that respect, was so impressed with the obligation of this Government to do something for the relief of Louisiana, that at the last session of the present Congress he introduced another bill which underwent discussion here for many days. In the preamble to that bill he uses these words:

Whereas there is no governor, lieutenant-governor, secretary of state, attorney-general, auditor of public accounts, or superintendent of education in the State of Louisiana, holding said offices, respectively, under an election by the legal voters of the State of Louisiana, in pursuance of the constitution and laws of said State; and whereas there is not in said State any Legislature elected by the legal voters of said State, according to the constitution and laws thereof.

That bill came on to be considered at sundry times up to April 28, 1874. It was ably discussed at great length. Many of the Senators who now declare that they are going to vote for the admission of Mr. Pinchback as Senator then declared their purpose to support this bill, and did support it. It never came to a final vote, but there was a vote which indicated the feeling of Senators in the Senate on this subject. On one occasion the Senator from Iowa [Mr. WRIGHT] moved to postpone the bill the preamble of which I have just read; and upon the vote to displace the bill and take up another for consideration those who voted in the negative were—

Messrs. Anthony—

That Senator has suddenly and strangely changed his judgment—

Bayard, Bogy, Boutwell, Buckingham, Chandler, Conkling, Cragin, Davis, Edmunds, Frelinghuysen, Gilbert, Hager, Hamilton of Maryland, Hamlin, Howe, Jones, Kelly, McCreery, Morrill of Vermont, Sargent, Scott, Sherman, Stevenson, Stewart, Stockton, and Thurman.

Now, Mr. President, I ask the American people in all seriousness what they think of Senators acting upon the fact which was ascertained that McEnery and the McEnery legislature were duly elected; acting upon the fact that it was so ascertained by the authorities of that State; acting upon the report made by the Senate committee, to which I have adverted at much length; acting upon the solemn vote they gave declared that there was no government in the State of Louisiana, and therefore that this Kellogg government was no government? I put it to them to say what judgment they will pass upon these Senators who now stand up and say that they are willing to admit into this body upon a so-called *prima facie* case a person who purports to have been elected by that Kellogg usurpation. I cannot imagine any judgment that they will pass upon these Senators except one of condemnation.

But, Mr. President, I contend that these Senators now are not only going in the face of their past record; they are not only going in the face of their solemn judgment thus expressed; but they are doing, if possible, worse than that. They are acting in utter defiance of public sentiment in the United States. Why do I say so? This is not mere empty declamation on my part; I am asserting a solemn fact, one striking in its character, one that cannot be escaped or evaded. The present Congress is overwhelmingly republican in the other end of this Capitol. The republican majority in the present Congress, elected two and a half years ago, is, I believe, more than two-thirds and about the same relative proportion in this. Why, sir, at the election before the last the republican party swept the country.

Now, what were the issues before the country at the last election? The most prominent issue before the country, if one can be called more prominent than another, was this very Louisiana usurpation, the action of the President there in the unlawful use of the Army, the action of the Administration generally toward Louisiana and the Southern States, and the civil-rights bill, so called. These were of the leading measures that entered into the last election and upon which it turned. Whereas the republican party had before the immense majority to which I have called attention, yet at the last election the democratic party swept the country, and in the next Congress they will have an overwhelming majority, a majority of from seventy to eighty in the House of Representatives. What does that mean? That is the judgment of the American people passed upon this transaction, the severe judgment of the people expressed at the ballot-box, starting with the great State of Massachusetts. There, where a democrat was scarcely ever elected before in the history of that State, a democratic governor was elected. Go to Connecticut and it was the same way. In the great State of New York the democrats swept the State by an overwhelming majority. It was so in Pennsylvania. It was so in Ohio. It was so in Indiana. It was so in Illinois. It was so in New Jersey. It was so in Delaware. It was so almost everywhere.

But the condemnation of this policy of the Administration did not stop in the election of members of the House. Although they have a republican Legislature in the State of Michigan, the administration candidate for Senator was repudiated and a man elected who, although I believe republican in name, is fully committed against these measures of outrage and usurpation. Although the republicans had a majority in the Legislature, they could not bring or drive that majority to the administration candidate, but he was beaten and repudiated. All the influence of the Administration was brought to bear, all the influence of the candidate was brought to bear; and yet the people of Michigan rose up in that republican Legislature and condemned these practices. Go to Wisconsin; there another administration candidate, the distinguished Senator from that State not now in his seat, [Mr. CARPENTER,] was before the Legislature. He, too, was beaten before a republican Legislature. In the State of Florida, where the republicans it might be supposed would have elected a Senator, there a democratic Senator has been elected. The senatorial election is pending now in the State of Minnesota. The candidate there with the best prospect of success is a democrat, though the Legislature is republican.

I ask what the American people mean in all this if they did not thus pass judgment of condemnation on this Administration, this usurpation, this persecution of the people of the South, what did they mean by this verdict? I put it to the people to say whether the Senate is not now defying the American people in attempting to pass this resolution recognizing the Kellogg usurpation and other measures of like character? Sir, if I wanted to see their condemnation sealed forever; if I wanted above all other things to see this party swept from the face of the earth, I would say, go on, pass your acts suspending the *habeas corpus*, pass your civil-rights bill, and all other acts of usurpation that you can imagine or propose, and then I would await calmly and quietly the hour when this party would be swept from the face of the earth, to afflict this country no more forever.

I say, then, Mr. President, I have made true my propositions; I have shown first that the Senate has decided and that it is its duty not to admit a Senator upon claiming to be a Senator-elect upon a so-called *prima facie* case. In the next place, I think I have assigned the most cogent reasons why the person applying now to be admitted as a Senator from Louisiana ought not be admitted until his case is thoroughly examined, and if it is determined at all he is to come in on the solemn judgment of the Senate based upon the whole merits of his case——

Mr. GORDON, (at four o'clock and fifty-eight minutes a. m.) With the consent of the Senator from North Carolina, I move that the Senate do now adjourn.

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

The yeas and nays were ordered; and the call of the roll having been concluded,

Mr. GORDON. Is there a quorum voting?

The PRESIDING OFFICER, (Mr. WEST in the chair.) There is not.

Mr. GORDON. I move that the Senate adjourn.

The PRESIDING OFFICER. That is the motion now.

Mr. DAVIS. I call for the announcement of the vote.

The PRESIDING OFFICER. The Clerk will read the list.

The list of yeas and nays was read, and the result announced—yeas 2, nays 33; as follows:

YEAS—Messrs. Ferry of Michigan, and Thurman—2.

NAYS—Messrs. Allison, Anthony, Boreman, Boutwell, Chandler, Clayton, Conkling, Cragin, Dorsey, Edmunds, Frelinghuysen, Hamlin, Howe, Ingalls, Jones, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Oglesby, Pease, Pratt, Ramsey, Sargent, Scott, Sherman, Spencer, Sprague, Stewart, Wadleigh, West, Windom, and Wright—33.

ABSENT—Messrs. Alcorn, Bayard, Bogy, Brownlow, Cameron, Carpenter, Conover, Cooper, Davis, Dennis, Eaton, Fenton, Ferry of Connecticut, Flanagan, Gilbert, Goldthwaite, Gordon, Hager, Hamilton of Maryland, Hamilton of Texas, Harvey, Hitchcock, Johnston, Kelly, Lewis, Logan, McCreery, Merrimon, Norwood, Patterson, Ransom, Robertson, Saulsbury, Schurz, Stevenson, Stockton, Tipton, and Washburn—38.

The PRESIDING OFFICER. There is not a quorum voting.

Mr. DAVIS. I believe it is in order to move to adjourn now, is it not? I make that motion.

Mr. SPENCER. I rise to a point of order. There is certainly a quorum here. Some Senators have not voted who are present.

Mr. DAVIS. I moved an adjournment, and that is not subject to debate.

The PRESIDING OFFICER. The Chair rules that that motion is out of order because this is a motion to adjourn and is not yet decided.

Mr. DAVIS. I understood the Chair to announce that there was not a quorum. Then when there is not a quorum the only business in order, I believe, is to adjourn.

The PRESIDING OFFICER. The vote now being taken is on a motion to adjourn.

Mr. DAVIS. I understood the Chair to announce the vote.

The PRESIDING OFFICER. The Chair announced that there was no quorum voting.

Mr. SPENCER. I rise to a point of order that there is a quorum here.

Mr. CHANDLER. I ask that the rule be read in regard to Senators voting.

Mr. SPRAGUE. I believe I am entitled to the floor. I desire to vote.

The PRESIDING OFFICER. The name of the Senator from Rhode Island will be called.

Mr. EDMUNDS. It is too late to vote after the result is announced.

Mr. CHANDLER. I ask that the rule be read in regard to Senators present voting.

Mr. DAVIS. I understand——

The PRESIDING OFFICER. The Senator from Michigan has called for the reading of the rule, which will be read.

Mr. DAVIS. I had moved an adjournment previous to that, Mr. President, and I ask whether it is in order to read a rule after a motion to adjourn has been made?

The PRESIDING OFFICER. The Chair will submit the motion, but the Senator must be aware that it will be followed by a call for the yeas and nays.

Mr. DAVIS. Of course; but can you read a rule after a motion to adjourn has been made?

Mr. CHANDLER. I ask for the reading of the rule.

Mr. DAVIS. I understood the vote to be announced, and by that announcement it appeared that there was not a quorum. Now I understand that the only business in order is to adjourn. When there is not a quorum present, that is the only business that can be transacted. Am I right?

The PRESIDING OFFICER. The Senator is mistaken, because there is other business, as a call of the Senate.

Mr. SPENGER. A call of the Senate is in order.

The PRESIDING OFFICER. The Chair announced that no quorum had voted and consequently no action could be taken.

Mr. SHERMAN. I move that the absentees be called.

Mr. DAVIS. Now I ask if anything is in order except to adjourn when a quorum is not present and a motion to adjourn has been made?

The PRESIDING OFFICER. The Chair has already decided on the proposition of the Senator, the pending question being a motion to adjourn, the repetition of the motion is not in order. There has been no decision on the question of adjournment yet by the Senate.

Mr. DAVIS. I understood that the vote was announced. That is certain. Something has occurred since the last motion, and, as I understand the rule, the only business that can be transacted when there is less than a quorum here is to adjourn.

Mr. THURMAN. Has the vote on the motion to adjourn been announced by the Chair?

The PRESIDING OFFICER. The Chair announced the result of the vote and at the same time stated that there was no quorum, and consequently no action.

Mr. SHERMAN. Then the only motion in order is to move a call of the Senate.

Mr. SPENCER. I move a call of the Senate.

Mr. THURMAN. Then there are only two motions that are in order; one is for a call of the Senate, the other is to adjourn. The question is which has precedence. There can be only one of these two motions at a time, for a call of the Senate or to adjourn.

Mr. SHERMAN. A motion to adjourn is not in order after another motion to adjourn unless other business has intervened.

Mr. THURMAN. That is very true where there is a quorum present; but where there is no quorum present, only two motions can be made, one for a call of the Senate and the other is a motion to adjourn.

Mr. SPENCER. If the Senator will allow me to interrupt him, I asked for a call of the Senate and stated that there were Senators present who had not voted and who would make a quorum.

Mr. THURMAN. That is true; but it was not until after the Senator from West Virginia had moved to adjourn. I understood the motion of the Senator from West Virginia to be made first. If that is so, that motion is certainly in order.

Mr. ANTHONY. I understand that the motion to adjourn was lost; but there was no quorum on the vote. I suppose it is competent for the Chair to ascertain if there be a quorum present now.

Mr. THURMAN. Certainly it is.

Mr. ANTHONY. If the Chair is satisfied by count that there is a quorum present, we can proceed with business.

Mr. CHANDLER. I call for the reading of the rule to which I referred.

The PRESIDING OFFICER. The Clerk will read Rule 16.

The Chief Clerk read as follows:

16. When the yeas and nays shall be called for by one-fifth of the Senators present, each Senator called upon shall, unless for special reasons he be excused by the Senate, declare openly and without debate his assent or dissent to the question. In taking the yeas and nays, and upon a call of the Senate, the names of the Senators shall be called alphabetically.

Mr. CHANDLER. I now demand that the names of those present who have not voted be called and that they give their reasons for being excused according to the rule.

The PRESIDING OFFICER. The Senator from Michigan demands compliance with the sixteenth rule, just read by the Clerk, on the part of those Senators who are present and have not voted on the call of the yeas and nays. The Secretary will call on the roll the names of such Senators who are recognized as present and who have not voted.

Several SENATORS. O, no.

The PRESIDING OFFICER. The Chair is informed by the Chief Clerk that it is not in order to supplement the vote as announced by calling the names of any other Senators at present. The only motion now, the Chair is informed, is a motion for a call of the Senate.

Mr. CHANDLER. I move a call of the Senate then.

Mr. SPENCER. I made that motion some time ago.

Mr. MERRIMON. That motion is certainly after the motion of the Senator from West Virginia to adjourn.

The PRESIDING OFFICER. The Senator from Michigan moves that the Sergeant-at-Arms be directed to notify the absent members to attend.

Mr. THURMAN. That raises the question, which has precedence. A motion to adjourn is made. It is voted down. If there be a quorum voting, it is certainly true, as was said by my colleague, that no other motion to adjourn can be made until business has intervened. But if no quorum be present, no business can intervene, because less than a quorum can transact no business; and therefore a motion to adjourn after a motion to adjourn has been voted down by less than a quorum must necessarily be in order, and the only question is——

Mr. CHANDLER. I call the Senator to order. No debate is in order at this stage of proceedings. I call the Senator to order.

Mr. THURMAN. It will require a good deal more distinct statement of the point of order than that, to enable me to comprehend it.

Mr. CHANDLER. I ask the Chair to decide. I call the Senator to order and ask the Chair to decide.

The PRESIDING OFFICER. The Chair is of opinion that the Senator from Michigan's point is not properly taken.

Mr. THURMAN. When there is less than a quorum present, the only motions that are in order are for a call of the Senate and to adjourn. Those are the only motions I am aware of that are in order—either a motion to adjourn, or a motion for a call of the Senate. I do not know that this is settled by any rule of the Senate; but I suppose a motion to adjourn or the motion first made is to be first put, and the motion first made was that of the Senator from West Virginia.

The PRESIDING OFFICER. The question is on the motion of the Senator from Michigan that the Sergeant-at-Arms be directed to request the presence of absentees.

Mr. STOCKTON. I raise the point of order that the question is not on the motion of the Senator from Michigan. The Senator from West Virginia [Mr. DAVIS] moved that the Senate adjourn. A motion had been made before, that the Senate adjourn; and the result was that the Chair announced that there was no quorum. The consequence is that the Senate must adjourn or do no business. There being no quorum, no business can be done except that less than a quorum is authorized to do. The next motion made was made by the Senator from West Virginia that the Senate adjourn. They were capable of doing that and of doing nothing else. The Chair did not hear that motion, but heard the motion of the Senator from Michigan or the Senator from Alabama. I insist upon it that the motion of the Senator from West Virginia to adjourn was a motion that the Chair had a right to hear, and no other motion had he a right to hear but that motion which was a motion to adjourn and which has never yet been put.

Now, Mr. President, recollect and Senators recollect that when there was no quorum there was no vote; there was no action on the motion to adjourn because the decision of the Chair was that there was no quorum voting. It is said there is a quorum here. Republican Senators have been out taking their ease through the hours of this night and they come in here now and make a quorum. They have been luxuriating in their cloak-rooms while we have been sitting here working, and they have come in and now make probably a quorum. I admit that probably there is a quorum now, and I am very glad there is. I always want a quorum. When the motion is made by the Senator from West Virginia, the only motion that can be entertained, that the Senate adjourn, we have a right to have that question put. I do not wish to embarrass business for a moment; but I do insist that that motion to adjourn made by the Senator from West Virginia should be put to the Senate and it will be a very singular precedent if any other motion should be put under the circumstances.

The prior motion failed for want of a quorum. Now, Mr. President, what will you do for want of a quorum? What does that mean? It means that the Senate is not here. That is what it means. The want of a quorum shows that the Senate is not here. Will you do business in its absence? Is that business legal? Suppose you tried to pass a bill under such circumstances, would that be a legal bill, when it is announced by your own vote that there is no quorum here? Certainly not, and the only motion that could be made was a motion to adjourn. It is perfectly plain now that there is a quorum of the Senate present, and it is perfectly plain that a motion to adjourn will not prevail; but although the skies fall, let us keep order. Let the motion of the Senator from West Virginia be put, which is the first motion in order, that we adjourn. I presume that motion will not prevail; but no matter what time of the night or of the morning it may be, it certainly is right that we should preserve the rules of the Senate; and certainly no man can doubt that that motion was the only motion which could be made under the circumstances. A motion for a call of the House might have been made possibly even at that time, but that motion was subsequent to it; it followed it. The first motion was, as the Chair must know, as every gentleman on this side of the House knows, was made by the Senator from West Virginia; it was a motion to adjourn, following a motion to adjourn which was declared by the Chair not to be decided upon at all because there was no quorum present. The motion to adjourn, the first motion made, has had no action upon it at all. Let us vote first on the proposition to adjourn. That being voted upon, I have no doubt the gentlemen on the other side will vote it down, and then the next motion

may be to call the absentees if you find you have not a quorum. But do let us preserve order, Mr. President. If gentlemen on the other side will keep us up all night, if they will go off and go to their quiet beds and take their delicate sleep, and send their guards here simply to keep us awake all night, the least they can do is, when motions are made and they come rushing in from their delicious couches, not to object to our having the rules of order preserved in this body. We simply ask that the motion of the Senator from West Virginia that the Senate adjourn be put. They can vote it down as soon as they please, but let us have the rules obeyed.

The PRESIDING OFFICER. The Chair will state his understanding of the case, and he will also set the Senator from New Jersey right with respect to his entertainment of the motion of the Senator from West Virginia. The Chair did hear the motion of the Senator from West Virginia and overruled it upon the ground of the uniform practice of the Senate that a motion to adjourn cannot be repeated until some business has intervened. On that ground the Chair decided the motion of the Senator from West Virginia out of order, and entertained the motion of the Senator from Michigan, which was for a call of the Senate. That has been the uniform practice, and the Chair will so rule until otherwise directed by the Senate.

Mr. STOCKTON. I wish to make my point as gently as I can; but my point is that when a motion to adjourn is made, and the Chair decides that there is no quorum voting, there is no decision on that motion; the Senate does not decide it, there is no quorum voting upon it, and the motion can be repeated instantly, and there is no rule of any parliamentary body that can prevent it. When, sir, you find that there is no quorum in this body, you have no Senate to preside over, you can make no decision. You made no decision in this case; you can make no decision. Your only decision was that there was no Senate here. We had then one of two things to do: to declare the Senate dissolved, to declare the Senate adjourned, or to call for the absentees, or to adopt another motion, and have the same vote put over again. You have no other power in your hands. The first motion made was by the Senator from West Virginia, which was to adjourn, but the absentees were coming in, and you saw the House was full and we had a quorum——

Mr. STEWART. I rise to a point of order. It is that the point of order is not debatable. The Senator from New Jersey is out of order in debating a point of order. There is no appeal from the Chair.

The PRESIDING OFFICER. The Chair will state that there is no motion before the body except the motion for a call of the Senate, and the Chair is informed that that is debatable.

Mr. THURMAN. I confess my surprise at the announcement of the Chair that the motion of the Senator from West Virginia was ruled by the Chair to be out of order. I never heard of such a ruling, and I venture to say that no Senator on this floor ever heard of such a ruling. If it had been ruled, I should have appealed, if nobody else had appealed, from a ruling so extraordinary.

Mr. President, if you now decide that motion of the Senator from West Virginia was out of order, then I ask to appeal from that ruling. No Senator has heard any such ruling—not one. No Senator has heard a ruling that when there is less than a quorum in this Senate it is necessity for business (which cannot be transacted without a quorum) to intervene before there is another motion to adjourn. No Senator ever heard such a ruling in this Chamber.

Mr. President, if you ruled that, I ask you to rule it now, and I ask you to entertain my appeal from that ruling.

Mr. STOCKTON. Mr. President, I was taken off the floor by the Senator from Nevada saying that he rose to a point of order. He made no point of order. He sat right down, and the Senator from Ohio got up, and I am very much indebted to him, for he made my little point of order much better, as he always can, than I did myself. I ask the Senator from Nevada to make his point of order.

Mr. STEWART. I will do it most distinctly. It is that the Senator from New Jersey is out of order, debating a question of order decided by the Chair when there has been no appeal.

Mr. STOCKTON. I ask the Senator from Nevada to reduce his point of order to writing. I wish to have that point on record.

The PRESIDING OFFICER. The Chair will call the Senator to order.

Mr. STOCKTON. Which Senator?

The PRESIDING OFFICER. And will entertain the appeal of the Senator from Ohio, which will be a great relief to the Chair. The Chair finds himself in a somewhat novel position, and he will state the case as he understands it.

A motion was made to adjourn, and pending a decision on that question, in consequence of no quorum being present, the Chair felt incompetent to entertain another motion to adjourn; and from that decision the Senator from Ohio appeals.

Mr. THURMAN. Now, Mr. President, I crave that this question may be fairly put. I have not wasted one minute this night by any remarks or by any dilatory motion. I have been ready to meet the question that is before the Senate at any time. I have been ready to vote upon it at any moment that I have been in the Senate to-night. I am not responsible myself for any delay.

But now what is the question before the Senate? It is a matter that concerns us all. A motion to adjourn was made. The vote was taken by yeas and nays. The Chair announced the result. There were but two for adjournment; I was one of them, and there was a majority against adjournment, but taking them together there was no quorum present. Thereupon the first business that occurred, the first motion that was made, was the motion of the Senator from West Virginia to adjourn. After that motion had been made the Senator from Michigan asked for the reading of a rule, that rule which requires Senators present to vote. Then the Senator from Alabama asked for a call of the Senate.

Now the question is, and the sole question before the Senate is, whether the motion of the Senator from West Virginia was in order. It would not be in order if a quorum of the Senate was present, because business must intervene between one motion to adjourn and another motion to adjourn when there is a quorum present.

But when there is no quorum present, all the Senate can do is either to adjourn or to require the attendance of absentees, and the question now before the Senate is, which of those motions has precedence? I do not know which has precedence. I appeal to the elder members of the Senate to say which has precedence. That is the sole question. The question is simply, when there is no quorum here and when no business can intervene between one motion to adjourn and another, whether a motion to adjourn or a motion to require the attendance of absentees has precedence. Upon that question I defer to the elder members of the Senate.

Mr. ANTHONY. As I understand it, I think the ruling of the Chair has been perfectly correct. A motion was made to adjourn, and it is competent for less than a quorum to adjourn or to refuse to adjourn. Before any business had intervened, another motion was made to adjourn. I do not think that one motion to adjourn after another, no business intevening, is in order. The Senator from Michigan [Mr. CHANDLER] moved that the Sergeant-at-Arms be directed to request the attendance of absent Senators. While that motion was pending, if the Senator from West Virginia [Mr. DAVIS] had moved to adjourn, he would doubtless have been in order, but the Senator from West Virginia moved to adjourn before the motion of the Senator from Michigan to direct the Sergeant-at-Arms to request the attendance of absent Senators was before the Senate. Therefore the motion of the Senator from Michigan was in order and the motion of the Senator from West Virginia was not, although it would be in order now.

Mr. THURMAN. I beg to correct the Senator from Rhode Island. The Senator from Michigan made no such motion. He simply asked for the reading of a rule.

Mr. EDMUNDS. He made it later than that.

Mr. MORTON. The Senator from Alabama [Mr. SPENCER] made the motion several times.

Mr. GORDON. I only want to say one word, for I confess my ignorance of the rules of the Senate; but it occurs to me that upon the ruling by the Chair and the position taken by the Senator from Rhode Island we might be detained in the Senate forever. Suppose no Senator had proposed the reading of any rule, we could not transact any business legal to the body where a quorum is present. Suppose no Senator had asked for the reading of the rule or had made a call, were we to sit here forever and not be allowed to renew a motion to adjourn? I think that this suggestion clearly shows that the position of the Senator from Rhode Island is not in accordance with the rules of the Senate.

Mr. SHERMAN. I see the Senator from North Carolina [Mr. MERRIMON] is weary, and I suppose he does not want to speak just now, and perhaps this point has been raised for the purpose of giving him a little rest. I desire to call the attention of the Senate to a remark made a moment ago by the Chair in response to the Clerk, that a member being present and not voting could not be arraigned for it without a quorum. I think that is technically true; but I call the attention of the Senate in a very friendly way to this, that Senators being present and refusing to vote, if their conduct thus prevents a quorum, it is a very high violation of the rules of the Senate and a very unreasonable one. I have never seen it done where a Senator has been pointed out——

Mr. THURMAN. We do not hear the Senator.

Mr. SHERMAN. I say I wish to call the attention of the Senate, without any feeling about it, that where Senators remain in their seats and refuse to vote when their names are called, it is specifically in violation of one of the rules of the Senate. Although no doubt the Clerk is right in stating that we cannot proceed in the absence of a quorum to pass the judgment of the Senate upon that act, yet it is an act that I never have seen done before and I hope it will not be repeated. The rule is imperative on a Senator when his name is called if he is in the Chamber. He can step out of the Chamber if he chooses and nobody will disturb him except the Sergeant-at-Arms be sent to request him to come in; but if he is present in his seat, he must vote. The violation of that rule is a serious matter, especially if the violation of the rule thus prevents a quorum. I do not make my remarks to the present case, because I do not know that any such Senator was present. I was absent myself at the roll-call. But the sixteenth rule of the Senate requires a Senator to vote when present, unless he is excused. He can, if he chooses to go out of the Chamber, stand among other absentees, but when present in his seat he must respond to his name and the Senate has the power to enforce its rules The rule itself requires that, and as a matter of course it can be done.

Mr. ANTHONY. Even less than a quorum.

Mr. SHERMAN. Even less than a quorum. Less than a quorum,

I suppose, cannot call upon a Senator to give his reasons for not voting, but undoubtedly that fact would be shown upon the record. Any Senator might be called to account to show that he was not absent at such a time when his name was called, and he might be arraigned for even this violation of the rule.

In regard to the other point made by my colleague in regard to the order of business, I agree with the Senator from Rhode Island that where the Senate appears without a quorum, by common consent usually a motion to adjourn follows a motion to adjourn, but if the point is made the parliamentary rule undoubtedly prevails and the same motion cannot be repeated. Otherwise there would be an end to all business. That applies as well to a body with a quorum as without a quorum. When the Senate is without a quorum, while it cannot pass a bill or resolution, while it can do nothing of a legislative character, it has power given to it by the Constitution of the United States to compel the attendance of absentees. Therefore it has the power to do business, but no other business except to compel the attendance of absentees. The uniform rule is when the Senate appears without a quorum, either to adjourn by common consent or to move, in the language of the rule, to send for absentees. The Constitution itself gives the power. It is doubtless familiar to all Senators, but I will read the rule of the Senate which authorizes the Senate to compel the attendance of absentees:

8. No Senator shall absent himself from the service of the Senate, without leave of the Senate first obtained. And in case a less number than a quorum of the Senate shall convene, they are hereby authorized to send the Sergeant-at-Arms, or any other person or persons by them authorized, for any or all absent Senators, as the majority of such Senators present shall agree, at the expense of such absent Senators, respectively, unless such excuse for non-attendance shall be made as the Senate, when a quorum is convened, shall judge sufficient, and in that case the expense shall be paid out of the contingent fund. And this rule shall apply as well to the first convention of the Senate, at the legal time of meeting, as to each day of the session, after the hour has arrived to which the Senate stood adjourned.

The only business we can do in the condition we are in now, is to proceed, under this rule, to send for the absentees; but if there are Senators present who were here when their names were called and did not answer, I respectfully appeal to them that we are bound to observe the rules of the Senate. We must do it. We cannot avoid it without violating our duty as Senators. I hope if there has been any such case, that every Senator will respond to his name. The motion to adjourn is now in order, and perhaps it will be the better way to make it.

Mr. CHANDLER. We can have the yeas and nays on this motion.

Mr. ANTHONY. Make a motion to call the yeas and nays.

Mr. SHERMAN. To avoid controversy, new business having intervened, I will move to adjourn.

Mr. EDMUNDS. There is an appeal pending. To find out whether there is a quorum here or not, let us take a vote on that.

Mr. SHERMAN. I do not care how it is. I am opposed to adjourning, and therefore I will not vote for the motion, but it seems to me when a motion is made Senators ought to respond to their names if present, because otherwise it might disturb the harmony of the Senate. One of the most fatal examples might occur if a Senator can stay in his seat and refuse to vote and violate a rule and that should be passed over without objection or complaint. There is then an end of the power of the Senate to compel a vote, because at almost any hour of the day, at any moment of the day, especially if the Senate should be evenly or nearly evenly divided, the minority might prevent a vote. Therefore this rule is imperative and important, and it ought not to be violated.

Mr. ANTHONY. In order to stop this debate and to test the presence of a quorum, I will move that the Senate do now adjourn, and upon that I call for the yeas and nays.

Mr. THURMAN. I hope the Senator will withdraw that motion for a moment.

Mr. ANTHONY. I will, if the Senator will renew it.

Mr. EDMUNDS. This motion is just as debatable as the other.

Mr. THURMAN. I will renew the motion if the Senator will withdraw it.

Mr. ANTHONY. I withdraw the motion.

Mr. THURMAN. Mr. President, my colleague is quite right in saying that the rule requires every Senator to vote; and yet there are certain considerations that might justify a Senator in not voting. No Senator can vote upon any question in which he is personally interested, and it may be that a Senator may fairly be unable to decide at the moment whether he ought to vote or not in view of that rule.

Mr. EDMUNDS. On a question of adjournment?

Mr. THURMAN. Yes, sir; on a question of adjournment, because a question of adjournment may determine the fate of a measure.

Mr. SARGENT. Will the Senator allow me? I would like to ask him if he were interested in any question and therefore should be required to vote, if he would not be violating strictly the rule which says he shall not vote in that case?

Mr. THURMAN. He may decline to vote.

Mr. SARGENT. But if asked to vote he would have to give that as a reason.

Mr. THURMAN. If he is interested in a question he may decline to vote, and he may be uncertain whether he is interested or not. That may be a matter for reflection. Upon every question that comes before the Senate every member of the Senate is interested in one sense. The distinction is between that general interest which all the people of the Republic have and the special interest which a Senator or a member of the House of Representatives may have in a pending question, and it is a very delicate question indeed. Therefore a Senator or a member of the House may well hesitate whether he shall vote or not, either upon the direct question upon the bill or upon any dilatory motion that may affect its passage.

But, Mr. President, there are other considerations besides the personal interest of a Senator. I beg leave here to recall what happened once in this Senate. When I entered the Senate there were but eight members of the democratic party here and there were sixty-odd supporters of the administration. Night after night those eight members attending in their places made the necessary quorum to transact business; and without the attendance of the whole eight there would have been no quorum. It so happened that on one night when they were here and when twenty-odd republican Senators were absent from their seats the late Senator from California [Mr. Casserly] and myself refused to vote. We were tired of making a quorum while the majority of the republican Senators were in their beds, and we refused to vote. The Senator from New York nearest me [Mr. CONKLING] called attention to the fact—naming us by our names—and the Senate refused to make us vote. Now, with twenty democrats on this floor and three or four independent members of the Senate, and with the whole body of the Senate besides these twenty-three or twenty-four, we are here agitating the question what shall be done for want of a quorum? Whose fault is it that there is no quorum to-night? The peace of the country, the peace of a sovereign State, are concerned in what we shall do to-night; and with fifty republican Senators in this body we are agitating the question what we shall do for want of a quorum? Ah! Mr. President, this is an odd spectacle for the American people to behold. If what has been said in this Chamber within the last two months be true, if Louisiana is a Golgotha, if the southern country is nothing but a scene of murder and assassination, why is it that the republican Senators are out of their seats to-night? Why is it that when the great question what is the regular and legal government in the State of Louisiana—for that is the question involved in the resolution now before the Senate—is before the Senate fifty republican Senators in this Chamber find themselves without a quorum? I want to know how that is; I want the American people to know why that is.

Mr. President, this is a very remarkable question that is now before us. It is a question whether or not we shall proceed to-night in this business. I appeal to the Senate to bear me witness that I have wasted no time. I am ready now, and have been ever since we met, to vote on this question. I have no speech to make upon it. I have already said what I want to say, and although I have heard special pleading here, that, if it had been made before me when I was the chief justice of my State, would have met with a merited rebuke, I am willing to pass it by in silence and take the vote. Now, Mr. President, in accordance with my promise to the Senator from Rhode Island, I move that the Senate adjourn.

Mr. SARGENT. I ask the Senator to withdraw that motion for a moment. I wish to make a remark.

Mr. THURMAN. Very well.

Mr. SARGENT. On the roll-call which we have just had there was but one democratic Senator present, and that was the Senator from Ohio. I ask him why it is, if, as has been asserted upon this floor hour after hour and day after day during the past weary weeks, Louisiana was being stabbed at the heart, if democrats believe the assertions which they have made on this floor that a man is to be illegally foisted in here, why is it that the democrats are not here to resist an act of that kind? I want the country to understand that.

Mr. BAYARD. They are here.

Mr. SARGENT. The roll-call says they are not here. That says there is no quorum here present; that here with great public business being transacted there is no quorum present, and Senators rise in their seats and call the attention of the country to the fact that there is no quorum present and that republicans are not here when this important business is being transacted. Now, appealing to the roll-call and to the country, I call attention to the fact that the democrats do not believe their assertions, they do not believe a great wrong is to be committed by the admission of this man or they would be here answering the roll-call.

Only one democrat voted on the last roll-call; only one democrat is present in this Chamber by the official roll-call; but I ask what the appeal of the Senator from Ohio is worth or what the reply is worth? Simply nothing. The roll-call showed the presence of thirty-six Senators on this floor. All but one of these were republicans. Almost immediately other democratic Senators rose up in their seats who had not voted at all, who claimed that there was no quorum present. The vote of a single one of them would have shown the presence of a quorum. A Senator rose and insisted because there was no quorum present that another motion to adjourn was in order, and he made that motion when he himself by simply voting, as he had refused to do, would by that very fact have developed the presence of a quorum.

Now, Mr. President, in the same spirit I renew the motion to adjourn.

Mr. EATON. I should like to say a word.

Mr. SARGENT. I withdraw the motion.

Mr. EATON. Although, Mr. President, a new member of this body,

and not disposed to take any participation in the discussion of this question, it is as important to me that the rulings of the Chair should be right as it is to any other member of the Senate. With some little experience in other deliberative bodies, I beg to state what, from the slight examination I have made, I think is the rule of the Senate, and what, in my judgment, the rule ought to be, and how I shall govern myself both now and hereafter.

By general parliamentary law everywhere, in England and America, where there is no quorum the body is adjourned until its next hour of meeting. By your rule here, in my judgment if the yeas and nays are called and there is not a quorum, the first motion to be made after that fact appears is not another motion to adjourn. I agree with gentlemen who have spoken upon the other side that that motion would be improper, but the proper motion would be for a call of the Senate. If a majority refuse to order a call of the Senate, then the Senate ought to stand adjourned, notwithstanding there is a rule that the Senate shall be called. It is important to us all, not this morning, but every other morning, that we should agree with regard to the proper administration of the parliamentary law and the rules, and I shall not be found to disagree with gentlemen on the other side I presume upon such administration.

Mr. FERRY, of Michigan. I should like to call the attention of the Senator from Connecticut to the fact that the Presiding Officer ruled the motion of the Senator from West Virginia out of order.

Mr. THURMAN. No; he did not. I deny it.

The PRESIDING OFFICER. The Senator from Ohio is certainly mistaken. The Chair called the Senator from West Virginia to order, and overruled his motion to adjourn.

Mr. FERRY, of Michigan. I think, then, notwithstanding the remark of the Senator from Ohio, that my assertion is vindicated by the Chair, that the Chair ruled the motion of the Senator from West Virginia out of order on the basis of its being a repetition without intervening business. The Senator from Michigan [Mr. CHANDLER] asked that the rule be read, and followed that by moving that the Sergeant-at-Arms be dispatched for absentees.

Mr. THURMAN. No; he did not.

Mr. FERRY, of Michigan. I will ask whether I am correct?

The PRESIDING OFFICER. Such was the Chair's understanding of the motion of the Senator from Michigan. He first called for the rule to be read and then demanded a call of the Senate.

Mr. FERRY, of Michigan. The second time I am vindicated by the Chair, notwithstanding the remark of the Senator from Ohio that that is not the fact. I might recur to another fact, that the Senator from Alabama moved at an early stage of these proceedings that the Sergeant-at-Arms be dispatched for absentees and while he was attempting to secure that the Senator from West Virginia moved that the Senate adjourn. The Chair, as I said before, stated that the motion of the Senator from West Virginia was out of order. The motion of the Senator from Michigan was clearly in order in my judgment. When that was made, business had intervened, and a motion to adjourn was then in order. I refer to this only to remind the Senator from Connecticut of the fact that that motion was made and to fortify what he has said, for it concurs with my view of the question, that then it was in order to move an adjournment, for there can be but two motions made when by any process the fact is revealed that there is not a quorum in the Senate, and those two motions are to adjourn and to send for the absentees. But the fact appeared that the prior motion was to adjourn, and therefore upon the principle of repetition without intervening business, the Chair could not entertain the motion to adjourn, and the only remaining motion was to send for the absentees. When that was done, intervening business having taken place, the motion of the Senator from West Virginia, had he repeated it, would have been in order; but as I understand it there has been no motion to adjourn since the intervening business suggested by the Senator from Michigan.

Mr. STOCKTON. Mr. President, I have been here the whole night long and up to this time voting whenever I heard there was a vote going on, and I think the majority of the democrats have been with me in that. As I said before, when the Senate was absolutely empty and we thought nothing was going on we were not actually present in this body but within reach always ready to vote. I have been certainly so myself. I answer that to the gentleman on the other side who made a remark which rather reflected on us. So far as I have been concerned, I have been here always ready to vote whenever I was called upon.

Mr. SPENCER. If the Senator will allow me, I rise to a point of order. My point of order is that the Chair has decided. There being if I am correct 36 votes cast lacking one of a quorum, the Chair decided there was no quorum. Am I correct in that?

The PRESIDING OFFICER. Yes sir.

Mr. SPENCER. Subsequent proceedings show that there is a quorum present. Several gentlemen have addressed the Chair, been recognized, and have spoken, who were not present at the time of the roll-call.

Mr. BAYARD. But others may have gone out who were in then.

Mr. SPENCER. Clearly there must be a quorum present.

Mr. STOCKTON. I think the Senator from Alabama does not understand the purpose of my remarks or he would not interrupt me.

Mr. SPENCER. I only rose to a point of order to suggest that there was a quorum present, and that the Chair was wrong in stating there was not.

Mr. STOCKTON. I think if the Senator will listen to me for a minute he will not make the point of order.

Mr. SPENCER. If the Senator from New Jersey had voted instead of talking, there would be a quorum. Is he here or not?

Mr. STOCKTON. I am here.

Mr. SPENCER. Then I insist there is a quorum.

Mr. STOCKTON. I knew a half-witted fellow once who lived in my town who went into an ale shop and began drinking ale out of a barrel. He was taking it up when the keeper of the shop came in and said, "Why Joe, what are you doing drawing my ale?" Said he, "You lie, I ain't here; it ain't me." [Laughter.] If the Senator expected me to say that, he is mistaken. I am here. It is I.

The PRESIDING OFFICER. Senators will address the Chair.

Mr. SPENCER. If the Senator is here I insist that there is a quorum present.

Mr. STOCKTON. The Senator from Alabama certainly did not understand the object for which I rose, or he would not, I think, have interrupted me. I rose simply to state this point. The question now before the Senate, as I understand it, is simply whether we can now take this vote.

The PRESIDING OFFICER. The Senator is mistaken. The Chair will state the business now before the Senate. It is on the appeal of the Senator from Ohio from the decision of the Chair ruling the motion of the Senator from West Virginia out of order; and consequently debate is in order on that appeal. If it were a motion to adjourn no debate would be in order.

Mr. FERRY, of Michigan. I desire to put a question to the Chair. Is this question debatable? The question is upon adjournment, which is an undebatable question, and an appeal upon that question cannot be debatable.

The PRESIDING OFFICER. The point of the Senator from Michigan is correctly taken. The question of adjournment being an undebatable one, the appeal must be decided without debate. The Chair will again put the question to the Senate. The Chair having decided that the motion of the Senator from West Virginia was out of order in consequence of its being a repetition of a motion to adjourn without an intervening motion and the only one that could be made for a call of the Senate, the question now is, Shall the decision of the Chair stand as the judgment of the Senate?

Mr. DAVIS. Mr. President——

The PRESIDING OFFICER. The question is not debatable.

Mr. DAVIS. I do not want to debate it. I move that the Senate do now adjourn, (at six o'clock a. m.)

The PRESIDING OFFICER. The motion is now in order. It is moved that the Senate adjourn.

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

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

Mr. SARGENT, (when his name was called.) On this question I am paired with the Senator from Kentucky, [Mr. MCCREERY,] who if present would vote "yea," and I should vote "nay."

The roll-call was concluded.

Mr. FERRY, of Michigan, (after having first voted in the affirmative.) There being a quorum, I withdraw my vote. I am paired with the Senator from Missouri, [Mr. SCHURZ.] If present, he would vote "yea" and I should vote "nay" on the question of adjournment; but to secure a quorum I would vote, as he would, as I have done during the evening.

The result was announced—yeas 12, nays 31; as follows:

YEAS—Messrs. Alcorn, Bayard, Davis, Eaton, Gordon, Hager, Johnston, Merrimon, Norwood, Saulsbury, Stockton, and Thurman—12.

NAYS—Messrs. Allison, Anthony, Boreman, Boutwell, Chandler, Clayton, Cragin, Dorsey, Edmunds, Flanagan, Frelinghuysen, Hamlin, Howe, Ingalls, Jones, Mitchell, Morrill of Maine, Morrill of Vermont, Morton, Oglesby, Pease, Pratt, Ramsey, Scott, Sherman, Spencer, Stewart, Wadleigh, West, Windom, and Wright—31.

ABSENT—Messrs. Bogy, Brownlow, Cameron, Carpenter, Conkling, Conover, Cooper, Dennis, Fenton, Ferry of Connecticut, Ferry of Michigan, Gilbert, Goldthwaite, Hamilton of Maryland, Hamilton of Texas, Harvey, Hitchcock, Kelly, Lewis, Logan, McCreery, Patterson, Ransom, Robertson, Sargent, Schurz, Sprague, Stevenson, Tipton, and Washburn—30.

So the Senate refused to adjourn.

Mr. MERRIMON. Mr. President——

Mr. EDMUNDS. The pending question is the appeal of the Senator from Ohio.

Mr. THURMAN. Then I have the floor.

The PRESIDING OFFICER. Does the Senator from Ohio withdraw the appeal?

Mr. THURMAN. No, sir; I want to say a word.

The PRESIDING OFFICER. The question is not debatable, the Chair will inform the Senator.

Mr. THURMAN. Then I ask unanimous consent. Statements have been made here that I wish to reply to.

Mr. HAMLIN. I object.

Mr. THURMAN. Then I withdraw the appeal and ask the Senator from North Carolina to yield me a moment.

Mr. MERRIMON. I yield, sir.

Mr. THURMAN. Mr. President, the Senator from Michigan [Mr. FERRY] made certain statements and claimed that he was sustained

by the Chair in his narration of those statements, in contradiction to statements that I had made. Now, Mr. President, I wish to state precisely the facts as I understood them to occur, and which I believe every member of this Senate knows did occur. A motion to adjourn was made. The vote was taken by yeas and nays. There was no quorum voting. The Senator from West Virginia [Mr. DAVIS] then moved to adjourn. The Chair did not then rule that that motion was out of order. Before that motion was decided the Senator from Michigan farthest from me [Mr. CHANDLER] asked that the rule be read which requires Senators to vote; and before any ruling had been made by the Chair the Chair said that the rule should be read. There was no——

The PRESIDING OFFICER. Will the Senator allow the Chair to remind him of one thing: that the Senator from West Virginia repeated on three several occasions his motion to adjourn and the Senator from Ohio did not notice that on the first occasion the Chair had ruled the motion out of order. His attention was called to the subsequent motions, which the Chair refused to entertain.

Mr. THURMAN. I must say, sir, that I never heard such a ruling. Then, further, the Senator from Michigan [Mr. FERRY] said that his colleague moved for a call of the Senate and that the Sergeant-at-Arms be sent for the absentees. No such motion was made by the Senator from Michigan, [Mr. CHANDLER.] The Senator from Michigan simply called for the reading of the rule which required Senators to vote; that was all. Then afterward, when the Chair announced that in its opinion the motion of the Senator from West Virginia was out of order, and after debate as to whether it was out of order, there being no quorum present, for the reason that no business had intervened, then I asked the Chair to make that ruling again. Then I appealed from it. I am certain, sir, as I am of my existence that no one here heard any ruling by the Chair when the motion was first made that that motion was out of order.

Mr. EATON. Will my friend from Ohio permit me a word?

Mr. THURMAN. Certainly.

Mr. EATON. My friend from Ohio did not hear it. The Senator from West Virginia made his motion to adjourn and the Chair ruled it out of order.

Mr. THURMAN. When it was first made?

Mr. EATON. Yes, sir. I heard it and the Senator from West Virginia heard it. The Senator from Ohio did not hear it.

Mr. THURMAN. Then I am corrected about that. I certainly heard no such thing. If I had, I should have appealed from it at the moment it was made, for I never should have submitted to a ruling that business must intervene by less than a quorum, before another motion could be made to adjourn. But certainly in respect to what was said by the senior Senator from Michigan, all he asked was that the rule might be read. He moved for no call of the Senate, he moved for no sending of the Sergeant-at-Arms for absentees.

Mr. FERRY, of Michigan. Inasmuch as the Senator from Connecticut has very kindly sustained me in the view that I presented as regards the Senator from West Virginia, my colleague has just entered the Chamber and I now appeal to him to know whether or not when he asked to have the rule read he followed it by asking that the Sergeant-at-Arms be dispatched for the absentees.

Mr. CHANDLER. I did.

Mr. FERRY, of Michigan. That vindicates the Chair, myself, and the Senator from Connecticut.

Mr. DAVIS. Mr. President, I think the Senate will agree that the Senator from Michigan farthest from me [Mr. CHANDLER] did ask for the reading of the rule, and some minutes afterward, after some words had taken place, he then followed it by a motion to send for the absentees, but not at the time. I think all will agree to that.

Mr. SPENCER. I asked for a call of the Senate several times.

Mr. FERRY, of Michigan. I do not wish to prolong the matter but only to place it right. The Senator from Ohio and I desire nothing between us on this matter but what is correct. The Senator from West Virginia is right in what he has just stated, but the Senator from Michigan, my colleague, held the floor. I think I am correct in that.

Mr. CHANDLER. I think so.

Mr. FERRY, of Michigan. I think there is no doubt on this question.

Mr. MERRIMON. Mr. President, I was a very cool observer——

Mr. SPENCER. I am sorry——

The PRESIDING OFFICER. The Senator from North Carolina has the floor. Does he yield to the Senator from Alabama?

Mr. MERRIMON. No, sir.

The PRESIDING OFFICER. The Senator from North Carolina declines to yield.

Mr. MERRIMON. I think I have been a very cool observer of the debate which has transpired touching these questions of order, and I remember very distinctly what the Senator from Michigan [Mr. CHANDLER] said and did. At first, he called for the reading of the rule; afterward, he did not move to send for absentees, but he insisted that those who were present and did not answer, should be called and give their excuses; and he insisted that those present who had not answered should be called, but he did not move to send for absentees.

Mr. President, before I proceed with my remarks, which were suspended by reason of the interruption of the motion to adjourn, I will remark, that something has been said about the readiness and anxiety of many Senators to take the vote on the resolution now before the Senate; and in rather a complaining tone, it has been suggested that some Senators were protracting the debate unnecessarily. I beg to say that I think that is uncharitable toward myself and other Senators, particularly from the South. But one democratic Senator from the South has been heard in this debate. I said some days ago that I thought all the Senators from the South who desired to speak ought to be heard. They come from that section most seriously affected by the suggested offensive legislation. They are more familiar with the facts, they are more familiar with those circumstances with which the country ought to be acquainted than anybody else, and for the reason that they live among those people. It is but just to the Senate and it is but just to the country and particularly to the people whom they represent that their representatives here should be heard; and so far as I am concerned, if I am entitled to be heard under the rules of the Senate and the Constitution and laws of this country, I insist that I shall be heard.

Mr. President, to-day the American people behold a strange and an alarming spectacle. In a time of profound peace a State of the Union is literally stricken down by the hand of treachery and violence. Anarchy prevails throughout all her borders, and the condition of the people is intolerable and deplorable to the last degree. This state of disorder has lasted for a long while, and yet no step has been taken to redress the wrong or restore the right. Poor Louisiana is prostrate, lingering, bleeding, dying, and none go to her relief!

A scene scarcely less striking and significant is presented in the Senate. Here are the majority, a great and controlling majority, who represent a political party whose boast to the world is that it saved the life of the Union, and which claims the ability to remedy all the political ills that afflict the country. This debate has lasted a month; the leaders and great men of this party have joined largely in it; its ablest defenders have made the best apology in their power for the many grave charges brought against it; they admit the evils which are patent to everybody; and yet, no one of them has brought forward any measure of relief; indeed, no one has even suggested a remedy. A stronger illustration of lack of statesmanship and power to remedy acknowledged evils of the most serious moment, can hardly be found. Well may the patriotic citizen say, "False and faithless party, thou has been weighed in the balance and found wanting; be thou cast down and cast out, and let another take thy place!" The essential good of the Republic demands, nay, requires a salutary change of administration. This is the chief public want at this time. So I think and believe, and I trust the people of the Union will so decide, when they shall again have opportunity to pass judgment on the conduct of those who serve them in public capacities.

Mr. President, it may be stated as a general truth, that the masses of the people never complain of misrule without a reasonable cause for such complaint. They are interested in having stable, wholesome, just government, honestly and faithfully administered; and when they have this, they are quiet, prosperous, and happy. The people are never agitators without a cause. Both reason and experience attest the truth of these declarations.

That the people of the South of every class and condition have complained for years past of misrule; that the grounds of their complaints have been of the most grievous character—too grievous to be borne in patience—cannot be denied by any candid person acquainted with the facts and the history of that section of the Union for the last ten years. That their wrongs for the most part and in most material respects, have gone and still continue to go unredressed is painfully true. They have repeatedly and constantly appealed in vain to the Federal and local authorities for relief. Their appeals have been slighted and rejected, and insult and outrage have been added to injury. Their importunities have been laughed at and their calamities mocked at, until in many sections they are hopeless and desperate, and court any fate other than that to which they are abandoned.

Those whose duty it has been by every obligation of the Constitution and laws, by every consideration of right, justice, patriotism, and sound policy, to grant relief and re-establish the Union in law, and as well in the hearts of that people, have made their calamities and wrongs the foot-ball of political parties, and have used the same to subserve the base ends of party and faction. That people have not only been thus injured, but men in high official station and the leaders of a great political party, in abuse of the freedom of speech, have falsely and cruelly denounced them as semi-barbarous, given to crime, and not fit to enjoy the blessings of free government. These puissant gentlemen, forgetful of their high duties, instead of consulting true statesmanship, have turned loose the violent passions of their natures and poured out their wrath upon their downtrodden and helpless countrymen. Even they cannot long enjoy pleasure in so empty a triumph. Humanity turns from them in disgust!

Under such circumstances, how natural that the people of the South should be indignant and restive, however helpless! How unnatural that they should love and respect the hand and the party that thus smites, insults, and injures them! They no longer hope for redress of their wrongs from those in official place and power. The republican party has failed, miserably failed, to bring peace, prosperity, and a restored Union to the American people; but, on the

contrary, it has sown the seeds of discord, and brought untold woes and sufferings to the people of the South. Though it has borne absolute sway continuously for fourteen years, its statesmanship has proven a failure. It has ignored and subverted the Constitution, and substituted for that sacred instrument, as the basis of its revolutionary action, "the higher law." With this limitless chart, it has gone wherever interest or ambition led it. The only limit to its action, when determined upon, is the measure of its physical power. Its essential power has been and is armed force; it has accomplished all its ends by revolutionary means and war; it knows no policy of peace, and hence, now that the war is over and peace has indeed dawned upon the country, its policy has not changed. It takes no note of this important fact; it still relies everywhere mainly on the Army to execute its will.

The southern people no longer confide in the republican party; they do not hope for relief from it; on the contrary, judging the future by the past, they have fearful anticipations of increased injuries and wrongs at its hands. That people now appeal with confidence to the candid judgment and sympathy of the American people for that reasonable measure of relief, that redress of flagrant, intolerable wrong, which they have heretofore failed to realize. They ask for peace, prosperity, and a restored and perpetual Union under the Constitution of a common country. They cannot, they will not appeal in vain to this grand tribunal. The thirty millions of freemen of the North surely will never consent to see twelve millions of their southern fellow-countrymen doomed to protracted outrage and anarchy, simply to swell the triumphs of a political party. They cannot afford in view of their own interests to see the South ruled by a military despotism and a standing army of many thousands, kept there to enforce the lawless will of a political party, and thus exchange our system of government for one of absolute powers. They cannot allow this. But let them remember that usurpation in the South to-day and for a long while in the past, becomes a precedent and a strong foot-hold, and may, nay will one day, if not arrested, establish organized tyranny in all America.

At the close of the late war the republican party had complete control and charge of the Government. It was therefore charged by the Constitution and the American people to restore the Union, to establish it upon enduring foundations, to reclaim the southern people, and enable them again to share freely in the benefits and blessings of national and local government under that system framed by the founders of the Republic. These were its high duties, and a noble field of patriotic labors lay spread out before it.

But this party has proven faithless to this imposing trust. Through a period of ten years a train of unparalleled crimes and abuses have marked its career. It has utterly failed in the grand work of restoring the Union upon that basis of peace and good-will contemplated by the Constitution and so essential to it. On the contrary, reconstruction has been based upon force and the sword, and the policy invoked has been one of absolute power. It has not given the southern people peaceful and wholesome government, nor has it pursued such a course as has been calculated to reclaim the affections of the people. So far from this, it would seem that it has exhausted its ability in devising ways and means to injure, insult, and provoke to wrath and violence that people, and in some localities it has brought about a state of anarchy and public despair. It has not only thus failed in the reconstruction of the Union, but its practices of fraud, peculation, and unparalleled extravagance are without a precedent in the history of this or any country. For the truth of these declarations, I appeal to the observations of disinterested men for the last fourteen years and the history of this party.

The groundwork of all this public evil is this: The republican party, especially for the last ten years, has looked to and worked for its continued ascendency and the aggrandizement of many of its leaders more than the public weal. An analysis of its workings will show the justice of this remark. Especially will this appear from an examination of its policy and practices in the Southern States.

And now the legitimate result is about to transpire. Notwithstanding the stronghold this party had on the popular confidence in connection with the late war, the people of the whole country have at length taken cognizance of its abuses and dangerous tendencies, and have rebuked it in a most significant manner. Many of its ablest leaders have abandoned it, and others indicate a purpose to do so. Its condition is one that alarms its friends profoundly. This proud and arrogant party see that the scepter of power is about to depart from it, and hence it must devise means of relief or all will be lost.

In the past, and especially since the year 1868, one of the chief sources of strength and success of this party has been the false impression assiduously made by it upon the minds of the great body of the northern people, that the white people of the South have ever since the close of the late war been hostile to the Union, desired and intended its overthrow; that they are the enemies of the negro race, and intend its extermination in this country, and never intend that the thirteenth, fourteenth, and fifteenth amendments to the Constitution shall be operative. Its misrule in that section of the Union, as the whole country knows, has been intolerable; it has long been the shameful scandal, not only there, but of the whole nation. This, and its revolutionary policy have stimulated and produced disorders there that have in some instances, and in several localities, resulted in disgraceful and atrocious crimes, partaking more or less of a political character. In some cases it has been the direct cause of such disturbances and crimes—generally, it has been the indirect but the moving cause of them. Colored people have been taught to believe that the white people are their deadly enemies, and by false teachings and trainings they have, in too many and lamentable instances, been led to attack the white people in their persons or property under circumstances of great provocation, and the white people so attacked have taken redress by violent means, and thus perpetrated crimes shocking to humanity. I undertake to say that in 90 per cent. of all cases like those just mentioned the colored people have been the first aggressors, moved by the causes and incitements suggested. That percentage of all the cases referred to in this debate began in that way. I challenge successful contradiction. Let the facts in the cases cited be fairly ascertained, and the truth of what I say will be made manifest. Unhappily, generally the infamous and fiendish authors of these crimes and disorders manage to escape unhurt. This condition of things has for years past been made the basis for the false republican cry of a "conflict of races," continued hostility to the Union, and a "new rebellion" in the South.

Too long a majority of the people of the North have heard and believed this false and scandalous party clamor; too long they have allowed themselves to believe that the republican party is and has been the only Union party in the country, and that especially the people of the South who would not indorse its policy and practices there, were and are unfriendly to the Union and the negro race. So believing, they have sustained that party long after it had accomplished its mission and ought to have been dissolved as a political organization. I have the strongest conviction that but for the crimes and disorders in the Southern States produced by republican misrule in the way indicated, that party would have ceased in 1870 to control the country. It ceased to be a party of principle before that time. Since that time, its life-blood has been official patronage and false clamor spread by it throughout the country as to the character and purposes of the southern people in reference to the Federal Government and the negro race. By its policy and practices this party falsely taught the freed people to believe that the white people in the South were their enemies, and thus were able to organize them solidly against them in everything political. This teaching was unqualifiedly false, and as pernicious as false. The white people there were not in fact hostile to the negroes. On the contrary, naturally the two races were friends. They had a common interest; the negro needed the protection and help and encouragement which the white people there alone could extend, and on the other hand the white people needed the labor of the negroes. Their interests were common, and there was no good reason why the great masses of both races should not entertain like political views. There was indeed no reason, and there would have been no difficulty but for the interested efforts of political demagogues and adventurers to use the negro vote for the purpose of promoting their own fortunes and placing them in office, often for dishonest purposes, and for the further purpose of giving the republican party of the nation the benefit of a million of negro votes. But for the desire to give this party ascendency in the Southern States and the party of the nation, the negro vote, years ago the troubles in the South had been settled. The peace, prosperity, and hopes of the South, the best interests of the Union have been sacrificed, cruelly sacrificed, to prolong the ascendency of a political party. This party have persistently taught the northern people to believe that the southern people as a mass have been and are hostile to the Union. This is likewise false. The southern people are not hostile to the Union. They have no motive impelling them to be hostile to it. On the contrary, they have high and controlling considerations leading them to love, support, and maintain it. They never were hostile to the Union as a form of government. The causes which led to the late war were not such as affected the system of government.

I repeat, the policy and practices of this party have not looked mainly to the restoration of the Union and the southern people to its blessings and stable, wholesome, just, local State government; it has looked mainly to its own continued ascendency in the Government of the Union and the several States. To this end it has ignored and perverted the Constitution whenever it stood in its way, and it has not hesitated to usurp any power or overthrow State governments in the South, to accomplish its purposes. Its revolutionary course of action has justly alarmed the public mind. Its misrule in the South and the misrepresentations of the southern people have at length arrested public attention everywhere throughout the Union. As a consequence, the late elections indicate the complete overthrow of this party, the most revolutionary this country has ever seen. The commonest observer sees it tottering to its fall and extinction. Its legitimate work was done several years ago. Now it has lost its hold on public confidence—it is dying, dying in disgrace! If it saved the life of the Union during the late civil war, since its close it has well-nigh stifled its existence by a misrule and extravagance without a parallel. If it had its day of merited glory, that glory has been dimmed and blackened by the multitude and enormity of its crimes. If it made free five millions of slaves as a result of the war, it has sought practically to enslave eight millions of white people by subjecting them to humiliation without a precedent in history, despoiling them of their property and establishing over them a practical military despotism

and a political surveillance which contravenes every principle of free government.

But its votaries have resolved to make one more struggle to prop up and stay its sinking fortunes. As in the past, so now they seek to make disorders in the Southern States serve their purpose. They have made the disorders there; they are responsible for them; they are the legitimate fruits of their misrule and party practices. They have overturned State governments and established military despotisms in their stead; they have provoked and goaded the people to desperation and despair. As a result, in some instances shocking and atrocious crimes have been perpetrated. Public complaint is loud and imploring for relief. Again this party seeks to mislead and deceive the northern people into its support; again it endeavors to produce the impression that there is a "war of races" imminent in the South; that the people there are hostile to the Union and intend its overthrow; that there is a "new rebellion," and particularly that the southern white people never intend to allow the thirteenth, fourteenth, and fifteenth amendments to the Constitution to operate. This is its plain purpose, its only hope of again bringing the northern people to its support. It has gone about its work in earnest. Its great men and little men join actively and anxiously in this patriotic work!

Can it again succeed? I hope not; I trust not. I trust that the American people now understand the condition of the southern people too well to be again deceived by such cruel and unpatriotic political practices. The peace and prosperity of the South, the complete restoration of the Union and harmony among the American people, is worth more than this expiring party. Let it die; let it disappear; let its deeds of glory, if it had any, and its deeds of blood and crime pass into history.

But its friends are not willing to see it thus pass away. I regret and deplore, more than I have language to express, a manifestly concerted effort in and out of Congress to revive and reopen malignant controversies of the past, which have resulted so disastrously to the Southern States of the Republic and the unhappy and persecuted people who inhabit them. Daily we hear the people of the South misrepresented and denounced in unmeasured and often insulting terms. Anarchy prevails in Louisiana and elsewhere and shocking crimes of a semi-political character have been perpetrated, all the essential fruits of republican misrule and unlawful efforts to retain political power in the hands of that party there. These evils are held up to the country and the world as indubitable evidence of a lawless, warlike, and rebellious spirit on the part of the white people of the South. The crimes so perpetrated are exaggerated in number, and often in kind and degree, and all painted in the darkest colors, and garbled and *ex parte* accounts are given of them, without even the slightest reference to the facts of their origin or any circumstances of provocation or excuse connected with them. These denunciations and misrepresentations are reiterated by most of the republican press throughout the country. Thus it is, and by such means, again proposed to rouse the northern mind against the South in the support of this party.

Is it not plain that such a course of political conduct is unfair and unjust to the people so assailed and the whole country? Is it not as plain that it is done for some sinister purpose? Is it not manifest that it is done to save the sinking fortunes of a political party? Is it not as manifest that military despotism and anarchy are to be prolonged indefinitely in the Southern States so that this party may continue its arbitrary sway? Is it not plain to be seen by anybody that the purpose is, that this party shall live though the country die?

A disinterested examination of the reconstruction acts, and particularly the manner of their execution, will show the striking truth of all I have said. The reconstruction history of every State in the South shows a studied, fixed effort of the republican party to maintain its own ascendency there at whatever cost or hazard.

But this occasion will not afford sufficient opportunity to bring even a considerable number of its revolutionary and despotic deeds and practices to bear upon this debate. I shall confine myself mainly and particularly to its concerted and persistent acts of despotism and fraud in the State of Louisiana for the last three years.

The reconstruction acts were passed by a Congress overwhelmingly republican. They contained grossly proscriptive features, as I shall have occasion to show. They were executed in Louisiana, as elsewhere, under the supervision of a military officer, and it may be truly said that the elections held in pursuance of them were held under and by direction of the sword. The effect was to give the republican party the control of every convention to frame a constitution in every State in the South under these acts. This was so in Louisiana; there that party had absolute control of the convention. The constitution provided by it, and the laws enacted under that constitution show, clearly a studied purpose to continue that party in power in that State indefinitely. One leading feature of them was the concentration of power in the hands of the executive of the State and those whom he might choose to appoint to office and place. He had virtual control of the elections of the State, if he chose to exercise the power. And the most abundant means were provided for the successful perpetration of frauds in the elections. All this, as will be seen, was done in the interests of that political party. The first State officers and Legislature under this constitution were republican. Their misrule has scarcely a parallel in the history of civilized government, except in other Southern States. The office-holders quarreled about the offices, spoils, and the opportunity to rob and plunder the people and the State. And what happened as a consequence at the election there in the year 1872 I will have occasion to refer to in another part of my remarks.

In view of what I am about to say, it is material here to cite certain provisions of the constitution of Louisiana:

ART. 15. The legislative power of the State shall be vested in two distinct branches; the one to be styled the house of representatives, the other the senate, and both the General Assembly of the State of Louisiana.

ART. 16. The members of the house of representatives shall continue in office for two years from the day of the closing of the general elections.

ART. 17. Representatives shall be chosen on the first Monday in November every two years, and the election shall be completed in one day. The General Assembly shall meet annually on the first Monday in January, unless a different day be appointed by law, and their sessions shall be held at the seat of government.

ART. 33. Not less than a majority of the members of each house of the General Assembly shall form a quorum to transact business; but a smaller number may adjourn from day to day, and shall have full power to compel the attendance of absent members.

ART. 34. Each house of the General Assembly shall judge of the qualifications, election, and returns of its members; but a contested election shall be determined in such manner as may be prescribed by law.

Accordingly, on the first Monday in November, 1874, an election was held in that State for members of the house of representatives and one-half of the senators. The house consisted of one hundred and eleven members and the senate of thirty-six senators. At that election, the commissioners to hold the election at the several voting-places received the votes and counted them. Then, after they so counted them, supervisors of the parish in which they were so cast compiled the vote and ascertained the result in the parish. The vote thus taken showed a majority in the house of representatives of twenty-nine democrats. About this there can be no question; these officers so ascertained, and the fact was so proclaimed at the time through the newspapers of that State and the country generally. Besides, a sub-committee of Congress recently examined into the fact, so ascertained and reported. They say:

The returns by the commissioners of election, compiled and forwarded by the supervisors of registration, gave the conservatives a majority of twenty-nine members out of a total of one hundred and eleven members. In only a few instances were there any protests accompanying the returns.

Under the election law, the returns were sent to the *returning board* which assembled at the capitol of the State. This board consisted of five persons, and the law directed that they should be selected "from all political parties," but in fact the board in question was composed entirely of republicans, until one resigned, when a conservative took his place. The statute prescribed the duty of this board. They were required to compile the vote of the State for all officers. Their simple duty was to *compile the vote* of the State, except in one other case and that was this: If a commissioner or supervisor of elections should send to them with the returns a full statement sworn by him, and this statement sustained by that of three respectable citizens, electors of the parish, also sworn, that any riot, tumult, acts of violence, intimidation, disturbance, or corrupt influence had materially affected the result of the elections, then and in that case only, if such board should be satisfied of such statement, they might refuse to count the votes of the place of voting so questioned and exclude it from the returns. They, by the statute, could only in such cases reject returns, but they had no power to decide upon the right of anybody: they had no right to say that one claiming a majority was not elected, nor on the other hand to decide that one appearing to have a minority was elected. They had no power to try the right in a contested case and decide the same for one party or another. This is so, in the first place, because the statute creating the board did not undertake to confer any such power; it is not conferred by terms or implication—indeed, the statute makes reference, in terms, to cases of "contest according to law." In the second place, if the Legislature had undertaken to confer such power, it could not do so, because the constitution provides in these words:

ART. 34. Each house of the General Assembly shall judge of the qualifications, election, and returns of its members; but a contested election shall be determined in such manner as may be prescribed by law.

Now this plainly means that the Legislature may provide by statute for contested cases before its branches respectively, else the main provision of this article that "each house of the General Assembly shall judge of the qualifications, election, and return of its members" would be nugatory and inoperative.

Charged with such powers and none others, this returning board began its labors and continued them for nearly two months. Notwithstanding the returns as made up by the commissioners who held the elections and counted the votes, and the returns from the parishes as compiled and counted by the supervisors, and these showed in the State a majority in the lower branch of the Legislature of twenty-nine for the democrats, this board decided, without any sanction of law, in many cases when democrats were elected, as the returns showed, that republicans were elected. This they had no authority in any case to do, for the reasons stated. They did this in several cases where there was not any suggestion of riot or disturbance as required by law. For example, in Rapides Parish the returns showed that three conservatives were elected. There was no exception to the election at all, much less such as the law required in case of riot or other disturbing cause, to authorize the rejection of the returns. On the contrary, the United States supervisors swore that the elec-

tion was in all respects full, fair, and free. Nevertheless, in this case, the board returned three republicans as elected!

The law further required this board to file one copy of the returns as made up by them in the office of the secretary of state. When they had completed their work the returns so filed showed that only fifty-two democrats and fifty-four republicans were elected. In the cases of five members of the house of representatives, they made no returns at all, but referred this matter to the Legislature. In these five cases the returns of the commissioners and supervisors of election showed that conservatives were elected in each, and there was no suggestion, as the statute allowed, of fraud or other thing which impaired the election. In short, there was no cause that in any way vitiated the election, nor was any suggested—at all events, any of which the board could take cognizance. There was nothing that could authorize them to reject these five members. These, with the count they had made, gave the democrats in the house fifty-eight members and the republicans fifty-three members. Seeing this inevitably gave the democrats a majority of five, they resorted to the subterfuge of "referring" these five cases to the Legislature. It is reasonable to infer that there was a motive for this action and this will soon be seen.

These facts must satisfy any reasonable person that this board, or a majority of them, were dishonest and corrupt. The conservative who became a member of it, resigned in disgust. But the corrupt character of this board appears in another and a strong light. A subcommittee of the House of Representatives, consisting of three gentlemen of high character for truth and honor—two republicans and one democrat—went recently to Louisiana charged to inquire, among other things, about the doings of this board. They made a searching examination, and they say of it, in summing up their conclusions, as follows:

> Without now referring to other instances, we are constrained to declare that the action of the returning board, on the whole, was arbitrary, unjust, and in our opinion illegal; and that this arbitrary, unjust, and illegal action alone prevented the return by the board of a majority of conservative members of the lower house.

Its conduct was so flagrantly illegal and dishonest, that I believe no one has yet ventured to offer a word of apology for it.

Now, are the five conservatives thus elected and so ascertained to be elected, members of the lower branch of the Legislature, notwithstanding the returning board refused to return them? They are, and for three plain reasons: First, the essence of the election is that according to law some person received a majority of the votes cast in the parish and that this fact be ascertained by some lawful authority. This is the material and substantial feature of the election, the balance is matter of form and evidence. Then in these five cases, each person claiming, did receive a majority of the votes cast in the parish where he was a candidate, and this fact was ascertained by the commissioners who held the election and were charged to count the votes, and also by the supervisor who was charged by the law to compile and count the vote in the parish. Thus they received a majority of the votes, and this fact was ascertained by lawful and competent authorities. They were therefore, to all intents and purposes, members-elect of the Legislature.

But it is said the returning board did not return them as so elected, as the statute requires. This I admit. But this is not essential. They have only the duty to recompile the vote in the third degree after the vote was polled. This is not material; it is only an evidence, or additional evidence, that the person did receive a majority of the votes cast. This is not the only evidence, much less is it exclusive evidence. There was no statement under the statute in any one of these cases that authorized the board to reject the returns showing these five, or any one of them, to have been elected. I say so because the fact is so; and besides, if there had been such statement, then they must have rejected the return as the law directs in such cases. But they did not reject the returns; they "referred" them to the Legislature. This they had no power to do; the statute gave them no power to "refer" cases to the Legislature.

Secondly. There was an election and return in each of the five cases referred to, and there was no statement under oath, as required by the law, to raise the jurisdiction of the board which would enable them to *reject* the returns to them. Will any one pretend that the board could arbitrarily reject returns showing an election? Surely not. That is too absurd; and it is as unreasonable to say that one was not elected because the board refused to do their office!

But, thirdly, this returning board cannot in any case have power to reject returns because of violence or other cause assigned in the statute creating the board, as impairing the election. This is so, because this provision of the statute contravenes the constitution and makes the returning board judges of the election of members of the Legislature. If they only exercise the power which the statute confers, they can decide that there was no election, and reject the returns. This the constitution forbids. It provides—

> ART. 34. Each house of the General Assembly shall judge of the qualifications, election, and returns of its members; but a contested election shall be determined in such manner as may be prescribed by law.

Then it follows that these five members whose election the returning board would not return, but undertook to refer to the Legislature, were duly elected and in all respects members of the lower branch of that body. And so there were fifty-eight democrats and fifty-three republican members of the house of representatives.

These members-elect, any one of them, had the right, nay, it was their duty, to go to the capitol of the State on the 4th day of January last for the purpose of organizing the Legislature and proceeding with the discharge of the duties of that body. To the end they might do this, and without molestation, they were highly privileged. Article 40 of the constitution of that State provides:

> ART. 40. The members of the General Assembly, in all cases except treason, felony, or breach of the peace, shall be privileged from arrest during their attendance at the session of their respective houses, and going to or returning from the same; and for any speech or debate in either house shall not be questioned in any other place.

According to law, one hundred and seven of the members did assemble in the capitol on the day mentioned; of these, one hundred and two had been returned as elected by the returning board, the other five were those whose cases this board "referred" to the Legislature. Under the provisions of a statute which I will now read, it was the duty of the clerk of the last house of representatives to furnish the members-elect and so assembled with a list of the names of members returned as elected by the returning board. That statute is in these words:

> SEC. 44. *Be it further enacted, &c.*, That it shall be the duty of the secretary of state to transmit to the clerk of the house of representatives and the secretary of the senate of the last General Assembly a list of the names of such persons as according to the returns shall have been elected to either branch of the General Assembly; and it shall be the duty of the said clerk and secretary to place the names of the representatives and senators elect so furnished upon the roll of the house and of the senate, respectively; and those representatives and senators whose names are so placed by the clerk and secretary, respectively, in accordance with the foregoing provisions, and none other, shall be competent to organize the house of representatives or senate. Nothing in this act shall be construed to conflict with article 34 of the constitution of the State.

That list was furnished. The clerk of the last house appeared at twelve o'clock in the hall of the house of representatives with the list, and called all whose names were on it. One hundred and two of those called answered, and the five members whose names were not on the list were also present—they were known to be present and as members-elect, and were entitled to join in the organization of the house.

It has been said that the clerk of the last house, who called the roll, had the right and it was his duty to preside at the organization of the house. This is not true. He had no power save only such as was conferred by some law. The statute just read is the only one that bears on his duty. It does not undertake by terms or reasonable implication to confer upon him such power. The language of the statute is:

> And it shall be the duty of the said *clerk* and *secretary* to place the names of the representatives and senators elect, so furnished, *upon the roll of the house and of the senate* respectively.

No other power is conferred, no other duty is prescribed for him. Even had the statute provided in terms that he should organize the house or preside at the organization, it might well be questioned whether such an act were valid, because by the constitution the house is master of its own organization. This power is absolute, and no former Legislature can abridge it. Besides this, on former similar occasions the clerk did not exercise such functions. So that it is plain there is no legal sanction or precedent for the power and right so claimed.

Then there were present at the time and place prescribed by law one hundred and seven members-elect of the house—largely more than a quorum. Of them fifty-five were democrats, including the five whose names were not on the roll as it came from the secretary of state, and fifty-two republicans. There was no statute prescribing how these members-elect should organize themselves into the house of representatives. By what rule, then, could they organize? There can be but one reasonable answer to this question. They were bound to organize according to the common law applying to deliberative bodies. By this law it was competent for any member-elect—the oldest man present or the one who had been longest in such service—to move that any member present be called to the chair to preside temporarily until the house could organize; the mover had the right to put the question and to decide that it was carried or otherwise. Then the member so elected had the right to preside pending the organization, to entertain motions, to put and decide questions, and authoritatively. This is so according to reason and practice, too, so far as my observation extends.

Now, according to the practice of political parties and legislative bodies in this country, the democrats had the right to organize that house and elect its officers. They had a majority of the members, as has been shown. They proceeded to avail themselves of their right and to organize the house. I now read from a sworn account of this organization, and it corresponds substantially with all the accounts I have seen. That portion of the statement material just now is in these words:

> After the completion of the roll-call by William Vigers, clerk of the former house, as provided by section 44, above recited, L. A. Wiltz was nominated as temporary chairman by a member, and was upon a *viva voce* vote declared elected temporary speaker, whereupon he took the chair, and announced himself temporary speaker of the house of representatives, and as such took his oath of office before Judge Houston, and also had said oath administered to him by a member. He thereupon administered the oaths to the members of the House. He then declared the functions of the former clerk, Vigers, at an end. A clerk was then, on motion, nominated and elected. A sergeant-at-arms and assistants were also elected.

During this temporary organization, upon motion put and adopted, the five members whose elections the returning board had not promulgated and had referred to the house were admitted as members and sworn in. Thereafter L. A. Wiltz was nominated as permanent speaker. The roll was called, and Wiltz and Hahn being in nomination, Wiltz received 55 votes, Hahn 2, and 1 blank. Fifty-six being a majority and legal quorum of the whole number, one hundred and eleven, to which the house was entitled, he was thereupon declared duly elected permanent speaker, and was sworn in and then administered the oath to the members, (by fours,) including Michael Hahn, Thomas Baker, Murrell, and Drury, republicans. A committee on credentials was then appointed, of which Hahn and Thomas were appointed members and accepted, and withdrew with the committee. Upon the return to the house of said committee, Hahn made known that he would make a minority report.

This organization was boisterous and disorderly. The republicans insisted violently that they had a majority and the right to organize the house. They said that the five members whose names were not on the roll were not entitled to participate in the organization, because the statute provided that those members whose names were on the list reported by the returning board and "*none other shall be competent to organize.*"

Here the corrupt motive of the returning board becomes manifest. The facts—the whole history of their conduct and that of the organization of the house—go to show conclusively that their purpose was, from the beginning, to disappoint the will of the people as expressed at the ballot-box and give the control of the Legislature to the republican party. The returns made by the commissioners who held the elections and counted the votes, and the returns as made by the supervisors in the parishes, showed that the democrats had a majority of twenty-nine. This board cut this majority down without sanction of law, as we have seen, until they returned that fifty-two democrats and fifty-four republicans were elected; and as to the other five members-elect—all democrats—their cases were "referred" to the Legislature. Can any fair person doubt that the purpose of the returning board and the republican party was what I have suggested? It was manifestly to get control of the Legislature—"peaceably if they could, forcibly if they must." I do not hesitate to declare that the democrats had the right, and it was their high duty by every lawful means in their power, to disappoint this shamelessly corrupt purpose. In view of the sufferings and disorders, and the sources of them, of the people of Louisiana, they could not be impelled by higher, purer, and nobler motives to do their utmost to preserve and retain the political power intrusted to them by the people at the polls. They must have the sympathy of every friend of good government and the oppressed everywhere. Here let me say that dishonest practices like this carried on by men destitute of integrity, who care for no party that does not serve their dishonest aims, is the groundwork, the life of the woes of Louisiana. The republican party of the nation has not only connived at, but it has openly sustained these vile robbers of the peace, good order, and substance of society, and now its own handiwork returns to plague it.

It is plain to be seen that the purpose had in view in inserting in the statute the words "and none other shall be competent to organize the house of representatives or senate" was to give a dishonest returning board the power to control the organization of the Legislature. This provision is one of a great variety in the constitution and statutes of Louisiana, intended to give republican officials power to disappoint the will of the people expressed at the ballot-box.

But the provision is void, because it contravenes the letter and spirit of the Constitution. I have shown that the returning board could not try a contested-election case, and could not decide that there was no election. "Each house of the General Assembly shall judge of the qualifications, election, and returns of its members." How can this be, if the returning board decides? But further, the constitution provides that the several parishes shall have representation in the Legislature. Can the Legislature empower anybody to deprive them of such representation? This statute is void because it undertakes to abridge a power conferred on the Legislature. It is monstrous to say that by such partisan legislation the people may be robbed of their rights in the organization of their Legislature!

The organization of the house was completed as I have described. Now we turn to a transaction which shocks every friend of free government, no matter what his party affiliations may be. It has profoundly alarmed the fears of the American people, and well it may if it shall lead them to set the seal of condemnation upon it and its authors and all those who indorse it.

On the day the Legislature of Louisiana met, perfect peace prevailed in that State and particularly in the city of New Orleans where that body met. There was no disturbance and no reasonable ground to apprehend any, much less was there any insurrection. A republican account of the house of representatives says:

NEW ORLEANS, *January* 4—noon.

The members have assembled in the hall of the house, and are the most orderly body of legislators so far that has assembled in Louisiana for many years.

All the evidence shows that there had been no disturbance, political or otherwise, in that State since September last. Nevertheless this quiet state of the people, this peaceful prospect, was disturbed by the assembling of the metropolitan police of New Orleans—an armed soldiery—and many hundreds of United States troops about the capitol on the morning of the day the Legislature met. This was a high day there—a free day, the people's day; the popular branch of the State government was about to assemble. Then, why this warlike movement? What was the occasion for it? Where was there any lawful authority for it? It was plainly, flagrantly in violation of the genius of our system of free government. But this military movement had a motive; it was intended for a purpose. It was done by preconcert. As the whole transaction shows, it was done to help if need be the republican party organize that house of representatives. Disguise it as interested persons may, it is plain to him who will see the truth, that the Army was prostituted to the ignoble purpose of helping the republican party into power after the people had defeated it by a large majority at the polls. That is the plain truth. Let us see how this was done. The Army and the armed police were there ready; they were not suddenly called from their barracks to suppress a riot or outbreak. On the contrary, they came into place for action in the quiet morning. Here is an account of its appointment which I take from the National Republican newspaper of this city of the day after what it describes took place. It says:

NEW ORLEANS, *January* 4.

At this hour (eight o'clock a. m.) the United States troops are taking their positions covering the State-house. A regiment of infantry in two columns, at parade rest, extends from Chartress street on Saint Louis street to the hall. The Metropolitans are being placed in position to prevent the near approach of the public to the State-house. A squad of them at Chartress street and on Saint Louis street refused to allow persons to pass out Saint Louis street, stating that only members of the Legislature or State officers would be allowed to go by. This squad was under the command of a captain. A similar squad will probably be placed at all approaches to the State-house. Eighteen hundred United States troops will be in position to sustain the State government.

It is not pretended that any state of war was there. There was no insurrection nor threatened insurrection; there was no violence there, nor threatened violence. Wherefore, then, this military investiture of the capitol? Why was it done? But above this, more important than this, by what lawful authority was this done? The facts show that the capitol was surrounded by these armed forces; only those persons went in and out of the State-house whom the troops permitted by order. There was no sanction of law for this movement. There was no warrant for it, nor could there be. It was done, as we learn, by the governor of Louisiana. What right had he in any way to direct or, in any the least degree, interfere with the assembling of the Legislature? It was a co-ordinate branch of the government, absolutely independent of him, but he exercised absolute power toward it; the right he had to muster these troops, as I have shown he did, he had to employ them as he would. As much sanction can be shown for the one as the other. He had no warrant or process of any kind against any man or body of men. Can he arrest at will without warrant? Especially, can he do this in a time of peace?

When the house assembled and organized, as I have described, and were proceeding with their business, by order of the governor, and while the troops were so investing the capitol, an officer of the Army, with a squad of soldiers, marched into the house of representatives and selected and seized the five members of the Legislature whom the returning board had refused to return as elected, and forcibly took them from the house. Thus the governor undertook to decide that these members were not members, and to enforce his decision by and through the Army of the United States. I have shown that these five men were duly elected members. But suppose for argument's sake that each of them only had a claim to a seat in the house; did this warrant their seizure by anybody, an officer of the State, much less by United States soldiers? Had the governor any right to seize any one of these men? Had any officer of the law any right to seize them? If the governor or anybody else had gone before a judge to sue out a State's warrant against them, what offense would or could he have suggested? They had done no crime; they were simply where the law commanded them to be; they were there at the command of the people, about the business of the people. No officer of the State had any right to arrest these men but by virtue of a warrant duly issued by a proper magistrate, because none was issued or prayed for.

Article 9 of the constitution of Louisiana provides in these words:

ART. 9. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched or the person or things to be seized.

The governor and all who acted under his orders not only violated this clause of the constitution, but they did more, if possible—they violated the high privileges of the house of representatives, one branch of a co-ordinate branch of the government. For this high offense he may be impeached, and besides he and all his aiders and abettors may be indicted in the courts of Louisiana. There was not the shadow of authority for his action. No one of the apologists for this high crime against the State has undertaken to show any lawful sanction for it, nor can they do so.

So this interference was illegal on the part of the governor of Louisiana, treating him as the lawful governor.

If such interference was unlawful on the part of the governor, it follows that it was unlawful on the part of the United States troops and everybody connected with it.

That the person exercising authority as governor of Louisiana should commit such a high-handed crime against the State and people in view of his past history of murder and crime, is not to be wondered at, when he could command the power to do so. But the most alarming feature of this transaction is that his conduct should not only be tolerated, but sanctioned and sustained, by the Administration—the President and at least part of his Cabinet and an apparent majority

of the republicans in Congress. This gives cause for serious apprehension, and the people of all parties and sections may well feel alarmed at such an arbitrary exercise of power.

It is said the President did not order the interference by the troops with the Legislature. The point in this case perhaps is not that he ordered the troops to do what they did, but that he tolerated it. Where did he find authority to allow the governor of Louisiana to command the United States troops for any purpose? I undertake to say there is no constitutional or legal sanction for any such use of the troops of the United States. It is said the troops might have been used as a part of the *posse comitatus*. This I deny; they cannot, *as troops*, be so used; they are trained and organized under the sanction of law, for purposes specified by law, and are under the command of officers appointed for the purpose. Could the sheriff or the marshal take control of and command them as part of the force and thus displace the lawful officers? There is no authority for such use of the Army. If they were at home, off duty, in their capacity as citizens, then they might be so used; but in this case they were used as United States troops in the regular service, and this is a beggarly shift and subterfuge. But even if they could have been used as part of the *posse comitatus*, even then the use of them was unlawful. There was no violence there; there was no riot; there was no warrant issued by any officer commanding another officer to arrest the five men taken out of the Legislature; there was not only no warrant, but they had done no offense. Can any one tell me what crime they had done? Shame on such puerile pleas!

Let us look briefly at the powers of the President to use the United States troops in the States in aid of the State authorities. The Constitution provides in these words:

> The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the executive, (when the Legislature cannot be convened,) against domestic violence.

This clause of the Constitution alone confers on the President no power. But Congress has conferred on him by statute power to execute its provisions. The statute provides as follows:

> In case of an insurrection in any State against the government thereof, it shall be lawful for the President, on application of the Legislature of said State or of the executive when the Legislature cannot be convened, to call forth such number of the militia of any other State or States, which may be applied for, as he deems sufficient to suppress such insurrection; or, on the like application, to employ for the same purposes such part of the land or naval forces of the United States as he deems necessary.

This statute is the sole authority which the President has to interfere with the Army in behalf of a State. Under its provisions two things must happen to warrant his interference. First, there must be insurrection in the State against the government thereof. Secondly, there being such insurrection, then there must be the application of the Legislature of that State; and if it cannot be convened, then the application of its governor to the President, notifying him of such insurrection and calling upon him to use the military power of the United States to suppress it. Then, and not till then, may he interfere. When such application is made, then it is discretionary with him whether he will do so or not. If he concludes to do so, then he must issue his proclamation commanding the insurgents to disperse and retire peaceably to their respective abodes within a limited time. The President has no authority to aid the authorities of a State in the execution of its laws. Neither the Constitution nor any statute confers on him any such power. He can only interfere in a case where there is insurrection, domestic violence, leveled against the State itself. The term insurrection means a general uprising of a great number of people against the government. Vattel well defines it in these words:

> A popular commotion is a concourse of people who assemble in a tumultuous manner, and refuse to listen to the voice of their superiors, whether the design of the assembled multitude be leveled against the superiors themselves or only against some private individuals. Violent commotions of this kind take place when the people think themselves aggrieved; and there is no order of men who so frequently give rise to them as the tax-gatherers. If the rage of the malcontents be particularly leveled at the magistrates or others vested with the public authority, and they proceed to a formal disobedience or acts of open violence, this is called a *sedition*. When the evil spreads—when it infects the majority of the inhabitants of a city or province, and gains such strength that even the sovereign himself is no longer obeyed—it is usual more particularly to distinguish such a disorder by the name of *insurrection*.

Worcester defines it thus:

> An *insurrection* is the rising up against the authority of the government; *rebellion* is resistance against the authority of the government, with an intent to overthrow it; *sedition* is a less extensive resistance against lawful authority; *revolt* is the act of renouncing allegiance to a government; *mutiny* is an insurrection of seamen or soldiers against their commanders.

Now this fact is to be noted: At the time the troops seized the members of the Legislature there was no insurrection in Louisiana; it is not pretended by the President or any one else that there was any, nor that there had been since September last. But if there had been, neither the Legislature nor the governor of the State had notified the President of it, as the law directs. No one pretends that he had any such application; and if the interference of the troops in investing the capitol of the State and seizing the five members of the Legislature was done by his order, or by any one having authority to so use the troops, then his act was in plain violation of the Constitution and laws.

Now, by what authority did the troops so interfere? It was done by the immediate order of the person acting as governor. This is his order:

> STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
> *New Orleans, January 4.*
>
> General DE TROBRIAND, *Commanding:*
>
> An illegal assembly of men having taken possession of the hall of the house of representatives, and the police not being able to dislodge them, I respectfully request that you will immediately clear the hall and State-house of all persons not returned as legal members of the house of representatives by the returning board of the State.
>
> WM. P. KELLOGG,
> *Governor of the State of Louisiana.*

> EXECUTIVE DEPARTMENT,
> *New Orleans, January 4.*
>
> General DE TROBRIAND:
>
> The clerk of the house, who has in his possession the roll issued by the secretary of state of legal members of the house of representatives, will point out to you those persons now in the hall of the house of representatives returned by the legal returning board of the State.
>
> WM. P. KELLOGG,
> *Governor of the State.*

But where did Mr. Kellogg get authority to command and issue orders to the United States troops? This does not satisfactorily appear. It is much to be regretted that the President has not seen proper to lay before the Senate all the orders issued by the War Department to the general officers in command at New Orleans. The request made to him was general and embraced them, and they are material here. They are material for his justification, and they are material for the Senate and the country. We must take the best information we have. In his message in reply to the resolution of inquiry, the President says:

> Troops had been sent to the State under this requisition of the governor, and as other disturbances seemed imminent they were allowed to remain there to render the executive such aid as might become necessary to enforce the laws of the State and repress the continued violence which seemed inevitable the moment Federal support should be withdrawn.

In giving his account of the military interferences, he says:

> Respecting the alleged interference by the military with the organization of the Legislature of Louisiana on the 4th instant, I have no knowledge or information which has not been received by me since that time and published. My first information was from the papers of the morning of the 5th of January. I did not know that any such thing was anticipated, and no orders nor suggestions were ever given to any military officer in that State upon that subject prior to the occurrence. I am well aware that any military interference by the officers or troops of the United States with the organization of the State Legislature or any of its proceedings, or with any civil department of the government, is repugnant to our ideas of government. I can conceive of no case, not involving rebellion or insurrection, where such interference by authority of the General Government ought to be permitted or can be justified. But there are circumstances connected with the late legislative imbroglio in Louisiana which seem to exempt the military from any intentional wrong in that matter. Knowing that they had been placed in Louisiana to prevent domestic violence and aid in the enforcement of the State laws, the officers and troops of the United States may well have supposed that it was their duty to act when called upon by the governor for that purpose.

It appears from the message, then, that the troops were placed in Louisiana by order of the President to aid Mr. Kellogg in enforcing the laws, and under this authority he ordered the troops to do what they did. This the President had no authority to do; he could not authorize Mr. Kellogg to use the troops for any purpose, and he could not himself use them to enforce the laws of Louisiana; he could only use them to suppress insurrection against that State on proper application. There was no application, and there was no insurrection. One Senator has said:

> Speaking of it, I say first, that no responsibility for the affair in New Orleans on the 4th of January touches the President of the United States.

wish he were correct. By the President's own showing, he placed the troops there for a purpose not authorized by law, and he gave Kellogg authority to direct them in the execution of that purpose. This was all unlawful.

I did most sincerely hope that the President would disavow the action of the troops, and say that it was inadvertently done. But he did not disavow it; on the contrary, his message is a labored effort to defend his general conduct in Louisiana and to excuse the troops. And more than this, he did not intimate any purpose to order the troops to cease such unlawful interference. While they had the capitol invested and were interfering with the Legislature, General Sheridan, by an order of the President, assumed command of the troops at New Orleans. He so informed the Secretary of War, by telegram, in these words:

> [Telegram.]
>
> HEADQUARTERS DIVISION OF THE MISSOURI,
> *New Orleans, January 4, 1875.* (Received 4—11.45 p. m.)
>
> W. W. BELKNAP,
> *Secretary of War, Washington, D. C.:*
>
> It is with deep regret that I have to announce to you the existence in this State of a spirit of defiance to all lawful authority and an insecurity of life which is hardly realized by the General Government or the country at large. The lives of citizens have become so jeopardized, that unless something is done to give protection to the people, all security usually afforded by law will be overridden. Defiance to the laws and the murder of individuals seems to be looked upon by the community here from a stand-point which gives impunity to all who choose to indulge in either, and the civil government appears powerless to punish or even arrest. I have to-night assumed control over the Department of the Gulf.
>
> P. H. SHERIDAN,
> *Lieutenant-General United States Army.*

Now, in this telegram General Sheridan expresses a purpose to execute the laws of Louisiana. This is plainly unlawful. He had no

right, nor could he have, to execute the laws of that State. His telegram was received and its receipt acknowledged in these words:

[Telegram.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, January 5, 1875.

Lieutenant-General SHERIDAN,
United States Army, New Orleans, Louisiana:

Your telegram dated the 4th, describing state of things, and reporting you have assumed control over the Department of the Gulf, was received by the Secretary of War, and is approved.

E. D. TOWNSEND,
Adjutant-General.

So his conduct was approved, and the President in terms thus assumes responsibility for what the general did and said. General Sheridan further advised the President of his action and purposes in two telegrams, of which the following are copies:

W. W. BELKNAP,
Secretary of War, Washington, D. C.:

Please say to the President that he need give himself no uneasiness about the condition of affairs here. I will preserve the peace, which it is not hard to do with the naval and military forces in and about the city, and if Congress will declare the White Leagues and other similar organizations, white or black, banditti, I will relieve it from the necessity of any special legislation for the preservation of peace and equality of rights in the States of Louisiana, Mississippi, Arkansas, and the Executive from much of the trouble heretofore had in this section of the country.

P. H. SHERIDAN,
Lieutenant-General United States Army.

W. W. BELKNAP,
Secretary of War, Washington, D. C.:

I think that the terrorism now existing in Louisiana, Mississippi, and Arkansas could be entirely removed and confidence and fair dealing established by the arrest and trial of the ringleaders of the armed White Leagues. If Congress would pass a bill declaring them banditti, they could be tried by a military commission. The ringleaders of this banditti, who murdered men here on the 14th of last September, and also more recently at Vicksburgh, Mississippi, should, in justice to law and order and the peace and prosperity of this southern part of the country, be punished. It is possible that if the President would issue a proclamation declaring them banditti, no further action need be taken except that which would devolve upon me.

P. H. SHERIDAN,
Lieutenant-General United States Army.

Now, no one acquainted with the law will seriously pretend that General Sheridan had any shadow of authority to do what he proposed to do. Still the President approved this conduct of that officer. The following are copies of the telegrams sent to him by the Secretary of War:

[Telegram.]

WAR DEPARTMENT,
Washington City, January 6, 1875.

General P. H. SHERIDAN,
New Orleans, Louisiana:

Your telegrams all received. The President and all of us have full confidence and thoroughly approve your course.

WM. W. BELKNAP,
Secretary of War.

[Telegram.]

WAR DEPARTMENT,
Washington, January 6, 1875.

General P. H. SHERIDAN,
New Orleans, Louisiana:

I telegraphed you hastily to-day, answering your dispatch. You seem to fear that we had been misled by biased or partial statements of your acts. Be assured that the President and Cabinet confide in your wisdom and rest in the belief that all acts of yours have been and will be judicious. This I intended to say in my brief telegram.

WM. W. BELKNAP,
Secretary of War.

This approval cannot be said to be an inadvertence. The President and his advisers knew what he was about, and what he did, and must be responsible for his deliberate acts and deeds. That the acts complained of were not authorized by law, no lawyer can pretend. No Senator has yet ventured to defend them as having the sanction of the Constitution, so far as I know.

So that it does inevitably appear that the whole transaction was a plain, palpable, and fearful violation of the constitution and laws of the State of Louisiana, and of the Constitution and laws of the United States. And it further appears that while others are guilty of grave offenses against the State of Louisiana, the President is not only technically but substantially responsible for all that was done at the capitol of that State on the 4th of last month. If the United States troops had been about their lawful business, then the Legislature of Louisiana had not been molested. I think any one must see this. I see no escape in the eye of truth and the law from these conclusions.

But, Mr. President, this is not all nor the worst of this transaction. When we consider that Kellogg was not the governor of Louisiana; that he is and has always been a usurper; that his whole government is a usurpation, sustained by the military arm of the United States, and the means by which his usurpation was established and has been continued to this day, and the circumstances of fraud, outrage, and crime attending it, we will have some tolerable knowledge of the magnitude, turpitude, and fearful character of the crime perpetrated against the State and people of Louisiana and the dangerous inroads made upon our system of government both State and Federal.

I have not time to advert to more than the leading and more striking parts of the matter. These develop a huge conspiracy of desperate and irresponsible political adventurers sailing under colors of the republican party, to keep unlawful control of the State of Louisiana in utter defiance of the popular will. It will appear unmistakably that while the people were struggling manfully to free themselves from a swarm of political cormorants and a misrule without a precedent, their oppressors were strangely able to command the confidence, aid, and support of the Administration, and that in all they have done they have been sustained by the free and unlawful use of the Army of the United States. It is to be deeply deplored that the President has in this connection, as it has appeared and will yet more clearly appear, allowed himself to be governed by incompetent advisers, and often—generally—by interested, wicked, and corrupt informers. I am sure that every disinterested person will see in this usurpation the sole cause of the terrible disorder and shocking crimes perpetrated in that State since 1872.

The Senate Committee on Privileges and Elections of the Forty-second Congress, were instructed by resolution of the Senate to inquire and report whether there was any State government in Louisiana. This committee was a very able one, and composed of seven republicans. They made a very thorough examination and an exhaustive report; three of the committee, each, made a minority report. The facts which I am now about to state I take from that report, and in the course of what I have to say I shall state all that are necessary to show fairly the true history of the usurpation I propose to expose.

I have said that in the year 1872, the republican politicians in Louisiana differed and quarreled. The result was the formation of two republican factions—one headed by the then governor, Warmoth, and styled the "liberal republicans;" the other called the republicans. The liberal republicans and democrats or conservatives fused, and put before the people a "fusion ticket" for governor and other State officers and members of the Legislature, to be voted for at the election which took place on the 4th day of November of that year. This ticket was headed by John McEnery for governor. The republicans put forward a like ticket, headed by William Pitt Kellogg. The contest before the people which immediately preceded the election was active and zealous on both sides. The "fusion ticket" had the advantage of having almost the united support of the white vote of the State and the large personal and political influence of Governor Warmoth among the republicans, besides the immense official patronage which he controlled as governor. It was therefore reasonable to infer that the "fusion ticket" would succeed.

The election took place on the day designated by law. The vote was twenty thousand votes larger than ever before polled in the State, and the election was generally conducted in quiet and was unusually free from disturbance or riot. Against more than four-fifths of the vote no complaint of unfairness is even alleged. According to the official returns, the fusion State ticket, headed by McEnery, received an average majority of about ten thousand votes, and a large majority of the persons elected to the Legislature were of the fusion party. About this there seems to have been no controversy. On the 13th of the same month the returning board met to compile the vote of the State. Governor Warmoth was chairman of it, and he and other members of it differed. The board adjourned to the next day, and in the mean time, judicial proceedings were instituted and injunctions were granted restraining Warmoth and his faction of the board from compiling the vote. Thereupon Governor Warmoth took from its file a bill passed by the Legislature at its session next before that time, regulating elections—the present election law—and approved it. This he might do, according to the laws of that State. This act operated to abolish the then existing returning board and put an end to the injunction and the litigation in that behalf, and it became necessary to appoint a new returning board. The Legislature was not in session, and under the constitution the governor might appoint the board in the absence of the senate. The governor did at once appoint what is called in the report the "De Feriet board." The committee say of this board:

In the opinion of your committee there can be no doubt—conceding the validity of the act of November 20—that it transferred the duty of canvassing the returns of the last election to the board to be elected under the provisions of the act. The act provided for such election by the senate, and, taking effect in the vacation of the Legislature, created offices to be filled thereafter by the Senate. This is what is styled in that State an original vacancy, which, happening in the vacation of the Legislature, the governor is authorized to fill by appointment; and it is said that the State courts of that State have repeatedly recognized the right of the governor to make such appointments.

Then this board was lawful.

This board compiled the vote of the State and ascertained that the McEnery ticket was elected, including the members to the Legislature, and it appeared by their returns that the fusionists had a majority in that body. The returns showed that the State ticket had an average majority of about 10,000 votes. It is not denied that their returns were according to the returns from the parishes. Besides this, the returns from the parishes were before the committee, and the committee say their returns were substantially correct.

On the day the "De Feriet board" was appointed, the governor, by his proclamation, as he might lawfully do, called the Legislature to meet in extra session on the 9th day of December, 1872.

There was another returning board, called by the committee, the "Lynch board." This board was in the interest of Kellogg and his

ticket. It was not a board in law; it had no legal existence or authority whatever; no more than five Senators would have to-day to do the same duty. Nevertheless, they pretended to act and to ascertain that Kellogg and the whole republican ticket were elected, including the Legislature. They had no returns, and what they did was based upon vague reports, estimates of what they said ought to have been the result, newspaper reports, forged affidavits, and such things.

In order to give effect to the action of the "Lynch board" and put Kellogg and his ticket in office, Judge Durell, a judge of the district court of the United States, without having any case before him, without any jurisdiction whatever for such purpose, out of court, in his own house, at a late hour of the night, and without application, on the 5th of December made an order commanding the marshal of the United States to seize and hold the State-house of Louisiana, and hold the same subject to his further order, and not to allow any assemblage in the capitol by virtue of any returns of the "De Feriet board." This order was plainly a nullity. The marshal, however, executed this pretended order. He applied to the United States officer in command of troops there, and the officer says that with the troops, he took possession of the State-house on the morning of the 6th of December, about two o'clock in the morning, and held it for six weeks. The excuse for using the troops then was, that they were aiding the marshal to execute an order of a United States court.

It cannot be disguised that the republicans had resolved at any cost and hazard to disappoint the popular will and retain possession of the State government by sheer usurpation. And I am pained to be forced to the conclusion, that the Administration at Washington had cognizance of and aided such a purpose. I will advert to some of the evidence of this fact—Judge Durell made his unlawful order on the night of the 5th of December. On the 3d of that month the Attorney-General of the United States sent to the United States marshal this strange and significant order:

DEPARTMENT OF JUSTICE,
December 3, 1872.

S. B. PACKARD, Esq.,
United States Marshal, New Orleans, Louisiana:

You are to enforce the decrees and mandates of the United States courts, no matter by whom resisted, and General Emory will furnish you with all necessary troops for that purpose.

GEO. H. WILLIAMS,
Attorney-General.

Now why was this order sent? It does not appear to be in response to inquiries made, and no explanation of it has ever been made, although the propriety of it has been repeatedly questioned in the Senate and elsewhere. The inference is unavoidable that it was given and the troops sent in anticipation of the unlawful and void order of Judge Durell, and for the purpose of inaugurating the Kellogg usurpations. On evidence of this is the fact that after the Attorney-General knew of the void character of the order of the judge, he still allowed the marshal to hold the State-house for six weeks. This cast light on his purpose. Other telegrams to the President and the Attorney-General go to show that the authorities at Washington were fully advised of what was going on at New Orleans in anticipation of the meeting of the Legislature. The President received this telegram:

NEW ORLEANS, *December* 6, 1872.

President GRANT:

Marshal Packard took possession of State-house this morning at an early hour with military posse, in obedience to a mandate of circuit court, to prevent illegal assemblage of persons under guise of authority of Warmoth's returning board, in violation of injunction of circuit court. Decree of court just rendered declares Warmoth's returning board illegal, and orders the returns of the election to be forthwith placed before the legal board. This board will probably soon declare the result of the election of officers of State and Legislature, which will meet in State-house with protection of court. The decree was sweeping in its provisions, and if enforced will save *the republican majority and give Louisiana a republican Legislature and State government*, and check Warmoth in his usurpations. Warmoth's democratic supporters are becoming disgusted with him, and charging that his usurpations are ruining their cause.

JAMES F. CASEY.

Casey was the collector of the port at New Orleans and brother-in-law of the President. How did it happen that he was interested about the vote of Louisiana? Who charged him to take part in that controversy, and for what purpose?

On the same day the marshal reported to the Attorney-General as follows:

NEW ORLEANS, *December* 9, 1872.

Hon. GEORGE H. WILLIAMS,
Attorney-General:

Governor Warmoth has been impeached by vote of 58 to 6. Warmoth's Legislature returned by his board has made no pretense of a session.

S. B. PACKARD,
United States Marshal.

The board referred to by him is the "Lynch board." It had no legal existence, and all it did was absolutely void. No one pretends to the contrary. Nevertheless, on the 9th of that month the persons whom this illegal board reported as elected, assembled in the State-house under the protection of the United States troops and organized what they called the Legislature. It was not a Legislature in any sense, for, first, the returns showed that other persons than themselves were elected members; and, secondly, no one having even color of authority, ascertained they were elected. But under the protection of the troops, this body, on the day of its first assembling, in violation of law, if it had been a Legislature, impeached Governor Warmoth and suspended his official functions, and at once inaugurated P. B. S. Pinchback, then lieutenant-governor, as governor.

On that day Marshal Packard telegraphed the Attorney-General as follows:

NEW ORLEANS, LOUISIANA, *December* 9, 1872.

Hon. GEORGE H. WILLIAMS,
Attorney-General:

Senate, by vote of 17 to 5, have resolved into high court of impeachment. Senator Harris elected president of the senate, Lieutenant-Governor Pinchback being now governor.

S. B. PACKARD,
United States Marshal.

On the same day he sent this further telegram:

NEW ORLEANS, *December* 9, 1872.

Hon. GEORGE H. WILLIAMS,
Attorney-General, Washington, D. C.:

Lieutenant-Governor Pinchback qualified and took possession of the governor's office to-night. Senate organized as high court of impeachment, Chief-Justice Ludeling presiding, and adjourned to meet Monday next. It is believed that all the democrats, members of General Assembly, will qualify and take seats to-morrow.

S. B. PACKARD,
United States Marshal.

Now, this whole proceeding was without any sanction of law, and any one acquainted at all with the Constitution and laws knew it. It was plainly and palpably unlawful, and the Attorney-General could not help knowing the fact. And it is plain, moreover, that the United States did it by the unlawful use of the Army. There was no constitutional provision or provision of any statute that authorized such use of the Army.

On the same day that pretended Legislature passed the resolutions contained in the following telegram to the President:

NEW ORLEANS, *December* 9, 1872.

We have the honor to transmit to your excellency the following concurrent resolution of both houses of the General Assembly, and to request an early reply:

"Whereas the General Assembly is now convened, in compliance with the call of the governor, and certain evil-disposed persons are reported to be forming combinations to disturb the public peace, defy the lawful authority, and the State is threatened with violence: Therefore,

"*Be it resolved by the senate and house of representatives of the State of Louisiana in General Assembly convened*, That the President of the United States be requested to afford the protection guaranteed each State by the Constitution of the United States when threatened with domestic violence, and that the presiding officers of the General Assembly transmit this resolution immediately, by telegraph or otherwise, to the President of the United States.

"Adopted in General Assembly convened this 9th day of December, A. D. 1872.

"P. B. S. PINCHBACK,
"*Lieutenant-Governor, and President of the Senate.*

"CHAS. W. LOWELL,
"*Speaker of the House of Representatives.*"

This, it seems, was intended to be a legislative call on the President to interfere to protect the State against insurrection. But even if this body had been a Legislature, it was not; it does not even suggest a state of insurrection, much less declare that there was. The same day Governor Pinchback, so called, also urged the President to furnish troops in compliance with the resolutions; and as a manifestation of his gratitude and a good consideration for services rendered immediately he rewarded each of the "Lynch returning board," except Lynch, with a lucrative office, and gave the latter's son an appointment.

The President then received these telegrams:

NEW ORLEANS, *December* 11, 1872.

President GRANT:

Parties interested in the success of the democratic party, particularly the New Orleans Times, are making desperate efforts to array the people against us. Old citizens are dragooned into an opposition they do not feel, and pressure is hourly growing; our members are poor and adversaries are rich, and offers are made that are difficult for them to withstand. There is danger that they will break our quorum. The delay in placing troops at disposal of Governor Pinchback, in accordance with joint resolution of Monday, is disheartening our friends and cheering our enemies. If requisition of Legislature is complied with all difficulty will be dissipated, the party saved, and everything go on smoothly. If this is done, the tide will be turned at once in our favor. The real underlying sentiment is with us, if it can but be encouraged. Governor Pinchback acting with great discretion, as is the Legislature, and they will so continue.

JAMES F. CASEY,
Collector.

NEW ORLEANS, 11, 1872.

Hon. GEORGE H. WILLIAMS:

If President in some way indicate recognition, Governor Pinchback and Legislature would settle everything. Our friends here acting discreetly.

W. P. KELLOGG.

NEW ORLEANS, 11, 1872.

President GRANT:

Democratic members of Legislature taking their seats. Most, if not all, will do so in next few days. Important that you immediately recognize Governor Pinchback's legislature in some manner, either by instructing General Emory to comply with any requisition by Governor Pinchback under joint resolution of Legislature of Monday, or otherwise. This would quiet matters much. I earnestly urge this and ask a reply.

JAMES F. CASEY.

NEW ORLEANS, *December* 12, 1872.

President GRANT:

The condition of affairs is this: The United States circuit court has decided which is the legal board of canvassers. Upon the basis of that decision a Legislature has been organized with strict conformity with the laws of the State, Warmoth impeached, and thus Pinchback, as provided by the constitution, became acting governor. The chief justice of the supreme court organized the senate into

a court of impeachment, and Associate Justice Tallifeiro administered oath to Governor Pinchback. The Legislature, fully organized, has proceeded in regular routine of business since Monday. Notwithstanding this, Warmoth has organized a pretended Legislature, and it is proceeding with pretended legislation. A conflict between these two organizations may at any time occur. A conflict may occur at any hour, and in my opinion there is no safety for the legal government without the Federal troops are given in compliance with the requisition of the Legislature. The supreme court is known to be in sympathy with the republican State government. If a decided recognition of Governor Pinchback and the legal Legislature were made, in my judgment it would settle the whole matter. General Longstreet has been appointed by Governor Pinchback as adjutant-general of State militia.

JAMES F. CASEY.

Let me here again impress on the Senate the important fact that this body was not a Legislature; the returns showed that it was not; and, besides, those who pretended to ascertain that its members were elected had not even color of authority to do so.

But it had been resolved to set up and maintain this usurping body. Hence the following telegram was sent by the Attorney-General:

DEPARTMENT OF JUSTICE, *December* 12, 1872.

Acting Governor PINCHBACK,
New Orleans, Louisiana:

Let it be understood that you are recognized by the President as the lawful executive of Louisiana, and the body assembled at Mechanics' Institute as the lawful Legislature of the State and it is suggested that you make proclamation to that effect, and also that all necessary assistance will be given to you and the Legislature herein recognized to protect the State from disorder and violence.

GEO. H. WILLIAMS,
Attorney-General.

And accordingly the following order was sent to General Emory from the War Department:

WASHINGTON, *December* 14, 1872.

General W. H. EMORY, U. S. A.,
Commanding, New Orleans, Louisiana:

You may use all necessary force to preserve the peace, and will recognize the authority of Governor Pinchback.
By order of the President.

E. D. TOWNSEND,
Adjutant-General.

It must be supposed that this important action was taken upon consideration, and that the President and Attorney-General well knew the facts upon which they were basing their action. Would they proceed lightly in a matter of such high moment? If so, they were not fit for their high stations. If they examined the facts, then they must have known that the whole movement was grossly unlawful and a naked usurpation, because it did not have even color of authority.

But if even it could be said they were at first imposed upon by treacherous and bad men, they had ample opportunity to correct their inadvertent errors; for on the 9th of December a quorum of the Legislature which was really elected, as the returns showed, and was so returned by the "De Feriet returning board," met. The President was acquainted with this fact and of the results of the elections. He received these telegrams:

NEW ORLEANS, *December* 11, 1872.

The President of the United States:

Under an order from the judge of the United States district court, investing James Longstreet, Jacob Hawkins, and others with the powers and duties of returning officers under State election law, and charging them with the duty of completing the legal returns and declaring the result in accordance therewith, those persons have promulgated results based upon no returns whatever and no evidence except *ex parte* statements. They have constructed a pretended General Assembly, composed mainly of candidates defeated at the election, and those candidates, protected by United States military forces, have taken possession of the State-house and have organized a pretended Legislature, which to-day has passed pretended articles of impeachment against the governor; in pursuance of which, the person claiming to be a lieutenant-governor, but whose term had expired, proclaimed himself acting governor, broke into the executive office under the protection of United States soldiers, and took possession of the archives. In the mean time the General Assembly has met at the city-hall, and organized for business with sixty members in the house and twenty-one in the senate, being more than a quorum of both bodies. I ask and believe that no violent action be taken and no force used by the Government, at least until the supreme court shall have passed final judgment on the case. A full statement of the facts will be laid before you and the Congress in a few days.

H. C. WARMOTH,
Governor of Louisiana.

[Telegram.]

NEW ORLEANS, 12, 1872.

His Excellency U. S. GRANT,
President United States:

Claiming to be governor-elect of this State, I beg you, in the name of all justice, to suspend recognition of either of the dual governments now in operation here until there can be laid before you all facts, and both sides, touching legitimacy of either government. The people denying legitimacy of Pinchback government and its legislature simply ask to be heard, through committee of many of our best citizens on eve of departure for Washington, before you recognize the one or the other of said governments. I do not believe we will be condemned before we are fully heard.

JNO. McENERY.

[Telegram.]

NEW ORLEANS, *December* 12, 1872.

His Excellency U. S. GRANT,
President of the United States:

SIR: As chairman of a committee of citizens appointed under authority of a mass meeting recently held in this city, I am instructed to inform you that said committee is about leaving here for Washington to lay before you and the Congress of the United States the facts of the political difficulties at present existing in this State, and further earnestly to request you to delay executive action in the premises until after the arrival and hearing of said committee, which is composed of business and professional men without regard to past political affiliations.

THOMAS A. ADAMS,
Chairman.

These persons were not only entitled as a matter of official courtesy to be heard, but they had the constitutional right to be heard. The President was about to decide upon their rights as individuals and as representing a State of the Union. This high and sacred right was denied them and a whole people. Hear the cold, willful, and wicked reply to them. It is couched in the very language of despotism and is utterly unworthy of a high officer of state in a free republic. It is a striking manifestation of that spirit of usurpation and disregard of constitutional right and obligation which has for years past been stopping the vitality of free government in this country and which ought to alarm the whole people. Who will dare to say it was right in any view? Here it is; let me read it:

[Telegram.]

DEPARTMENT OF JUSTICE,
December 13, 1872.

Hon. JOHN MCENERY,
New Orleans, Louisiana:

Your visit with a hundred citizens will be unavailing so far as the President is concerned. His decision is made and will not be changed, and the sooner it is acquiesced in the sooner good order and peace will be restored.

GEO. H. WILLIAMS,
Attorney-General.

In view of these facts, can any fair mind doubt that the Administration had deliberately resolved from the beginning to establish this usurpation, and without regard to the right, uphold it by force? In the language of Judge Trumbull, of the committee who made the report—

The history of the world does not furnish a more palpable instance of usurpation than that by which Pinchback was made governor, and the persons returned by the Lynch board the Legislature of Louisiana; nor can a parallel be found for the unfeeling and despotic answers sent by order of the President to the respectful appeals of the people of Louisiana.

Without evidence, without hearing, and against the protest of those entitled, the President decided this grave question, and, in favor of one who had not the shadow of a right, established a bald usurpation and overthrew a State government.

When a citizen of this country attains to the exalted station of President, he ought not to consent to be a political partisan. He has no right to be a partisan. By his station and obligation, he is bound to know only the Constitution and laws of his country, and to exert himself to execute, preserve, protect, and defend them. These are his chief duties, and parties and all else ought to be subordinated to them. His ears, his heart, and his judgment should be forever closed against the suggestions, importunities, and wiles of designing and corrupt men. They should never for one moment be intrusted with the high powers of government which the people have confided to his sacred keeping and exercise. Sir, the sad and distressing history of Louisiana for the last two years makes manifest the fact, that the President has lent ear to evil and incompetent counsels and yielded to the false suggestions and unceasing importunities of little, contemptible politicians.

Now, sir, what was the plain duty of the President in the case presented by the troubles growing out of the Louisiana election in 1872? It seems to me very palpable that if the Administration had not encouraged Kellogg and his faction, there would have been no trouble; but suppose there had been in good faith such a controversy as that presented, the difficulty was comparatively easy of solution. By the Constitution and laws, the President is bound, upon proper application, to protect the State against insurrection, and to keep continued official relations with the State governments. In this case, McEnery and his associates insisted that they were respectively the true State officers and Legislature, and had been duly ascertained so to be according to the constitution and laws of Louisiana; and they insisted further that Kellogg and his associates were making insurrection. On the other hand, Kellogg and his associates insisted that they were respectively the true State officers and Legislature, and that McEnery and his associates were making insurrection. Each party applied to the President to afford the aid guaranteed by the Constitution to the States. Thus an issue was presented of the highest and most solemn moment, and one not to be treated lightly. It involved the integrity of the State and the peace, quiet, and prosperity of a whole people, and in great measure it involved the integrity of our system of government.

This is the case in which the Federal Government passes upon the State government. The President's decision in the case is subject to be reversed only by Congress. In such a case, how important that the President shall decide correctly; and to this end how essential that he shall have all the information bearing on the issue he can avail himself of. It was not in that case his duty to decide who was elected—that is not a question for him—but who were *ascertained*, according to the constitution and laws of Louisiana, to be elected governor and the other State officers and members of the Legislature. As soon as he learned that fact his decision was easy to be made. In making such a decision no party considerations or personal predilections ought to have been allowed to influence his judgment in the slightest degree. The integrity of the Government is worth more than parties, or the interests of public or private individuals. I venture to say, with perfect confidence, that this was the proper way and the only legitimate way to solve the question presented. Then, the President ought to have heard both sides of the controversy; he ought to have heard McEnery and his associates and Kellogg and his associates. But he peremptorily refused to hear McEnery and his

friends; he did not hear the merits of the other side; he acted upon the loose, interested suggestions, false statements, and heated political clamor and importunities of Casey, Packard, Kellogg, Pinchback, and such folks, none of them, as the evidence shows, entitled to credit or respect.

Suppose the President had made the proper inquiry, does any one acquainted with the facts believe the President could or would have ever recognized and sustained Kellogg and his usurpation? Never. Why? Because, first, the returns showed that McEnery and his ticket were elected by an average majority of ten thousand votes; secondly, no authority of the State of Louisiana ever ascertained that Kellogg and his ticket were elected. Even if he were beaten by fraudulent or any unlawful means, he was not *ascertained* to be elected according to law; but, on the other hand, it was *ascertained* according to law that McEnery and his ticket were elected, and by this determination the President was in law bound to be governed, whatever he may have thought of the merits or fairness of the election.

If the President had taken this lawful course, he would have been compelled to recognize and sustain McEnery and his associates. If he had done so, then the State and people of Louisiana would not have suffered the wrongs and oppression they have experienced; scores of lives would have been saved, and the country from shameful scandal and national disgrace.

Before I pass from this matter, I wish to sustain all I have said by calling attention to what the committee said on this subject. The committee were all republicans. It was composed of Senators MORTON, CARPENTER, LOGAN, ALCRON, ANTHONY, Trumbull, and Hill. Messrs. CARPENTER, LOGAN, ALCORN, and ANTHONY made a majority report, the others, each, made a minority report.

The committee, referring to the action of the United States judge, (Durell,) say:

> Viewed in any light in which your committee can consider them, the orders and injunctions made and granted by Judge Durell in this cause are most reprehensible, erroneous in point of law, and are wholly void for want of jurisdiction; and your committee must express their sorrow and humiliation that a judge of the United States should have proceeded in such flagrant disregard of his duty, and have so far overstepped the limits of Federal jurisdiction.

On the order referred to, the marshal and troops seized the State-house and held it for six weeks, and organized the usurping or Kellogg legislature in it. That is the sole authority on which the Kellogg usurpation rests this day. An order as void as if I had made it.

In referring to the "Lynch board" and its conduct, the committee say:

> There is nothing in all the comedy of blunders and frauds under consideration more indefensible than the pretended canvass of this board.
>
> The following are some of the objections to the validity of their proceedings:
>
> 1. The board had been abolished by the act of November 20.
>
> 2. The board was under valid and existing injunctions restraining it from acting at all, and an injunction in the Armstead case restraining it from making any canvass not based upon the official returns of the election.
>
> 3. Conceding the board was in existence and had full authority to canvass the returns, it had no returns to canvass.
>
> The returns from the parishes had been made under the law of 1870 to the governor, and not one of them was before the Lynch board.
>
> It was testified before your committee by Mr. Bovee himself, who participated in this canvass by the Lynch board, that they were determined to have a republican Legislature, and made their canvass to that end. The testimony abundantly establishes the fraudulent character of their canvass. In some cases they had what were supposed to be copies of the original returns; in other cases they had nothing but newspaper statements; and in other cases, where they had nothing whatever to act act upon, they made an estimate, based upon their knowledge of the political complexion of the parish, of what the vote ought to have been. They also counted a large number of affidavits purporting to be sworn to by voters who had been wrongfully denied registration or the right to vote, many of which affidavits they must have known to be forgeries. It was testified by one witness that he forged over a thousand affidavits and delivered them to the Lynch board while it was in session. It is quite unnecessary to waste time in considering this part of the case; for no person can examine the testimony ever so cursorily without seeing that this pretended canvass had no semblance of integrity.

Upon the pretended count of this board, Kellogg is this day exercising authority and his usurpation is sustained by the President.

Speaking of the McEnery ticket the report says:

> It is the opinion of your committee that, but for the unjustifiable interference of Judge Durell, whose orders were executed by United States troops, the canvass made by the De Feriet board, and promulgated by the governor, declaring McEnery to have been elected governor, &c., and also declaring who had been elected to the Legislature, would have been acquiesced in by the people, and that government would have entered quietly upon the exercise of the sovereign power of the State. But the proceedings of Judge Durell, and the support given him by United States troops, resulted in establishing the authority *de facto* of Kellogg and his associates in State offices, and of the persons declared by the Lynch board to be elected to the Legislature. We have already seen that the proceedings of that board cannot be sustained without disregarding all the principles of law applicable to the subject, and ignoring the distinction between good faith and fraud.

Without any reference to the merits of the election, a lawful board, the lawful authorities of the State, ascertained according to law that McEnery and his ticket were elected. Behind that the United States have no right to go.

In his minority report, Judge Trumbull says in reference to the election:

> According to the official returns, the fusion State ticket, headed by McEnery for governor, received an average majority of about ten thousand votes, and a large majority of the persons elected to the Legislature were of the same party; and but for the illegal interference of the United States authorities, as is stated in the report of the majority, the McEnery government would have been peacefully inaugurated.
>
> How skillfully the plan was laid to overthrow the legitimate State government, set aside an election, and inaugurate the Pinchback and Kellogg administrations and legislatures, and how well Judge Durell was supported in all these revolutionary and illegal proceedings by other United States officials, will appear by reference to a few facts disclosed in the evidence.

Referring to the views of the majority, he says:

> It is, however, said by a majority of the committee that the election of November 4 was so tainted with fraud as to render it wholly void, and they recommend the passage of a law for holding a new election under the authority of Congress.
>
> If it were admitted, as it is not, that Congress has authority to inquire into the fairness and regularity of a State election, it was denied that there was any such fraud in the late Louisiana election as would justify setting it aside. It was confessedly one of the most quiet and peaceful elections ever held in the State, and the evidence shows that it was substantially free and fair.
>
> The vote polled was twenty thousand larger than ever before cast in the State, and against more than two-thirds of it no complaint of unfairness is even alleged.

The majority of the committee say that the returns showed (and they had them before the committee) that McEnery and his ticket were elected by a large majority, and that it was so ascertained by the count of the De Feriet returning board; but they say that they are of the opinion that the Kellogg ticket would have been elected if there had been a fair election. On this point they say this:

> Your committee are therefore led to the conclusion that, if the election held in November, 1872, be not absolutely void for frauds committed therein, McEnery and his associates in State offices, and the persons certified as members of the Legislature by the De Feriet board, ought to be recognized as the legal government of the State. Considering all the facts established before your committee, there seems no escape from the alternative that the McEnery government must be recognized by Congress or Congress must provide for a re-election. And this brings us to consider:
>
> 1. Whether the election of November last is void for fraud; and
>
> 2. If void, has Congress the authority to order a re-election?
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> First. A careful consideration of the testimony convinces us that, had the election of November last been fairly conducted and returned, Kellogg and his associates, and a Legislature composed of the same political party, would have been elected. The colored population of that State outnumbers the white, and in the last election the colored voters were almost unanimous in their support of the republican ticket. Governor Warmoth, who was elected by the republicans of the State in 1868, had passed into opposition, and held in his hands the entire machinery of the election. He appointed the supervisors of registration, and they appointed the commissioners of election. The testimony shows a systematic purpose on the part of those conducting the election to throw every possible difficulty in the way of the colored voters in the matter of registration. The polling-places are not fixed by law, and at the last election they were purposely established by those conducting the election at places inconvenient of access in those parishes which were known to be largely republican; so that in some instances voters had to travel over twenty miles to reach the polls. The election was generally conducted in quiet, and was, perhaps, unusually free from disturbance or riot. Governor Warmoth, who was the master-spirit in the whole proceeding, seems to have relied upon craft rather than violence to carry the State for McEnery. In the canvass of votes which determined the McEnery government to be elected the votes of several republican parishes were rejected.

They say further:

> If the Senate should be inclined not to go behind the official returns of the election, then the McEnery government and legislature must be recognized as the lawful government of the State, and McMillen, if regularly elected by that legislature, should be seated in the Senate in place of Kellogg. But your committee believe that this would be recognizing a government based upon fraud, in defiance of the wishes and intention of the voters of that State.

In the paragraphs just read the committee have embodied the strength of all the objections to the election of 1872. Now, with all due respect, I insist that the grounds suggested are untenable. First, neither Congress nor the President has the right to determine the result of elections in the State for State officers. This is matter that the States control for themselves; they have sole and exclusive jurisdiction; when they decide, rightly or wrongly, the United States and the world are bound by the decision. Where is the clause of the Federal Constitution that confers on Congress or the President any such authority? No one has cited it, and I venture the assertion that no one can do so. So far as I can learn, such a suggestion never was made before. Such a power is not only not conferred, but the exercise of it would manifestly lead to interminable conflict and inaugurate general anarchy. The Congress and the President may, on a proper occasion, ascertain who *were ascertained according to the constitution and laws of a State* to be its officers, but this is all they may do.

This answer would seem to be sufficient in this case, because the authorities of Louisiana did ascertain and decide that the McEnery ticket was elected.

Secondly. But a consideration of the causes assigned as evidence of the fraudulent character of the election are likewise untenable. It does not follow because the negro vote was cast in 1868 for the republican ticket, that it ought to have been cast for it in 1872. Governor Warmoth supported the fusion ticket; it is admitted he had a large influence—personal, political, and in the way of official patronage. If he chose to use these for the benefit of the fusion ticket he had the right to do so, just as he had the right to do the same for the Kellogg party if he had chosen to do so. It is well known that the President, through his political influence and official patronage, exerts in the States a tremendous influence—controls thousands and tens of thousands of votes. I do not think this is right, but no one ever heard it suggested that an election was void because he did it. The constitution and laws give the governor the right to appoint the supervisors of election, and as to the location of the voting precincts they were as convenient to the negroes as the white people, and generally the negroes are more apt to attend than the white people. Besides, there had been terrible misrule in Louisiana, and how far the negro vote was cast in favor of a salutary change, who shall say? It is admitted that the election was unusually quiet and it was the largest vote ever polled there. In confirmation of the result thus ascertained, the late election in that State

gave the conservatives a large majority. Then, such objections are not reasonable—surely no one can seriously pretend that they are sufficient to warrant the overthrow of a State government!

Now, sir, after what I have said and shown, I insist that I am warranted in making these deductions:

First. The power and authority exercised by Kellogg and his associates in the State of Louisiana since the election in 1872, has always been a naked, wicked usurpation; that it has been established and sustained by the present national Administration for political party purposes in defiance of the vote, will, and protest of the people of that State by and through the unlawful use of the Army of the United States.

Second. That at the late election in that State the people again defeated the republican party, and again the Administration by means of the unlawful use of the Army defeated the popular vote and will.

Third. That thus the Administration has by the exercise of absolute power set a precedent, not only dangerous to, but absolutely subversive of, our system of government and public and personal liberty.

Mr. President, I very much regret that the President in his late message saw fit to present a partisan view of the troubles in Louisiana. It is a labored effort to justify Kellogg and his supporters on the one hand, and condemn McEnery and his friends on the other. He calls special attention to what he calls a shameful and undisguised conspiracy to carry the election in 1872 against the republican party, to the affair in New Orleans on the 14th of September last, the Colfax and Coushatta affairs, and a general state of lawlessness and crime in that State. His grave charges are not sustained by any reference to ascertained facts or information, but are founded on vague, partisan, interested, and *ex parte* statements. He arraigns and condemns a whole people upon such information, without any hearing, and without any reference to, or a line or word explanatory of, the causes that gave rise to such disorders. He seeks to leave the impression that the people are essentially lawless, and that they love crime for its very sake. This is not just to that people, the Senate, or the country, and manifests a spirit unworthy the Chief Magistrate of the nation. We need to know both sides of the controversy and the whole facts.

It is beyond cavil that the Kellogg usurpation is the cause of the extraordinary and atrocious deeds to which the President makes reference. No disinterested man acquainted with the facts can doubt for one moment that, if the McEnery administration had been permitted to proceed according to law, these terrible crimes had not been perpetrated. It was the lawfully ascertained government; and, as appears by the report of the committee, and from every source, the masses of the people of all parties were ready and willing to recognize and accept it. The people of that State, the Congress, and the whole country know that Kellogg and his associates are usurpers. This has been ascertained by solemn investigation under order of the Senate.

The affairs of the 14th of September in New Orleans, the Coushatta and Colfax affairs, grew out of the struggle of the rightful government to assert itself against usurpation. This no one can deny. In New Orleans the engagement was open and direct between the contending parties. In the two latter cases, the Kellogg officials and others of that party outraged the people by intolerable misrule and incited the negroes to attack the whites. The result was that conflicts of violence and deeds of blood shocking to humanity and meriting the severest condemnation and punishment were perpetrated. But this is the natural consequence of usurpation. It has been so in all ages and countries, and our own is no exception to the general rule. Indeed, the American spirit will not submit to tyranny; it will assert its freedom or perish in the effort to do so. The American people submit to lawful rule cheerfully and quietly, but to despotism and oppression never! Our whole history attests this truth.

The crimes referred to shock my nature and sicken my soul. I denounce the authors of them. They merit severest punishment; but I denounce both and all sides of them. The poor, ignorant negroes, incited to murder and rapine by vagrant supporters of Kellogg, and the white people, goaded to desperation and violence by his and their misrule, are not the only nor the most guilty parties. The Kellogg usurpation and its supporters are responsible. The deliberate judgment of the American people and the civilized world will hold them so.

The President complains that the perpetrators of these crimes have gone unpunished. Why is this? The usurping government had complete control of the executive, judicial, and legislative branches of the State government, and they were sustained constantly by the Army of the United States. More than one-half of the population were negroes. Kellogg's government could do what they would. It is a shameful subterfuge to say they could not bring offenders to justice. There was another cause, and that was this: The friends of this usurpation, as the facts show, were the first aggressors—always the aggressors—and any judicial investigation would expose them while it might expose others. Like all other usurping governments, it has been interested in avoiding all investigations that expose its crimes and misrule. This is the reason why crime has not been punished. The statistics show that other crimes were punished. Why not these? The answer is that I have given.

It is not surprising that the propositions of General Sheridan contained in his telegrams, which I have read, and which the President and the War Department approved, have greatly shocked the masses of the American people. They are not only unlawful but monstrous; they embody every essential attribute of absolute despotism, and a doctrine, the outgrowth of the late war, which has been embraced by a class of politicians very dangerous to liberty and free government. I cite it as a striking and significant fact, that the President did not disavow the propriety of General Sheridan's propositions. I had hoped that he would do so.

The President tells us that "no party motives or prejudices" influenced General Sheridan. However this may be, it is very manifest that he thoroughly identified himself with the policy and wishes of the President and the Kellogg usurpation. No one can read his dispatches and not see that he went to New Orleans hostile to the white people, and that he received suggestions mainly if not entirely from Kellogg and his supporters. Apart from the enormity of his propositions, the language used by him was coarse—that of insult and violence, and well calculated to stir up the wrath of a whole people. Whatever may have been his purpose, his language and manifestations were well adapted to stir up a conflict, and thus give the republican party the opportunity to set up anew the cry of a "new rebellion" in the South and a "conflict of races." His language was not only gross and violent, but it was false in fact, if we can rely upon testimony of the most indubitable character. He styled the "white-leaguers" as *banditti*. Now, they are not *bandits*. The sub-committee of Congress made special inquiry as to the nature and purposes of that association.

In speaking of it they say:

> In this connection we refer to the White League mentioned in the message of the President. In the last campaign of Louisiana the opposition was composed of various elements—democrats, reformers, dissatisfied republicans, liberal republicans, old whigs; and in order to induce the co-operation of all, some of whom refused to unite with an organization called democratic, they took the name of "the people's party;" called in some localities "the conservative party;" in others, "white man's party;" in others, the "White League;" and had ordinary political clubs under these names throughout the rural districts, which were ordinary political clubs and nothing more; neither secret, nor armed, nor otherwise different from usual political organizations. These, must not, however, be confounded from similarity of name with the White League of the city of New Orleans.
>
> That league is an organization composed of different clubs, numbering in all between two thousand five hundred and two thousand eight hundred; the members of which have provided arms for themselves, and with or without arms engage in military drill. They have no uniforms, and the arms are the property of the individuals, not of the organization. They comprise a large number of reputable citizens and property-holders in the city of New Orleans. Their purpose they declare to be simply protective; a necessity occasioned by the existence of leagues among the blacks, by the hostility with which the Kellogg government arrayed the black against the white race, and by the want of security to peaceable citizens and their families which existed for those reasons, and because, also, of the peculiar formation of the police brigade.

This account is confirmed by the clergy of New Orleans, military officers, and scores of northern citizens doing business in that city. Now, whom shall we believe—General Sheridan, who is in a bad humor, and gets his information from Kellogg, or his supporters, or the disinterested congressional committee, sustained by hundreds of men whose purity of character no one can question? General Sheridan is mistaken in this matter as well as others. His statements are plainly *ex parte*, and he colors darkly every complaint he makes. This is neither fair nor just nor does it comport with the duty of one in his position or with the policy of peace and order. He says, for example:

> Since the year 1866 nearly thirty-five hundred persons, a great majority of whom were colored men, have been killed and wounded in this State. In 1868 the official record shows that eighteen hundred and eighty-four were killed and wounded.

Now, where did he get this information? From whom did he get it? His statement is a vague one, based, as his whole report shows, upon the statements of interested persons. And with a view to color his report and make the number sound loudly he couples *murder* and *wounding* together. How many of one and how many of the other, he fails to tell. And over and above this, he never once alludes to the causes that gave rise to the disorders. This all fair men must say was due, in fairness and right.

I do not pretend to deny that there are terrible disorders in Louisiana, and that bloody crimes have been perpetrated there, but I think I have proven that these are justly attributable to the Kellogg usurpation established and sustained by the present Federal Administration in violation of the Constitution and laws, and with the view to the continued control of that State by the republican party in utter defiance of the popular will expressed at the ballot-box. The Administration unlawfully interfered in 1872, and defeated the popular will, overthrew the lawful government of the State, established and has ever since sustained the Kellogg usurpation. Now, in 1874 it again defeats the popular will, and with the Army disperses and overthrows the lawful Legislature. I respectfully challenge any one to show any lawful sanction for what the President has done in Louisiana since 1872. No one has yet pretended to do so; I venture to say with perfect confidence no one can do so.

Whatever may have been the patriotic services rendered to the country by the President in the past—and I do not detract from them—how long, I ask, will the American people submit to such arbitrary exercise of absolute power? If he can thus dismantle Louisiana and set up his political adherents, may he not do the like in New York, or Ohio, or Oregon? If he may thus control the organization of the Legislature of Louisiana and disperse those who do not adhere to him and his fortunes, may he not in like manner disperse the Legis-

latures of the other States I have named? Nay, when Congress shall cease to adhere to his political fortunes, may he not, like Cromwell, march troops into these Chambers and disperse Congress? Who shall say that he will not? The right he has to do what has been done in Louisiana, he has to do all I have suggested—that is the right of might! If this President and the present dominant party may do it with impunity, another President and another dominant party may do likewise and cite this precedent. Is the republican party ready to see another President at the head of another party do so in Massachusetts, in Vermont, and Pennsylvania? Are the American people willing to see this doctrine established and carried into practice? I trust not. I hope not. Then let them now assert their right and stand by the Constitution of the country. Let this deed be condemned everywhere; let every friend of free government, let every friend of liberty in the Union, throughout all its compass, hold this subversion of the State of Louisiana up to the condemnation of the whole people. Let the cause of Louisiana be the cause of the whole people and of every State in the Union. The question is not whether crime has been committed or whether it shall be punished—all are in favor of that; that is not the question; it is, shall a State government be overthrown, demolished, by a President of the Union? That is the question. Let crime be punished, let it be punished everywhere, according to the full measure of the law; let the prosecution of offenders be vigorous and certain. I am in favor of that. I urge that on every one charged in any way with the punishment of crime. I urge it upon all good men to be active and aid in bringing offenders to answer for crime, but I will not now, I never will, consent to make crime a pretext to help a political party control the country; I never will consent to make crime an excuse for subverting a State government for any purpose. How is crime any excuse for what was done to Louisiana in 1872, and from that day to this? How is crime any excuse for what was done to the Legislature of that State on the 4th of last month? Answer these questions who can! No, Senators, this blow at Louisiana is a death-thrust at the vitals of the Republic, if we, if the American people, shall allow it to be consummated. If this work shall stand, then the Constitution is dead, the love of liberty in this country is dead, liberty has fled to other lands, the one-man power is everything—might is right, right is might, and despotism triumphant! Do you say, Senators, let this blow be consummated? Then I appeal with abiding confidence to the people everywhere in the Union. They love their country and their form of government more than party. Let the issue be made at once; I do not fear the verdict. Already the voice of millions of freemen has been heard in condemnation of the arbitrary deeds of this Administration in Louisiana and elsewhere. Let the issue be made, and that voice will increase in volume and power until it speaks from existence forever the most arbitrary Administration and party the people of this country have ever seen or tolerated. Let that issue be made, and then will be made manifest the truth that the republican party has ceased to be a party of principle, that its legitimate work is done for good or evil.

Mr. President, I deprecate the unfriendly tone and temper of this debate on the part of the majority, toward the Southern States and the white people of that section of the Union. It manifests a spirit of dislike, in some instances of revenge and insult, which I had hoped did not exist anywhere, much less in this high place, and I venture still to hope it, finds very little sympathy in the popular heart of the North. Unmerited denunciation, misrepresentation, and falsehood prove nothing but the littleness and meanness of those who employ such instruments of detraction. Coarse and insulting language add not one whit to the dignity or merit of any one; it only serves to engender dislike, contempt, and disgust. It seems to be the desire of some of the majority to provoke the dislike and displeasure of the southern people, rather than secure their respect and confidence. Such gentlemen will very probably succeed in their purpose now and for the future. I am very sure that a wholesome statesmanship, apart from personal good-will, would suggest the propriety, wisdom, and importance of reclaiming the respect of the people of the South of all political parties for the people of all political parties at the North, and especially for the public men of the nation. The spirit of this debate seems to have no such end in view. I beg to say, however, to the Senate and the country, that the southern people are very able to take the distinction between the Government and the dominant party—they may dislike the one while they love and honor the other, and so I apprehend millions of southern white people do. The republican party have not done much for the last ten years to command the love and confidence of the southern people.

Sir, it is false and scandalous to say that any considerable number of the southern people anywhere are murderers, assassins, robbers, and given to crime. No proof of this has been, and I undertake to say none can be, produced. I do not pretend to say that there is no crime in the South or that there are no bad men there. I admit the contrary; but what I do say is, that the aggregate crime there is not greater in proportion than elsewhere in the United States, and anterior to the late war it was much less there than in the Northern States generally. In this estimate, I do not include those crimes growing out of the troubles in Louisiana and others like them. These are attributable to special causes, the principal one of which is misrule of the most intolerable character. And I assert with perfect confidence, and challenge successful contradiction, that in 90 per cent. of these horrible atrocities the negroes, led on by bad white men and others in the interest of misrule, have been the aggressors. This was so at Colfax, Coushatta, and Vicksburgh and elsewhere.

Mr. SARGENT. The Senator states that the provocation was on the part of the blacks and others. He mentions Coushatta among other instances. Will he please state what the provocation was?

Mr. MERRIMON. I will.

Mr. SARGENT. As that circumstance is in the official documents, some persons who had been properly elected to office were required to resign. They declined, though threats of their lives were made; but when further threatened, they agreed to leave the State if they could have a safe escort. A safe escort was promised, and they were murdered on their way to the State line.

Mr. MERRIMON. The facts about that transaction, as I have learned them from various sources, getting them from the same sources that the Senator does and other sources, including a private letter from a highly respectable individual, are that the men who were thus cruelly murdered—and I make no apology for the murderers—had incited the negroes to riot and murder anterior to the time when they were arrested and carried out of that town. The fact that the negroes were so incited by these parties or part of them, gave rise to their arrest, seizure, and taking them off with a pledge of safeguard, when they were brutally murdered; and I condemn it as thoroughly and completely as anybody, and the parties who did it ought to be punished to the last degree.

Mr. SARGENT. There was no riot at Coushatta. There had been there no previous violence of any kind whatever. These were not negroes, but white settlers, and two of the men who were thus murdered were southern born. The offense of all of them was merely that they were republicans.

Mr. MERRIMON. The facts are, that the original riot which it was intended to have in the town of Coushatta did not take place there, but by misdirection the negroes went to another town. That excited the indignation of the white people, and then these men were arrested in the town of Coushatta, and they were murdered on their way to the place where a pledge was given them they would be allowed to go. But I will proceed with my speech.

I do not justify or excuse the violence of the white people. I condemn this as strongly as anybody; but I condemn those who incited the negroes and made misrule, more than any one else. It cannot be denied by any just person, that in all these cases the provocation was great indeed, such as would have produced like conflicts and bloody results in any State in the Union. In truth, I believe that today if the same provocations were offered in Indiana or Wisconsin or New York to the people, the result would be infinitely worse. The white people of the South have borne much, because they knew little allowance would be made in their behalf. I put it to every reasonable and well-informed person to say, if, considering the character of the late war and what has transpired since—the humiliation, impoverishment, outrage, and misrule to which the people of the South have been subjected—the gross amount of crime there has not been remarkably small. Looking to the history of other times and other countries, there would be no doubt of the correctness of this view.

I know that exaggerated statements have been made by political newspapers and public men—sometimes on one side and sometimes on the other—for political effect; perhaps both sidesin politics are not free from this imputation. Such statements are worth but little with reasoning, reflecting men. I place small confidence in what individuals may say on either side of this controversy, moved by political considerations. I look to general results and the opinions of disinterested, just, and conscientious men charged to look after the public good, and who do so regardless of the interests of political parties. Looking to such sources we may form just conclusions. Who could draw such conclusions from most of the speeches made in this debate? The majority, attacking the South, in speaking of the crimes in Louisiana and elsewhere, have uniformly exaggerated them in number, painted them in the blackest colors; they have talked against one side and for the other, and hence have told but one side of any case.

I cite the speeches now in the RECORD in support of what I say. No one of them pretended to explain the facts attending the origin of any conflict, no one has ever referred to any grounds of provocation. A stranger, taking the speeches as stating the whole truth, would infer that the white people just in cold blood, and for the love of murder, killed negroes by the score. Now we all know this is not true. I repeat, that wherever these extraordinary scenes of blood have transpired the negroes, incited by bad men in the interest of misrule, have been the aggressors. And but for bad white men they would be comparatively quiet; the South everywhere would be quiet to-day. And wherever in the South there is wholesome government there is peace, good-will, and slowly returning prosperity. My own State is a striking illustration of this fact; Georgia is another; Tennessee and Texas are others, and lately in Arkansas there is a state of quiet and good order produced by a wholesome change in government.

In my State, the governor is republican and a large majority of the judiciary are so; the Legislature is conservative. In Georgia, Tennessee, Texas, and Arkansas the State authorities are mainly democratic. There is peace, and the people of all classes and colors are protected alike in their lives, liberty, and property as well as any-

where in the Union. In South Carolina, where there has been the grossest misrule, the present republican governor manifests a strong and honest purpose to administer the government faithfully, and as a consequence order and confidence are returning and all classes of people sustain him. It has been said tauntingly that if the democrats rule all is well, but republicans are not tolerated. This is the contemptible cry of the small demagogue. Wherever there is a republican who rules justly, he is both sustained and respected by the people. I do not doubt that the white people prefer democratic rule, but they cheerfully sustain the lawful and wholesome rule of any party or any man.

Before I pass from this subject, I wish to call attention to the census statistics of crime in the years 1850, 1860, and 1870. I wish time would allow me to produce the tables. Any one can refer to them who wishes. But they show these striking general facts in support of what I have said. Anterior to the late war, the ratio of crime in point of smallness of amount, was nearly as 3 to 1 in favor of the Southern States. Especially in North Carolina, there was not a more peaceable, law-abiding people in the world. Since the war the ratio is about the same throughout the Union; but if I subtract the crime done by colored people, the ratio is about what it was before the war. Take North Carolina, for example: Out of four hundred and sixty-two convicts in the State prison in 1870, one hundred and thirty-two were whites and three hundred and thirty were colored. This official data will carry infinitely stronger conviction to the minds of just and reflecting men than all the empty declamation and detraction that can be heaped on the people of the South for an age, founded upon the clap-trap, interested, and false statements of petty partisans. They, like all agricultural peoples, are peaceful and law abiding. Until the republican misrule in the South, with which the country is at length becoming somewhat familiar, that section of the Union was remarkably free from riots and crimes incident to crowded cities and communities. It is so now, except in the cases and for the causes mentioned, and the statistics I cite show it.

Mr. President, republican politicians have sought for years past to produce the impression that the people of the South are and have been ever since the late war hostile to the Union, and desire and intend its overthrow. They seek to make this impression now in and out of the Senate, by the cry, in connection with the troubles in Louisiana, of a "new rebellion" in the South. Their misrule has produced disorder, conflict, and crime; and again they raise the shout of a "new rebellion," in order to rally the people of the North once more to their support. This is likewise a false suggestion—utterly groundless. But it has been made so persistently in the past and is now so vigorously renewed by politicians, that I deem it worth while to submit some considerations which ought to silence forever this groundless clamor.

Notwithstanding the violence of the late war and the multiplied annoyances and complications the people of the South have been subjected to since that war, so far as I know or can learn, no man has ever since then raised his hand or his voice against the Union. If any one knows to the contrary, I ask him to produce the proof of his allegation. Those who make the imputation reach their conclusions by false deductions. They argue that the southern people rebelled, they fought, were conquered, subjugated, and therefore they hate the Union; and then in support of their conclusions they cite disorders in the South, which were in fact produced by their own misrule. That this is false reasoning will appear from what I am about to say.

The general fact I have just stated as to opposition to the Union is striking and significant, and ought to be a source of profound pleasure to every patriot. It rests on solid grounds of patriotism, and gives the strongest assurances of the perpetuity of the Union if the people are true to themselves.

In the early struggles for independence in this country the people of the South were the first to strike for liberty. Undisguised white men seized British tea, British stamp and also the stamp officer at Wilmington, North Carolina, before the tea was cast into the water in Boston Harbor. At Charlotte, in that State, the people declared independence of Great Britain on the 20th day of May, 1775, thus anticipating the national declaration more than twelve months. They employed much of the noble thoughts and language in their declaration afterward incorporated into the national declaration. When the hour of conflict that "tried men's souls" came, they were among the first to rush to arms and declare and make the "cause of Boston the cause of all." In that glorious, never-to-be-forgotten struggle for liberty and independence, Virginia, North Carolina, South Carolina, and Georgia contributed of their blood and treasure without stint and as liberally as any of the Colonies. In the statesmanship and generalship of the Revolution they were the equal of any other section. In the very outset the people at Charlotte manifested their unalterable love and preference for free republican institutions, and all through the southern colonies they did likewise. In order to throw off kingly government they nobly aided in gaining and establishing independence. After that they aided in framing, establishing, and sustaining the present national system of government. Without them this never could have been done. Much of the system is the workmanship of their statesmen. The people approved the Union, they indorsed it, they sustained it, they loved it, because it embodied their notions of free government, and secured national liberty for them and their posterity and for the oppressed of all nations. They believed in the theory of it; they put it in practice, studied and understood its workings, learned and approved it well. From its earliest existence to this moment their tastes, their industries, their education, their laws, their statesmanship, their valor, and their civilization have uniformly attested their approval of, adherence to, and love for this system of government. In all the past scarcely an individual in the South has expressed, much less made, opposition to this noble system of government. Nor can any man deny that the southern people contributed much, very much, to the greatness, glory, and renown of the Union. Whatever may be said of their hostility to it in the late civil war, it can never be said that they were hostile to and fought against this system of government; and that is the material fact I now wish to make prominent.

I know that here the horrid specter of the civil war rises up, and I am to be told that the southern people fought against the Union. But they did not fight against it because it was the Union; they did not fight against it as a system of government or because it was such. They owned five million of slaves, worth more than two thousand million dollars; they had a strong and overruling apprehension, grounded upon long and fierce controversy, that a political party about to administer the Government intended to destroy that property, although it was recognized by the Constitution and secured by the system of government as much as any other property. So apprehending, they did not propose to make war on the Union, but to withdraw from it, as thousands believed they had a constitutional right to do, both North and South. I did not, however, share in that opinion. The first act of attempted government they did was to form a national government substantially in all respects that of the Union. The State governments were all preserved. No one suggested a new system; if this had been proposed, the revolution could not have lasted a day. The people of all classes were zealous and keenly alive on this subject. The magnitude and violence of the war was almost without precedent in history. At the close of it the people of the South, seeing that negro slavery was lost, at once laid down their arms. Immense armies did so, though they might have continued a terrible warfare for years. Almost in a day the whole people abandoned war and returned to peaceful pursuits and, I may add, their allegiance to the Union.

There is no parallel in all history for such a termination of such a war. I submit to the judgment of a candid world that there could not be a nobler illustration of the high civilization of the southern people. Could there be more convincing evidence that they were not hostile to the Government as a system, but approved it? How else can that grand result be explained? No man can gainsay the manhood and unbending courage of the southern people and their unalterable and unconquerable love of liberty. If they had deemed their liberty about to be lost, with armies well-trained and able and experienced commanders, they could have kept up organized warfare for an indefinite time, and beaten in this, they could have carried on irregular war for a quarter of a century. This they would have done if they had supposed that they were to be denied the full benefits of free government. But they were assured otherwise by the President, by Congress, by the Army of the Union, and by the northern people. They confidently expected otherwise, and hence they were content at once to abandon war and return peacefully to the Constitution and the Union—again enjoy the benefits of them and again support and defend them. After that, they submitted to the repeated overthrow of their State governments and the re-establishment of them under reconstruction orders of the President first, and afterward under the reconstruction acts of Congress, containing provisions alike proscriptive and humiliating. Tens of thousands of the white people, thousands of them distinguished for virtue, learning, and experience, were not allowed to join in the work of reconstruction, while the then late slaves, without any preparation or fitness for such a purpose, were allowed to do so. To make these laws more offensive, they were executed by the Army, and it is a shameful mockery to say that the elections were free—they were held under the sword and the supervision and direction of the Army officers. The vote taken in my own State was counted in a city in an adjoining State, at military headquarters, whether rightfully or otherwise no one ever knew. Time will not allow me to advert to the demoralization in government, public extravagance, corruption in office, increase of public debt, and general misrule consequent upon reconstruction. It is scarcely necessary to do so; it is notorious. It has in great measure driven the people in the South to despair; it is the national disgrace and the scandal of civilization.

In view of all these things can any reasonable person doubt that the southern people are for the Union and bound to it by motives and considerations of the most enduring character?

Sir, free government, as embodied in the constitutions of the several States and that of the Union, is essential to the liberty, prosperity, and happiness of the American people. It is therefore a matter of supreme moment to them that it shall operate freely and perpetually in all its parts throughout the length and breadth of the whole Union. It cannot be one government for the North and another for the South; what is done to Louisiana must under like circumstances be done to New York. It cannot be one government for the northern people and another for the southern people; it must be the government of all and for all. The northern people cannot maintain a standing army and a military despotism in the South and free gov-

ernment at the North. They cannot allow the usurper to crush and kill Louisiana now. If they do, one day he will by the like right crush and kill Massachusetts. Our rich and noble heritage of government has cost too much of precious blood and treasure to be wasted and frittered away in prolonging the supremacy of a political party. The vitality of that heritage is not only threatened—a deadly assault is made upon it. The time for active defense has come. I call aloud to the people to come to the rescue while they may, lest the terrible time shall come when they cannot.

Mr. STEWART. I did not intend to make a speech, and I will not now; but I have listened to all this essay of the Senator from North Carolina, [Mr. MERRIMON,] and there are some parts of it rather cool and refreshing.

Mr. MORTON. Will the Senator yield to a motion for a recess?

Mr. STEWART. I think we had better go on. I say that some parts of this essay are rather cool and refreshing, particularly when he deprecates the tone of the majority toward the southern people and toward the democratic party. He deprecates the harsh language the majority use. He does not say anything about the tone of the minority. After having dealt in epithets, ransacked the dictionary to get harsh terms to apply to the republican party and the President of the United States for the space of four and a half hours, he deprecates that anybody should say harsh things except himself. He has the exclusive privilege to say hard things. Where did he get that exclusive privilege? There have been harsher things said by him than I ever heard in this Chamber before, harsher things of the President of the United States than I ever heard before.

Mr. MERRIMON. I challenge the honorable Senator to point to one word I said disrespectful to the President of the United States.

Mr. STEWART. Take the whole speech; the words "usurpation," "tyranny," "oppression," "cruelty," and everything else were applied to the President. He was charged with almost every crime in the decalogue; he was pictured as a tyrant worse than Nero; he was not treated with any respect whatever by the speech of the Senator from North Carolina.

Who is the President of the United States that he should be thus treated? The President of the United States happens to be a man who has acted a very conspicuous part in the republican party and in the struggles of the last fourteen years, and I do not wonder that there is some feeling against him on the part of certain persons; but I am surprised that that feeling should manifest itself quite so publicly at so early a date and at this particular time. I want to tell my democratic friends that they are getting a little too fast in this matter; it is a little too early yet to speak of the republican party as false, faithless, dead, and all that. The republican party is not going to die immediately. I do not wonder that the enemies of the republican party desire its death. The republican party is identified with too much of that which is good, too much of that which is worth having, its history is too thoroughly identified with the Union of these States, it is too thoroughly identified with government and law and order to meet the approbation of some people. There is no doubt about that. The Senator from North Carolina says let it die, and let it die now. The republican party is not going to die at his bidding. The republican party has lived a long time. The republican party did not die at the bidding of men who disliked it when it won a just victory in 1860 and elected a President. It did not die then because the democratic party would not submit to the verdict of the people. It did not die then notwithstanding this same democratic party declared that they would destroy the republican party; and if it was necessary to do that to destroy the Union and the Government of the fathers, they would do it; and still the republican party did not die. No! but the majority of the people of the United States came forward and said that the party that stood by the Union and the Constitution and the laws should live. But the struggle commenced then; it went on with various successes. Each day we were told that it was the last day for the republican party; it must die. We were told by democratic orators in the darkest days of the rebellion that the republican party must now die. Every time there was a rebel victory we heard in the streets of the North, "This is the end; it is a terrible overthrow. You and your party will now be crushed out." This went on from time to time. We heard, I say, during the whole struggle that the time had come for the republican party to die. When finally through the patriotism of those composing that party—for the great Union-loving people of the whole country belonged to that party—when by their sacrifices and their patriotism the rebels were forced to lay down their arms, then the cry was, "The war is over now; Lee has surrendered. Now it is time for the republican party to die. The republican party has survived its mission; let it die!" And the then accidental President of the United States thought the time had come for the republican party to die. He pronounced its eulogy in terms not quite so harsh and severe as it has been pronounced here to-day, and he went on then to build up the substitute of sham loyalty to the Government; but what did the people say to him? The people said, "We will trust the republican party that has stood by the Constitution, that has stood by the country, that has saved the Union from destruction by war; we will trust it with reconstruction." They rolled up their majorities in its behalf, and reconstruction went on; but not in the spirit of cruelty or oppression, as has been charged. Notwithstanding the republican party was backed up by the votes of the people, by overwhelming victories at the polls constantly, it demanded no vengeance; it excluded no one. All it asked of the South was that all men might have their rights; that the loyal man, though he be weak, should fare as well as the disloyal, though he was strong. That was all this great republican party asked.

It was said that if the negro was enfranchised the southern men would control his vote. I supposed that was so at the time, and in advocating colored suffrage at an early period I stated on this floor that I expected that result would follow. I thought then that hostility to the negro and hostility to the Government were at an end in the South; but what do we hear to-day? The Senator from North Carolina charges what—and what a charge it is to make! He says that the republicans have taught the negro to hate the white man and to separate from him. Have the republicans taught him that? There was nobody there but a few strangers. If there had been those friendly relations that they affirm, if there had been that disposition to treat the negro kindly of which they boast, they could have controlled him. The fact that they have no influence with the negro shows that they have treated him badly. He is not a turbulent man; he is peaceable, he is docile. He was under the subjection of his master. I say that to charge the republican party with having excited the negro against his master there is an admission that the negro has not been fairly treated, for I know that he loves his old master better than he does the stranger with half-decent treatment. If the idea of enslaving him had been abandoned, if your peon laws had been abandoned, if good faith had been pursued there would be no trouble of this kind. That is the strongest argument; it is the thing that comes up daily to my judgment and the judgment of fair men in the North. The fact that you have no influence with the negro, the fact that he can be controlled by a few men from the North that you call carpet-baggers, shows how you treat him. You ought to have influence with him, and if you treat him as a man and recognize his manhood you can control him, and everybody knows it. That charge against the republican party is an admission that you have maltreated him, because good treatment would secure his co-operation and friendship.

There is in that charge a volume of reproach to you. I say that all this great republican party asked in reconstruction was fair treatment, and all it has attempted to do in the South was to prevent injury to the negro by the whites of the South, or I mean to say the bad whites of the South—for I do not believe the great mass of the people of the South approve of this thing—but the turbulent white-leaguers and Ku-Klux Klan. All our efforts here were to prevent the shedding of blood and cruel treatment of the poor and defenseless. The only effort the republican party as a party has made was to give you good government. But you say the carpet-baggers have given you bad government down there. That is your fault if it be so. You had it in your power to have good government. You would not run for office yourselves; you held aloof; you made the government as bad as you could in order to have it a reproach.

Tell me that the people of the South, with all their intelligence and wealth, cannot control the negro if they would acknowledge his manhood! Tell me that they would not control him if they were kind to him! Tell me they could not have honest government if they desired! No; they were desperate; they would let the thing go by default; they would have a grievance to bring before the North to tear down the party that they hate; and perchance if they tear down this party they may take a step further; but they must first tear down the republican party before they can tear down the Union of the States. It is not dead yet. Although it is said on this floor "Let it die," it will not die as long as oppression lives; it will not die so long as red-handed treason against law and against humanity is allowed to exist and stalk abroad in the South. You misjudge, you may rail at President Grant now. I am aware of the various causes which bring defeat occasionally; but mark you, there are a few cardinal principles that are imbedded in the hearts of those who love this country, of those who stood by it in its darkest days; and they are equality of all, protection to all, fair play for all; and until you are prepared to concede that, you cannot kill the republican party.

While you upset State governments, while you use violence and fraud at the South, while you refuse to submit to the verdict of the people, while you play your old trick that you did when Abraham Lincoln was first elected of refusing to abide by the verdict of the majority, while you show yourselves uneasy under that verdict and essay to get rid of it by any means whatever, the republican party will rise up in judgment against you.

I am aware that the republican party is not tied together by the broad bonds of public plunder and traditional prejudice that are said to have held other parties together. I am aware that if any member of the republican party goes astray the whole party will throw him overboard. I am aware of the condemnation that they are willing to bestow upon any unworthy member of that party. I am aware of their not having political rule and party lines drawn as other parties have, but I am aware also—I have seen it, and I should think the Senator from North Carolina would be mindful of it at this time—that they have a few cardinal principles for which they will make any sacrifice.

Now with regard to Louisiana I am not going into any detailed discussion. I simply say that the whole case shows that the only object the President had was to preserve order, defend the laws, protect the weak, and do his duty as the Chief Executive of the nation.

There is no doubt about it, and it is premature to take what is first said upon a false report by newspapers without full information as to the facts. It is premature to say on that authority that the judgment of the people will be against President Grant. The judgment of posterity will be in favor of his Administration. Toward the South he has been generous. No man in all this broad land has shown a more high sense of generosity and liberality to the people of the South than President Grant. When Lee surrendered he extended a parole. When it was sought to have that parole violated and those soldiers arrested, who like General Grant stood up and took the responsibility to say "Thus far shalt thou go and no farther." In all his conduct toward the South in every instance, in appointing men in the South, in his private conversation constantly with the people of the South, no man expresses the sympathy, the anxiety, and the cordial wish for their prosperity. His only hope and ambition is that they may have good government, and he, forsooth, is arraigned as if he were a common criminal.

It is said that the voice of the people of the United States has condemned the Administration and that the republican party must now die—die after its glorious record; die after it has vindicated free government; die after it has vindicated the Constitution; die after it has saved the Union; die after it has recognized the manhood of all men in this country, the equality of all; die after the sacrifice it has made for the weak; yes, and die while the weak are being persecuted; die while the White League lives; die while the Ku-Klux are supreme; die while anarchy reigns in a goodly portion of this country; die while the work is yet to be done.

What does the death of the republican party mean? It means anarchy in the South, disorder everywhere, destruction of free government, States overturned by fraud, innocent people driven from their abodes and slaughtered; it means all these, until the whole country shall be sick and tired of our form of government and finally consent to disunion. That is what it means. It means, furthermore, the payment of large sums of money for damages done to the South in the war, it means to reverse the verdict of the war, it means everything that is evil to this country. Without the republican party in this generation, there would be no United States. The great body of the republican party are the only people who are identified with the government of our country and the Union in this generation. In the time of the Revolution there were other parties identified with the Republic. There was a great party then identified with it; but that generation is passed away.

The men who saved the Union by the sacrifices they made were, as a rule, members of the republican party, or sympathizers with it from the democrats and of other parties—those who carried on the war coming from all parties—coming together under the grand name of the union party for the preservation of this country; and I say they are the only people who have any memories to vindicate in connection with it. Those who now form your White Leagues, the young men who are in them, have memories upon hard-contested fields of battle against the Union. Many of them I am sorry to say are willing to give vent to their feelings by murder and depredations upon the innocent and weak among them. That is a sad spectacle, but why should they come forward and say "We will now slay the great republican party; we will trample it in the dust; it has been a tyrant to us?" I deny that the republican party has been a tyrant. I deny that the administration of President Grant has been tyrannical. I undertake to say that history furnishes no parallel of the magnanimity of the republican party; that the history of the world furnishes no parallel of a great war without a cause against a government like ours or against any other government, after which executions did not follow. Look at France with her boasted civilization and see her after two years of rebellion in the city of Paris marching men off by hundreds and thousands every week for execution. Some forty thousand if I mistake not were executed after they were captured, besides those who were cut down with arms in their hands. Nothing was said about that in the civilized world. It was regarded as the common usage of nations. Here where a war was made upon a country without provocation, without a single grievance, with nothing to complain of, no law violated, for they all admit it; they all say now the war was unjust; and the republican party in power, sustained by the great majority of the people, with overwhelming majorities at every election, granted freedom to all, restored civil rights to all and made no request of the South except that they would grant to all freedom and civil rights. That was the only request, the only struggle. It was to perpetuate slavery, as admitted by the Senator from North Carolina, that the war was waged by the South. They waged this war, he says, because their property was endangered and they have continued it to preserve that property, and every time they have had an opportunity we have seen them enacting their peon laws. I had a book full of peon laws that were passed under Johnson's reconstruction, that virtually reduced the negro back to slavery. It is their effort to control the blacks as property that causes trouble. They are unwilling to recognize the fact that the negro is a man. That they must recognize. They never will kill the republican party so long as they pass peon laws. They never can kill the republican party until they abide the event of the result of an election. They never can kill the republican party until they stop force at the ballot.

In the providence of God, the Republican party will be used for the preservation of liberty here so long as it is necessary. It is the only instrumentality that can save liberty in America; the only party that can save the Constitution and the Union. It is the only party that can secure to every man the right to life, liberty, and property without molestation. It is the only party to which anybody looks for protection at the ballot-box and for free and fair elections.

Be friends of the negro and he will be your friend, and then there will be no occasion for the republican party. Let him vote; abandon all idea of hostility to him. He is a trusting, confiding man, and when you stop trying to get his labor for nothing, when you give up the idea of slavery in the South, when you stop that altogether, you will have his confidence. You are affable, you are seductive in manners; you can captivate us; we all like you, like to associate with you. You make us very happy by your complimentary remarks. Southern people are the most polite and most agreeable in the world socially, and they can capture the whole Senate and the country wherever they go. Tell me not they cannot capture the negro if they will only get rid of the idea that he is property, and treat him as a man.

When the idea of slavery is over, then the White Leagues will disband, then intimidation will stop, then fair play will begin, and then, when fair play begins and every man has his rights, we will begin to talk about there being no necessity for the republican party; but you may talk what you please of oppression in New Orleans; you may talk of your Arkansas troubles, and it will amount to nothing. The people understand just how it is. They will understand that in Arkansas it is not President Grant who has committed any outrage, but a State government has been overthrown. They will ascertain in Louisiana that it is not the republican party or the President that committed any outrage there, but that there is still an effort there to enslave the negro and oppress him, and there are organizations to intimidate him and to deprive him of his rights as a man. Concede these rights; let us have fair play; and drop this oppression. You cannot drop the republican party until you have dropped oppression. It hates the name of oppression. It was born to uphold law and order everywhere. It was born a giant, and grows a giant, and will remain strong and powerful so long as it sets its face against oppression.

I have friendly feelings to the South and friendly feelings for southern men. I know very well how they can get rid of the whole of this matter. All you have to do is—and I cannot repeat it too often—to be on friendly terms with the negro, and he will vote with you. Do not drive him away from the polls, but be friendly to him. He is willing to compromise. He does not want to carry on a fight; we do not want to carry it on and fight you, but as long as you do in any part of this country things that you cannot defend, you must expect it. It is intolerable in a republican government to have men driven from the polls by the thousand. There is nothing so bad. Talk about oppression. That is a blow right at the vitals of republican institutions. There is no republic; there is no liberty, unless every legal voter in the country can go to the polls and be protected and stand up as a man. Until that is conceded we must have a struggle, and every man who is a republican, every man who is a democrat, every man who believes in free institutions, is offended and injured and insulted every time the weakest man is driven from the polls. It is fundamental. The ballot is government.

Talk not to me about striking at the ballot and asking this administration not to strike back. If President Grant would not use the extent of his power to protect every man in the exercise of his life and rights in the exercise of the ballot, he would not be worthy of the place he occupies; he would be forgetful of his great record. But fear not; he has been schooled with the great republican party in the great reform measures of the day. He carried the banner of the Union when the national life was threatened. He has been in the front rank of all reforms. When he became President his first official act was to declare in favor of the fifteenth amendment and to recognize the rights of man. If he had done less than he has done in Louisiana and elsewhere, he would have given the lie to the promise he then made to stand by equal rights and the ballot for every citizen. Think you that he can stand idly by and see the ballot, for which this great struggle has been made, trampled in the dust? Revile him not. If you of the South want to govern, if you want liberty, if you want protection, if you want prosperity, join us and let us have that and divide on some other issues; let us not divide on the issue of the rights of man; let us not divide on issues of slavery any more; drop it if you would have peace. Let us divide on other policies, but let us agree upon the fundamental principle that every man in all this broad land has the right to protect himself with the ballot, and a right to go to any poll where he is a legitimate voter and deposit his ballot without molestation; and if you think you can have democratic rule without conceding this, you are sadly mistaken in your estimate of the northern people and of this nation.

The quicker you consent to this the quicker you come up to the standard in good faith, the quicker you will have peace and prosperity in the South. Your miseries grow out of your struggle to enslave mankind. I have nothing to say against any one man personally or any particular section. Slavery was tolerated under the laws as they formerly stood; but your struggle to extend it has been unfortunate. Your struggle to maintain caste, your struggle to rule the

negro, your struggle to obtain his labor without treating him as a man, will be equally unprofitable. Drop it, and then we can have peace in this country; then we can have union and brotherly love throughout the country; for I do assure you that the only difficulty in all this country now is your vain and foolish efforts to deny the negro what are his legitimate rights. You cannot do it. You may prolong the struggle, but it will be as hard on you as it will be on the negro. It will continue to keep in power the gigantic party of the nation, which, although it may be temporarily defeated, still is a lion. Its face is set in a certain direction; its resolution is taken; you cannot resist it.

The decree has gone forth at the mouth of the cannon that this country shall be free. It has gone forth from the legislative halls of the nation and three-fourths of the States that all men in the jurisdiction of the United States shall have the right to vote, to govern and to be governed by law. Do not attempt to reverse that decree. Come fully up to that, and then you may talk about parties dying. You think you will elect a President. With your present talk and your present style you have no more chance of electing the next President than you have of carrying this Capitol on your backs. It is perfectly ridiculous to talk about electing the next President with your White Leagues in existence. Every loyal man would be insulted by those White Leagues struggling to control the presidential election. Last fall the people thought you were quiet. You said you were good boys, and the country believed it; but they will find you out before the presidential election. You cannot afford to go on in this way. Your speeches arraigning the President in such unmeasured terms, speaking of the republican party as a most oppressive party—that kind of talk at the next session of Congress would be all the document we would want to distribute. The speech of the Senator from North Carolina [Mr. MERRIMON] would be a good enough document for my State. It would secure for us every vote that was ever republican in the State. If that is the way you talk, they will all say, "I will vote the republican ticket a little longer.". Strike them on some other issue. You know exactly how to stir up the northern masses and make them mad. You hit them just right every time. Perhaps I make a mistake in telling you this; but the truth is your speeches make everybody in the North mad and wipe out all chance of your electing the next President. It may not be good republican policy for me to give you democrats this warning. I am rather a non-partisan myself. I am going out of politics, and I would like to have these troubles ended. I do not want to fight these battles year after year.

I did not intend to make a speech, but the remarks of the Senator from North Carolina brought me up, and such speeches will have the same effect through the whole country. I warn you to be a little more circumspect, a little more prudent. You are rash; you are dealing with edged tools. You do not understand that when you put in an apology of any kind for White Leagues it makes everybody mad. We do not like to see men apologize for driving men from the polls. In my country, if a man was driven from the polls, I do not care what the excuse was, it would create a revolution. Everybody would be on one side against it. Think of a man deprived of the right to vote! Suppose they tried in Virginia City to deprive one man of the right of giving his ballot. There would be a worse commotion there than ever was in that commonwealth. All our people would be ready to take up arms if they heard anybody make an apology for driving men away from the polls—giving any reason for it, saying they are carpet-baggers, they are thieves, or anything else; they would simply ask, "Is it a fact that men have been driven from the polls?"

Mr. SAULSBURY. Will the Senator allow me to interrupt him? Do I understand him to say that thievery and knavery are so very popular in Nevada that that community will not tolerate the application of that term to anybody?

Mr. STEWART. No. Honesty is so popular there that you cannot make the people believe stories about the thievery and knavery of a poor negro that has been cheated of his rights; and when you talk about his being blood-thirsty they will laugh. You tell the people of Nevada that the people of the South are in danger from the negro, they will laugh. They know that is not true. It will not do at all. They know that it is a mere subterfuge for denying the right to vote. They see through the whole thing, and that is what I want to warn you about. You are not sufficiently circumspect. Your speeches will ruin you. You have said enough to ruin you. You cannot recover your ground. You may talk as nicely as you please here, but the people have no faith in you when you admit that you drive men from the polls. That you admit by your arguments here. You cannot give a reason which will satisfy any honest man that that is a right way of doing things. When you say it is not much to kill two or three thousand men; when you talk about your technical orders that the President had a right to give and talk abstractions about the Constitution, the common people will say "What of the Constitution; what have you to do with the Constitution? Under the Constitution is it legal to drive men away from the polls and murder them?" That is not the way to construe the Constitution. Lawyers may construe it in that way, but we believe that under the Constitution every man has the right to protection. And so believes President Grant. The newspapers are assailing the President.

Mr. SAULSBURY. Am I to understand from that remark that the people of the country are going for a third term?

Mr. STEWART. No, you do not understand me to say anything about that at all. I have not said a word about it; but I will tell you this: While I do not believe the people of the North would elect any man President under ordinary circumstances for a third term, I believe you can by kicking up a little rebellion down there and going on as you seem inclined to do make them do almost anything. There I warn you again. If the people find that Grant is doing his duty and that nobody else will, they will elect him again against everybody, because the people are going to preserve a few things that are cardinal with them. You had better not trifle with them on these questions, the question of the Union and the question of equal rights. You have always got beaten when you have undertaken these issues, and now you start up again the same thing. Every issue you have made for ten years on this line has beaten you. When you have not talked politics for a while, and the country gets quiet and tired of the continual rule of one party and thinks there is no danger, and the republican party is beaten in a single State, you start the old howl and stir up the people again. That is what you are doing now. It is your own fault. I have seen it over and over here for the last ten years. Whenever a little insignificant town election has gone against the republican party, then you raise a howl. You commence then to talk about the right to vote and apologize for White Leagues or Ku-Klux or something of that kind, you stir the thing right up and get beaten. That is the way the thing has been and I suppose it will continue in that way, and the republican party will live until you give up your policy. I wish you would give it up now and let the country prosper. It is time the war was over, time slavery was over with all its relics and apologies for wrong and outrage. We do not have these things in the North. We do not have men driven from the polls. We have no White Leagues. It should be so in the South. The republican party will stay and watch until it is so there. It is a persistent party. It enlisted for the whole war. It is not going to accept of any discharge and is not going to be kicked out of the service until it has finished the war in all its aspects.

Now, the quicker you are willing to stop the war and let us have peace the better; but so long as you continue the war you will be beaten in every battle and we shall see your backs on the same old battle-ground. We know every inch of that battle-ground; we have been over and over it. We know every advantage. We have seen so much on that battle-field that we know the whole plan. You have started in the same old track to wage the war of oppression and hate—the war of slavery. We understand that, and shall meet you as of old until you quit making that issue and fighting on that battle-field.

Mr. RANSOM. Mr. President——

Mr. EDMUNDS. Will the Senator from North Carolina allow me to move an amendment before he proceeds?

Mr. RANSOM. Certainly.

Mr. EDMUNDS. I offer the following amendment to this resolution.

Strike out all after the word "resolved" and insert:

That the Committee on Privileges and Elections be, and it is hereby, instructed to report forthwith a bill declaring that no constitutional State government now exists in the State of Louisiana, and providing for an election of a governor, lieutenant-governor, and members of the General Assembly for the State of Louisiana, and all other State officers which by the constitution of that State are to be elected by vote of the people thereof.

[Mr. RANSOM addressed the Senate. His remarks will appear in the Appendix.]

Mr. BOUTWELL Mr. President, it may not be out of place for me to allude to the circumstance that I had not a seat in this Chamber when the proceedings connected with the election of 1872 in Louisiana were first considered by the Senate. But this circumstance may not be an explanation and certainly not an excuse for the fact, which may be reason for regret by me, that on the morning of the 5th of January I was not so furnished with facts and so equipped with faculties, moral and intellectual, that I could at once form an opinion satisfactory even to myself of the events and of the character of the events that occurred in the city of New Orleans the preceding day.

Other Senators were more fortunate; and other persons in the country, not having better nor, as far as I know, even different means of information, were also more fortunate; and with singular unanimity they at once pronounced the President of the United States a usurper and the Lieutenant-General of the Army an "instrument of his behests" in the basest usurpation of modern times.

We know that these opinions expressed in the Senate and expressed in the country were simultaneous in time and the same in character; but as we cannot assume that these coincidences were the result of prearrangement based upon a knowledge of the plans of those in New Orleans who designed to organize the house of representatives by fraud and force, it appears that they were the result of an identity of opinion and purpose in the politics and affairs of the country. Therefore these proceedings are just reason for serious thought. The facts were not then known. Even the party complaining had not been heard in full, and the party assailed had not been heard at all. Nor is it an excuse or defense to now say, as is now said, even were the statement true, that the facts are what you believed and assumed them to be when the President and General Sheridan were arraigned and condemned. Your statement, if true, might be evidence, of your superior

capacity for foreseeing, but it is conclusive proof of your indifference to justice and to the principles and rules of proceeding by which alone justice can be secured.

If from this injustice the South shall reap a bitter harvest, it would be a fortunate circumstance in their affairs if they could see the chief source of those disasters, which are not traceable directly to their own faults and errors. At least one-half of the misfortunes of the South are due to the misdirected sympathy and criminal support given by the democratic party of the North. Before the war, during the war, since the war, the democratic party, either by its promises or by its policy, has encouraged the rebellious and unsubdued spirits of the South. This encouragement has led to new acts of violence, to new scenes of disorder. These acts of violence and scenes of disorder have compelled the nation to move again and again for the protection of its loyal citizens in the reconstructed States. The power of the democratic party in the North, whether actually acquired or only prophesied by its leaders, has been the measure of violence and injustice to the loyal people of the South; and this violence and injustice, reacting upon the loyal people of the North, have checked the progress and prevented the actual triumph of the democratic party in the nation. This, in a sentence, is the political history of the country for fifteen years.

And this, if I may address myself specially to the South, this, Senators, will be the political history of the country until you cease to look to the democratic party for relief, and turn to those principles of justice whose essence in politics is human equality, and apply those principles universally in the States that you represent. Be not deceived by any temporary success of your northern allies. They are today for the purpose of relieving you in the manner that you seek to be relieved as powerless as they were in 1861, 1864, 1866, 1868, and 1872. You seek to be relieved from the authority conferred upon the United States by the thirteenth, fourteenth, and fifteenth amendments to the Constitution. This relief you can never obtain. The nation has been clothed with power to protect its citizens, citizens of the United States, in their equal rights as citizens of the several States.

These equal rights you do not secure in your several States to the citizens thereof, and under cover of the seductive theory of local self-government you deny to the nation the power to protect those who are first citizens of the United States, and then and therefore citizens of the States where they reside.

Your relief must come from yourselves. When you accept the negro as your equal politically the contest will be over. Until you do so accept him the contest will continue. Make your choice.

Time will show that these days given to misrepresentation and injustice are fraught with disappointment to you who speak for the remnant of the old order of things in the South, but they are full of hope for those who seek the complete enfranchisement of the negro race.

The people might have believed that General Sheridan or the President had erred in measuring the limits of executive or military authority; but they will never for a moment accept the suggestion that either of them has usurped power, or engaged in any undertaking hostile to the Constitution of the country.

Senators on the other side of the Chamber may excel General Sheridan and the President as interpreters of the Constitution, but none of them have done as much for its defense. It is fortunate that the judgment of partisan contemporaries is not always, nor indeed often, the judgment of history. We have had many great personages in American political history, and none of them were exempt from assaults; but those assaults when unjust, as usually they were unjust, have never darkened the character nor dimmed the record of the nation's benefactors. The language of eulogy is not wisely applied to the living, but what was said of Washington and Jefferson and what they in truth were and are, and what was said of Jackson and Lincoln and what they in truth were and are, should at least moderate our opinions and temper the expression of them concerning men who are to take rank in history with the most illustrious characters that America has produced.

The Senator from Ohio, [Mr. THURMAN,] who was indeed the most fortunate of Senators in his knowledge of the events of the 4th of January at New Orleans, and in his ability to mete to the actors each his just share of responsibility, early the 5th of January introduced a resolution calling upon the President for information. The speech which he made at the moment and the more elaborate speech which he afterwards pronounced in the debate showed that he did not seek information for himself, as his opinions were already formed. The same, I think, could with truth be said of his associates and supporters who took part in the debate of the first week. Nor was there anxiety manifested that the information should be given without delay. The resolution was peremptory, as though the President were our servant or agent. The Senator from New York [Mr. CONKLING] proposed to recognize the constitutional discretion of the President by inserting the words usually employed by the Senate.

The Senator from Ohio admitted, I think, although not in words so explicit as he often commands, that the form was not essential—that the President could reply or refuse, as his judgment might dictate.

And this unquestionably is the truth. The Constitution has given to the President power in his discretion to make communications to Congress upon public affairs from time to time, but no authority is given to either House to call upon him, and much less is there authority in the Constitution, or derived from usage, by which the Senate can make a peremptory demand upon the President for information. Therefore the form of the resolution did not concern the President at all. His power and his duty were the same in one case as in the other. But the form did concern the Senate. It concerned the country; it concerned the proper ordering of the public business; and, above all, it concerned the constitutional relations and rights of co-ordinate branches of the Government.

The resolution as offered, an amendment having been proposed and a controversial discussion having arisen thereon, became in fact a proposition to subordinate the executive to the legislative branch of the Government, and in so far it was an assault upon the Constitution itself. It is safe to say that there was not an hour during the four days of debate when the majority of the Senate would not have passed the resolution if the mover had accepted the amendment.

But by the force of the discussion the amendment ceased to be one of form merely, and its adoption became a necessity as defining the line between the rights of the Senate and the constitutional powers of the President.

Thus for a week, in the absence of the facts, the debate went on. Thus for a week, without having the facts before us, the President and the Lieutenant-General of the Army, whose names are as certainly historical as any in our annals, were not only denounced but condemned by the leaders of the opposition in this Chamber. Thus, and without evidence, were distinguished, patriotic, and successful officers of the Army of the Union held up to the execration of the country. In the other House a bill to abolish the office of Lieutenant-General was introduced for the purpose of striking the name of General Sheridan in disgrace from the rolls of the Army. The country, and especially the veteran soldiers of the Army of the Union, will notice these attempts to strike down a hero whose courage and conduct contributed always and largely to the success of our cause. Passion is of the moment; the spirit and the principles of justice are immortal. These days of injustice and the passions of these days are passing away. The country will accept the statements of General Sheridan and the message of the President, and hold them officially and personally in higher estimation than ever before.

In times of public peril men in authority must meet and check the peril by every constitutional means. There is, there can be, no higher public duty, and the neglect of this duty in times of public danger is the chiefest of political crimes. Remember how humiliating, how ignominious the course of affairs, how terrible the results, when Buchanan sat in the executive chair, and without resistance permitted the dismemberment of the Union and the overthrow of the Constitution which he had sworn to support. These days are only less serious and threatening than were those; and were such a man as Buchanan President, or were the President disposed to leave the South to the control of the white race, the Government would be overthrown before the close of the present term. Whenever the Administration at Washington shall be in sympathy with the unsubdued and rebellious element of the South, that element being in extent and power what it now is, the Government of the country will be easily destroyed.

That the nation is now in great peril I cannot doubt; but if the peril were less serious there might be less hope of our final escape. If the country shall realize this peril, the peril itself will then be averted. But evils and dangers are not averted by closing our eyes to them, and the tendency, the unmistakable tendency of public opinion and of public affairs, is to place the administration of the Government in the hands of those who are fresh from the contest for its destruction. This attempt to blacken the character of the President and to destroy the power and drive from office the Lieutenant-General of the Army are movements in harmony with the plans of those who seek the ruin of the Government. Thus it appears that the events at New Orleans are an important chapter in the history of the rebellion. Thus are the events at New Orleans connected with the rebellion, and thus do they foreshow the danger to which the country is exposed.

In 1866 or 1867 General George H. Thomas testified that there was a secret organization extending over the whole South whose purpose was the dissolution of the Union or the destruction of the Government, while the forms of union were allowed to exist. Although he then commanded the Department of the Tennessee, and although his means of information were superior to those of any other person, the statement seemed so improbable that no heed was given to it even by the committee before which the statement was made.

Of the truth of those statements there is now no doubt. General Thomas was a southern man, but his devotion to his country knew no limits, and he gave himself to her defense without reserve. He possessed the three great qualities of courage, patriotism, and integrity, and it is in vain to inquire in which he most excelled. As his statements were supported by additional evidence from time to time, the leaders of the South and their allies in the North strenuously asserted that the whole was a fabrication; but when the existence of the organization could no longer be denied, its innocent character was asserted as universally and with the same assumed confidence.

An extraordinary and not agreeable side of human character is exposed by the testimony of men of influence in the South who were members of a secret organization, whose purposes, as they declared, were entirely innocent.

At length in 1872 the true character of the organization, its purposes, its crimes, were disclosed to the country. Some of its leaders in murderous undertakings and many of its dupes were arrested and punished; but its leaders in council, they who were most guilty, escaped.

It truth the White League of 1875 is, in the knowledge we possess of its character, in the assertions of innocence made by its members and defenders, in no important particular different from the Ku-Klux organization of 1871; and I anticipate that its career, history, and the exposure of its crimes will render the evidence of its identity complete and conclusive.

Confidence cannot be placed in the statements of those who pass for honorable men; hence they who seek the truth are quite likely to be deceived, and hence the country will wisely wait for a full disclosure of the character of the White League before accepting as final the opinion of a committee that has trusted, manifestly, to a superficial examination of the subject.

Men upon the ground, who are members of the organization, will not expose its character, whether it be innocent or criminal; those who are not members of the organization have no trustworthy knowledge, and usually they dare not give voice to their suspicions.

The testimony taken by the committee on the Ku-Klux organization in 1871 illustrates the point I am now considering, and I refer for our instruction to the examination of J. B. Gordon, of Georgia, made in July of that year, recorded in the first volume of the testimony taken upon the existence and character of the Ku-Klux order in Georgia, pages 321, 322 and 323.

After a lengthy examination this simple question was put to the witness;

Q. Was there a chief of the whole order in the State?
A. Well, sir, such a thing was talked about; I do not know that the organization was ever perfected. Such a thing was talked about for the purpose of keeping down any general movement on the part of the negroes; but I do not think it was found necessary. We had no lodges, councils, nor anything of that sort.

This answer seems explicit, but the record shows that after two hundred and eighty-eight questions had been put and answered, all relating to the nature of the organization, the committee return to the charge in this manner:

Q. What office did you hold in it, if any?
A. I did not hold any office. I was spoken to in regard to holding an office, but I never held any. The organization never was perfected, as I have already stated.
Q. In regard to holding what office were you spoken to?
A. I do not know that it is necessary to answer that question unless you insist upon it.
Q. I insist upon an answer.
A. I was spoken to as the chief of the State. *I said very emphatically that upon that line I could be called on if it was necessary.* But the organization never was perfected, and I never heard anything more about it after that time.

In presence of this record who can say that in the search for truth upon this subject the talk of the town, the casual or even formal statements of citizens to committees, the testimony of travelers, the letters of correspondents, whether for a private eye or the public ear, are, one or all, of any value whatever? The time will come when members of the White League through fear of exposure and punishment, or moved by an uneasy conscience, will make the secrets of the order public. What we now know is that the order exists in Louisiana, and we know of no other order in Louisiana capable of doing what has been done by organized force in that State and in the neighboring State of Mississippi.

When the friends of peace, order, and justice complain that murders are frequent in Louisiana they are met by the counter assertion that murders occur elsewhere, in Indiana and Massachusetts. This we are compelled to admit; and immediately those who deny the existence of the White League, or assert its innocence, or excuse and defend its proceedings, assume that they have gained their cause—that equality in crime in some sense absolves the criminals.

Murder is the greatest of crimes, and as a legal offense it is always the same; but as an offense against society, against the State, it has many degrees of turpitude.

Murders which are the result of the fiery passions directed against a real or supposed offender are not usually repeated even if the murderers go unpunished. Society is shocked, the example is pernicious, but the cause or the occasion of the crime has disappeared with its commission. In other countries, and perhaps occasionally in this, desperate men have combined for purposes of robbery and plunder, and accepted murder as a means to the end. Such men justly have been called banditti. But the sphere in which banditti operate is a limited one. Their victims are drawn from a small class of society, and from a class, the wealthy, which always and everywhere has the largest influence in the State, and from its resources is better able than other classes to provide for its own defense.

The banditti of Italy would be shocked by a truthful narrative of the crimes of the Ku-Klux in America; but in Italy there was none to excuse or defend the crimes of the banditti. I speak now of the Ku-Klux, because its organization and character are fully known; but I do not doubt that the organization discovered by General Thomas in 1866 and 1867 and the White League of 1874 and 1875 are identical with it.

If the Ku-Klux had not existed in the South, if it had not included many leading men of the South, if it had not made murder an engine in politics, if it had not overawed the well-disposed white people of the South, if it had not oppressed the poor, if it had not robbed, maltreated, maimed, and committed murder without specific personal hate but in obedience to a law of its organization, it would be cruel injustice to suggest or imagine the existence of such an order at this time.

But the order of the Ku-Klux having been shown to exist in 1872 it remains for us to inquire whether it now exists under another name. Present facts are therefore to be considered.

The cause or the occasion which gave rise to the organization remains. There are still loyal people in the South, most of them negroes and freedmen, acting politically with the republican party of the country. The visitations of the Ku-Klux were confined to them, they were the only sufferers, and therefore the inference is natural that their extermination as a political power was the object of the order. In Tennessee, North Carolina, and Georgia that object has been attained. In South Carolina the undertaking may for the moment be considered hopeless. In Alabama, Mississippi, Arkansas, and Louisiana the negroes are a political power even now; and it is wise to consider whether the successes of the Ku-Klux in North Carolina, Tennessee, and Georgia have strengthened or impaired the purposes of the men by whom those successes were achieved.

Secondly. The number of murders committed in Louisiana shows that they were the act of an organization, inasmuch as it is impossible to conceive of a society moving by the force of its own impulses, however criminal, in which the daily homicides without authority of law, using the mild language and gentle rhetoric of the Senator from Ohio, [Mr. THURMAN,] average one to a million of people. Indeed, such a fact, if in the end sustained by proof, would be more discouraging than the existence and power of the Ku-Klux as made known to us. This organization at most includes only a small minority of the white people. The majority are for the time indifferent or overawed, but they are not positively criminal. If, however, these murders are the result of unregulated passions developed in individuals without concert, and perpetrated without punishment or the fear of punishment, then indeed we are forced to the conclusion that society in Louisiana is wholly criminal. This conclusion I reject, this conclusion the country must reject, and the alternative of the existence of a criminal political organization alone remains.

Thirdly. The events in Louisiana on the 14th of September and the 4th of January concur in support of the position I have taken. What otherwise meant the purchase of arms in great numbers previous to the 14th of September? What otherwise meant the robbery of the public arsenal? What otherwise meant the presence of twenty-five men in the hall of the house of representatives at the hour of meeting each with a badge as assistant sergeant-at-arms hidden beneath his over garments? Thus independently of direct proof is the existence of the order shown and its purposes sufficiently indicated.

Murders of passion affect the peace, the well-ordering of society; but they do not touch the source of its life. Combinations for robbery and plunder with the design to commit murder as an incident or as a means are more dangerous to the public peace, and the criminals are justly considered the enemies of the human race; but even they do not attempt through their criminal acts the destruction of the state itself. It is the essence of a republican government that the citizens shall have entire freedom of thought and action in political affairs. The least restraint upon the humblest citizen as upon the highest is an offense to the body-politic. What, then, shall be said of an order, and how shall it be characterized, that by intimidation, maiming, stealthy murder, and open assassination seeks to obtain power for a class; of an order that seeks through these means to change the character of the government by corrupting it at its source? Thus with them the chiefest of personal and social crimes are also the chiefest of political crimes.

As murder for the destruction of the state is a higher, a grosser crime than murder which is the result of personal passion; and as organizations which propose murder as a means of changing, overthrowing, or corrupting the government at its source are fouler than those which contemplate murder as a possible means of robbery and plunder, so the deeds which have been committed in the South by the Ku-Klux and kindred organizations must ever be denounced as the basest and most dangerous of the crimes recorded in the annals of mankind. Nor is there any excuse in the suggestion or statement that the members of this organization make no war upon the Government of the United States. They make war upon citizens of the United States and they make war upon the States which are integral parts of the United States.

They know the power of the States, and we, too, know the power of the States. These same men organized the rebellion of 1861 through the existence and power of the rebel States; and one of our chief means of suppressing the rebellion was found in the existence and power of the loyal States.

Do we need further instruction upon this point? Is not the concerted attempt of the rebel leaders to place every Southern State in rebel hands a warning to the people of the North? Their policy is plain, their course is clear. First, either by fraud or violence, they secure control of those States in the South which, if left to themselves, would be republican; and then within the National Government they use its power for their own purposes, or failing in that they again attempt its overthrow.

Within the Government they can effectually undermine and ulti-

mately destroy it. A government without credit is contemptible in peace and wholly powerless in war. At the commencement of the rebellion our debt did not exceed a hundred million dollars, but we are now embarrassed by a debt of two thousand million. An administration in the hands of the South could easily augment this debt to twenty-five hundred or three thousand million dollars in four years. Meager sources of revenue, negligence and profligacy in its collection, extravagance of expenditure, the return of the cotton tax, and the payment of cotton claims and war claims would work out the problem within a single presidential term. To every country a vast public debt is a public calamity to be tolerated and endured only as pestilence and famine are tolerated and endured; but to us our vast public debt is now a public national danger. The great error of our politics, both as regards the continuance of power in the hands of the republican party and the preservation of the Government itself, was the reduction of our revenues.

But this unlawful conspiracy in the South, now apparently directed against negroes and the much-abused class of northern men known as carpet-baggers, is in truth a conspiracy against the Government of the United States; and it is not too much to say that it has in its hands the means of accomplishing its object unless the North again offers the united resistance it offered during the war. The democratic party, which challenges the judgment of the country for support, is in its organization a tyrant. It never respects individual opinion; it never recognizes individual will. It is indifferent to personal wrongs; it questions, it disputes, it denies the authority of the General Government, but it admits, adorns, dignifies, crowns local rule. This is the ethical, the political basis on which the conspiracy in the South rests, and resting on this basis it has the power to destroy the National Government. Can you offer to the enemies of the negro, to the enemies of the National Government, to the friends of secession a more acceptable basis in politics than this? And this is what the democratic party offers.

The events in Louisiana as they are connected with and relate to the general conspiracy, are important to the country; indeed they are important to so many of the human race as are struggling in other lands for equality of rights; but we are unnecessarily disturbed if the question is only whether Kellogg is rightfully and lawfully governor of that State, or whether five men by an error as to the scope of military authority were unlawfully removed from the hall of its house of representatives. These are grave questions, but they do not touch the vital interests of the country. Hoffman was two years governor of New York through a fraud upon the ballot-box, and yet the event, though a reproach to our institutions, did not disturb the business or check the growth of the country or in any large sense affect the personal or political rights of the people. The military power has sometimes exceeded its authority, but not on this occasion, and the act of the military at New Orleans, however judged, has in it no quality of danger to the Republic. Are these minor events magnified that the serious dangers to which the country is exposed may be kept from sight? If, however, I deal with those events in detail, I so deal with them in deference to a public opinion which is due to a temporary excitement and destined soon to give place to a healthier tone, and to a desire as strong as any of which my nature is capable to contribute something to a thorough union of sentiment and action in the North on which alone the well-being, the safety of the country depends.

The fourth section of the fourth article of the Constitution of the United States was designed to secure to every State a republican form of government, to protect it against invasion, and upon application of the executive when the Legislature cannot be convened, against domestic violence.

The duty and power of the United States to secure to each State a republican form of government and to protect it against invasion do not depend upon the action of the people of the State or its authorities. The duty is imposed upon the Government of the United States; the power is there, the discretion is there; but the duty and the power of the United States to protect a State against domestic violence depend for exercise upon the authorities of the State. It is to be observed that it is the *executive* that is named as the authority that may call upon the United States for aid against domestic violence when the Legislature cannot be convened.

Usually the executive is the governor whose right to the office is not disputed; but the Constitution has so carefully provided for the peace of the States that a call from the executive, whether governor or other officer, whether acting under an authority recognized by everybody or disputed by everybody, is, without inquiry as to the legality of his title, to be heard and obeyed by the President. Were it otherwise the chief means of promoting and continuing domestic violence in a State would be found in the denial of the right of the executive to his office. Were it otherwise the President would be compelled to inquire for himself into the title of the executive, and this independently it might be of legislative, executive, and judicial proceedings within the State; this inquiry to be made, it might be, while the State was given over to domestic violence, its constituted authorities fugitives, and the evidences of their titles in the hands of their enemies. Therefore it follows that whenever a call is made upon the President for the aid of the United States to suppress domestic violence in a given State and the President is satisfied that the person making the call is in the possession of the executive office and in the exercise of the functions of the executive office in that State, he must obey the call for aid without further inquiry.

William Pitt Kellogg was in possession of the executive office of Louisiana and in the exercise of the functions of that office in September last, and he had been so in office and so exercising the functions thereof from January, 1873, and therefore, without inquiry as to his legal right to such office, the President was bound to obey his call for aid to suppress domestic violence in that State. Thus it appears that the military force of the United States was lawfully in Louisiana the 14th of September last for the suppression of domestic violence; and so being there they were entitled to the legal and constitutional support of the civil authorities and to the moral support of the people of the United States.

The troops being lawfully in Louisiana for a lawful purpose, how long could they lawfully continue there? Clearly until one of three events should occur. Until the executive of the State should signify to the President that the troops might be withdrawn, or until the President upon his own judgment should withdraw the forces, or until the Legislature of the State should have convened and a reasonable time been allowed for legislative action upon the subject. Neither of these events had occurred on the 4th of January last, and therefore the troops were lawfully in Louisiana and in Louisiana for a lawful purpose on the day when the acts complained of were committed.

But this part of my argument does not rest alone upon the formula which I have presented, although this formula is a sufficient legal basis for all that was afterward done.

There does not appear to have been a moment of time when the spirit of domestic violence did not exist in Louisiana, and indeed the danger of outbreak appears to have been constant and imminent. While I omit all specific reference to the reports of Major Merrill and other officers in command in the interior of the State, I refer to the dispatches of Major-General Emory, commanding the Department of the Gulf. The 1st of October, he informs the President that he is unable to recover the arms that had been stolen from the arsenal, and that Admiral Mullany informs him that he will leave two ships at New Orleans for the preservation of peace in the city. His dispatch of the 5th of the same month states that bodies of armed men, from twenty to sixty in each body, meet in the street at night for the purpose of drill, and that armed bodies of men, whose numbers are not known, meet in the league-rooms.

In his dispatch of the 7th of October he says that he thinks the white-leaguers would like to be assailed, and that they have at least six thousand well-instructed men, accustomed to arms; and on the 21st of October he says that he shall bring the troops from Jackson barracks to keep the peace and prevent possible conflict between armed bodies.

In his dispatch of the 16th of December he informs the President that disturbance is impending and may happen at any time.

These facts not only show that a necessity existed for retaining the troops in Louisiana, but they also show the character and power of the conspiracy in that State.

But the troops being lawfully in the State, and their legal right to remain there having been established, I next inquire who had authority to designate the objects and subjects of military action or surveillance? The President was not there, and it is not in the nature of his office that he should have been there; and therefore in a constitutional sense he cannot be made personally or officially responsible for the military operations except so far as he may have given definite orders to the officers in command. The President not only had not given specific orders, but he did not even know that any occasion for action would arise. Therefore, whether the acts of the military on the 4th of January were lawful or unlawful, they were acts for which the President was not responsible either in his personal or his official character. What he had done and all he had done was in strict conformity to law. And now and thus, upon the facts and by the force of reason and of law, all the accusations made against the President fail; and as a consequence all the denunciation heaped upon him is shown to have been the voice of personal and party hate.

Within the limits of a State the executive is the chief magistrate, and upon him more than upon any other magistrate rests the duty of keeping the peace; and this is especially true in times of domestic violence. The officer in command of the United States forces, under the circumstances existing in Louisiana, might, upon his own motion, suppress acts of violence taking place before his eyes; but usually he would wait for the authority and direction of the executive of the State, and this authority must be a sufficient justification for the commander, unless without inquiry the case was clearly such as to leave no reasonable doubt that intervention would be a misapplication of military power. Hence it follows that the authority of Kellogg is a sufficient legal justification to General De Trobriand for the removal of the five men from the hall of the house of representatives.

My argument thus far has proceeded upon the proposition that Kellogg was in possession of the executive office of the State of Louisiana and exercising the functions of that office; and it follows that the United States were bound to protect the people against domestic violence, whether his title to the office was recognized by everybody or disputed by everybody.

Whoever admits that the military forces of the United States were lawfully sent to Louisiana in September last upon the call of Kellogg

must accept as legal conclusions therefrom all that occurred in that State which is the subject of our present inquiry, including the removal of the five men from the hall of the house of representatives, and excluding only the appearance of General De Trobriand in that hall upon the request of Mr. Wiltz. There was no house of representatives, and of course no speaker; but if there had been a legally-organized house and Mr. Wiltz had been its speaker, he would have had no right to call upon the military force of the United States for any service or duty.

The United States under the Constitution can know only the executive of a State; and in a case of domestic violence in a legally-organized house of representatives neither the house nor the speaker could obtain the aid of United States troops except through the agency of some person exercising the functions of a magistrate, and more properly through the agency of the person exercising the functions of chief magistrate. General De Trobriand may be justified by the fact that upon his own motion he suppressed domestic violence of which he then had personal knowledge, but the request of Mr. Wiltz furnishes no justification whatsoever.

The provisions in our State constitutions and in the national Constitution for frequent elections were designed to secure the country against revolutions of force. In every government questions arise touching the title of rulers to the places they occupy; in America these questions are not more frequent than in other countries, but in America we have a constitutional mode of deciding them.

Should the right of the person in possession of the office of governor of Ohio be drawn into controversy and should the supreme court of the State decide that he was entitled to his office, Congress and the country would accept the opinion as final and conclusive, even though the decision rested upon a technicality, and even though the facts of public fame were such as to justify the belief that he did not receive a majority of the votes of the people. This is the demand, the necessity of constitutional government. Every question of which the law can take notice and does take notice must be settled. The court is the tribunal, the court of final jurisdiction is the ultimate tribunal.

If an appeal can be made to arms, if conspiracies can be formed for the purpose of overruling the decisions of the courts or thwarting their judgments, and especially if those conspiracies can find influential defenders, then the Government ceases to be a government of laws and becomes a government of men. But with us so checked and guarded are all the powers of government that even a corrupt or incompetent court can be brought to justice. Corrupt judges can be brought to the bar of the legislative department and there deprived of their places if found guilty of malfeasance or misfeasance in office. Do you say that these proceedings are too slow, the remedy too uncertain, the punishment too remote? My answer is that deliberation is the highest attribute of justice; and therefore delay grows with the gravity of the cause. Thirty years ago the public mind was as much concerned in the affairs of Rhode Island as it is now in the affairs of Louisiana, although the occasion for such concern was then much less than it now is.

Finally in the case of Rhode Island the voice of the court was heard and the clamor ceased.

If you ask me whether William Pitt Kellogg was duly elected governor of Louisiana by a majority of the votes of the people who voted for governor of that State in 1872, I answer that I do not know. Perhaps no one knows.

All the proceedings may have been voidable or even void for fraud and uncertainty. Does it follow therefore that Louisiana has no legal governor because neither you nor I can say whether any person was duly elected by a maojrity of the votes of the people? A person legally in an office holds that office not only *de facto* but *de jure*, even though an analysis of all the proceedings might show a wide departure from the *forms* required by law, or even an absence of the *substance* required by law. Upon a collateral question the right of Kellogg was considered by the supreme court of Louisiana. The majority of the committee of the Senate in referring to the case The State *ex rel.* P. H. Morgan *vs.* J. H. Kinnard, say:

> The utmost that can be claimed for this decision is that the court recognizes the Kellogg government as a government *de facto*.

De facto is a term used to denote a thing actually existing or done; and inasmuch as it was then of public fame that Kellogg was in the office of governor, it needed no court to tell the people so much or so little as that he was *de facto* governor. If they said that and nothing more, then what they said was of no value whatever. It is a maxim that that is certain which can be made certain. The same court, in the case of State *ex rel.* Attorney-General *vs.* Wharton *et als.*, (Louisiana Reports, volume 25, page 14), did find that of the two contesting returning boards one was a valid, that is, a legal board, and the other was not; and it is not only proved, but it is of public knowledge, that the board so declared to be legal did make return that William Pitt Kellogg was elected governor of Louisiana at the election held in November, 1872. Therefore the court did find that Kellogg was the lawful governor of Louisiana.

As these facts cannot be denied; we are met by the allegation that the acts of the returning board were fraudulent. If this were so there should be a legal remedy which those who consider themselves aggrieved are bound to pursue; but if there be no legal remedy, or if its pursuit be ineffectual, shall the disappointed resort to conspiracy and revolution, and shall conspiracy and revolution for such cause find defenders? These questions have a larger public interest than the question of Kellogg's right to the office he holds. A larger public interest because upon this pretext people in Louisiana have formed conspiracies and hatched rebellion, and such conspiracies and rebellion have been excused, palliated, and defended by the democratic party of the country.

It is the old controversy between a government of laws and a government of men. We have chosen a government of laws; the conspirators and their allies demand a government of men, whenever the administration of the law does not promote the purposes they seek. Nothing is better understood than that the administration of the law, even by able and pure magistrates, does not always meet the demands of justice and equity, and we know, too, that the administration of the law is not always in the hands of such magistrates. But we have chosen, and wisely chosen, a government of laws.

The experience of mankind shows that the evils of a government of laws, as far as these evils are the result of administration, steadily and visibly diminish; and the experience of mankind also shows that the evils of a government of men rapidly and fatally increase.

I now ask the indulgence of the Senate while I recall the events of the 4th of January in New Orleans. The statutes of Louisiana provide for a returning board, to whose custody, examination, and decision the votes given for members of the house of representatives should be submitted. Such a board, legal in its organization and character, assembled in New Orleans for the purpose of examining and passing upon the returns of votes for members of the house of representatives cast at the election held in November, 1874. That board acted. By its report one hundred and six persons were elected, and five seats were left vacant for the reason, as stated, that the board could not decide whether the claimants were entitled or not.

The names of the persons so returned as members were furnished to the secretary of state, and a list thereof was by him furnished to the clerk of the preceding house of representatives as required by the statutes, of which the following is a copy:

> The statute that regulates this subject is the twenty-fourth section of the act of November 20, 1872, which declares in these words—
>
> That it shall be the duty of the secretary of state to transmit to the clerk of the house of representatives and the secretary of the senate of the last General Assembly a list of the names of such persons as, according to the returns, shall have been elected to either branch of the General Assembly; and it shall be the duty of said clerk and secretary to place the names of the representatives and senators elect, so furnished, upon the roll of the House and of the Senate respectively; and those representatives and senators whose names are so placed by the clerk and secretary respectively, in accordance with the foregoing provision, and none other, shall be competent to organize the house of representatives or senate.
>
> Nothing in this act shall be construed to conflict with article 34 of the constitution.

Article 34 of the constitution gave the usual authority to each house to judge of the election, qualification, and return of its members.

In presence of these facts and of this statute it is clear, if anything in logic or law be clear, that the one hundred and six persons returned by the returning board, whose names were borne on the roll made by the secretary of state and transmitted to the clerk of the last house of representatives, and none other, were competent to organize the house of representatives.

It is, however, maintained that five other persons who are not returned by the board, and whose names were not on the list, were entitled to act, and upon two grounds:

First. That they were improperly and fraudulently rejected by the returning board.

Secondly. That the law of Louisiana for the organization of the house was invalid, and that the members-elect might organize in disregard of its provisions.

The first defense set up is a confession that the attempt of Wiltz and his friends to organize the house was a revolutionary proceeding, justified on the part of its defenders by the allegation that the returning board had failed to perform its duty. This defense needs no further discussion; at most, it is but another fact in the long catalogue of crimes in Louisiana, tending to show that it is the policy of the enemies of equal rights to use the forms of government whenever they can be made subservient to their purposes, and to trample them in the dust whenever they become an obstacle in the way of the execution of their revolutionary undertakings.

The second ground of defense is equally desperate in its character.

What is a law? The expression of the will of the people through a constitutional channel and taking effect upon a subject within the constitutional domain of the law-making power. Who are the members-elect of a Legislative Assembly? They are only citizens having a right to enter upon the performance of certain duties. They are subject to the laws like other citizens; and the fact that when they are actual members of a legislative body they will possess certain powers, does not absolve them from the authority of the law while they are on the way to membership. The law of Louisiana prescribing the mode of organizing the house of representatives did not in any way affect the powers of a house when organized. The constitutional power of the house to judge of the election, qualifications, and returns of its members, of which so much has been said in this debate, did not commence until the organization was legally accomplished. There could be no conflict, as there could not be a moment of time when both the law and the constitutional provisions were operative. The power of the statute was exhausted the moment the house was competent to take notice of the constitutional provision.

More than thirty years ago the State of Massachusetts legislated upon the subject, and under the lead of a distinguished and recognized authority. I refer to Mr. Cushing, the author of the great work on parliamentary law.

In the year 1843 the Massachusetts house of representatives was so equally divided that several days were passed in the effort to elect a speaker. The circumstances of the trial caused much solicitude to thoughtful men of both parties, and in the year 1844 Mr. Cushing proposed a special committee to consider whether any legislation to provide for the organization of the house of representatives was necessary and practicable. It was my fortune to be upon the committee, of which Mr. Cushing was chairman. A bill was reported and passed which provided that the secretary of state should make a list of persons having certificates of election and furnish the same to the sergeant-at-arms of the last house of representatives. It was made the duty of the sergeant-at-arms to admit those persons and those persons only to the hall of the house whose names were upon the list. Further, it was made the duty of the eldest senior member whose name was borne upon the roll to call the house to order and to preside until a speaker should be chosen. The constitution of Massachusetts made no provision for such legislation, and it rested upon the inherent right of the people, through the legislative body, to direct the manner in which each succeeding house of representatives should be organized. The statute of 1844 remains in force, and I have not heard that any parliamentary, statute, or constitutional lawyer has called its validity in question. It differs in no essential respect from the statute of Louisiana; and as an exercise of power it differs not at all; nor do I hesitate to say that the statute of Louisiana would never have been challenged had it not been necessary to justify the revolutionary proceedings of the 4th of January.

Assuming that the validity of the laws of Louisiana is beyond any honorable controversy, it follows that the five men whose names were not upon the clerk's roll had no right to be in the hall, and that no one but the clerk had a right to preside at the election of speaker. In defiance of law the five men were there; in defiance of law another than the clerk did assume the place of presiding officer; in defiance of law another than the clerk did declare that Mr. Wiltz was chosen speaker; in defiance of law Mr. Wiltz assumed to be speaker; and thus in fine all the proceedings, from first to last, were in defiance of law. It is not pertinent to the question, nor does it furnish the slightest aid to those who defend these revolutionary proceedings, to say that the returning board had not decided that the five men were not elected. The returning board had not decided that they were elected, and only those who were declared elected by the returning board were entitled to admission to the hall.

Nor does it furnish aid to the defenders of these proceedings to say that the five men were afterward declared members by the body over which Wiltz assumed to preside. That body was not a house of representatives; and therefore it was not competent to pass upon any question. It had no legal character, although it had a character known to the laws. It was a mob, the fruit of a conspiracy consisting of fifty-two persons legally elected to the house of representatives, and five persons claiming to have been elected, but wholly without evidence to entitle them to take part in the organization. Being a mob, it had no rights; but being a mob, a great public right, the right to have the mob dispersed, was invoked, and for the time this right was paramount to all others. It had no character as a legislative body, it had no rights as a legislative body, and it could not demand protection as a legislative body. This unlawful assemblage presented itself to the magistrates in two aspects: First, as a disturbance of the public peace, such as might occur at a theater or circus, and therefore to be suppressed by any magistrate authorized to summon the *posse comitatus*, of which the military could lawfully form a part. Secondly, it presented itself as a body of men engaged in domestic violence. It clearly appears that those men were engaged in the attempt to organize the house of representatives by force and in violation of law. This is a mild presentation of the case. It was, in short, an attempt to seize the government of the State. Does such an act meet the demand made by the phrase "domestic violence," as used in the Constitution? Can it be doubted that an attempt to seize the government of a State, whether made by two men or two thousand men, is the most dangerous sort of domestic violence?

The troops being lawfully in the State, and for the protection of the State against domestic violence, it was the duty of the officer in command not only to have removed the five men, but to have removed all others who had conspired with them in their unlawful purposes.

Thus is it seen that the acts of the military forces were lawful, whether these men be regarded as ordinary disturbers of the public peace or as conspirators, as they really were, engaged in an act of domestic violence, against which the United States was bound to protect the State of Louisiana.

This, Mr. President, is a brief and a very imperfect statement of the legal aspect, or what seems to me the legal aspect, of affairs in Louisiana. I have dealt with these affairs to the extent that I have for the purpose of making some observations on the general character of these events, and to suggest what I think should be the policy of the country in reference to them. While I shall vote as I have opportunity to recognize the legal authority of Mr. Kellogg as governor of Louisiana, I know perfectly well that no recognition by this body, by Congress, by the President, by all combined, will have an important effect upon the condition of affairs in the South. If Mr. Pinchback shall be admitted to a seat here, it will have no considerable influence upon the great question which we are forced to consider.

I should be glad for one to accept as conclusive the condition of things in the South as presented this morning by the senior Senator from North Carolina, [Mr. RANSOM;] but it was my fortune to sit in the peace congress in 1861, fourteen years ago this month, and I there listened to speech after speech made by honest and I believe patriotic men from the border slave States, of which the speech made by the Senator from North Carolina to-day is only a reproduction. They were made by patriotic men, men devoted to the Union, and against civil war; but on the 1st day of March they left the hall of assembly in this city and in less than thirty days they were enveloped in the fires of civil war. I know very well that there are patriotic men on this floor who do not believe in the existence of any conspiracy or any purpose in the South hostile to this Government; but if I chose to analyze, as I might analyze, the speech made by the Senator from North Carolina this morning, we should observe elements of danger which, if not removed from the minds of the people of the South, will end in civil war. He said in reference to the negroes:

> We have the kindest feelings toward them, and we treat them with Christian mercy.

That is all very well. He gives expression to the doctrines of humanity, of civilization, of Christianity. But there is a political question which the people of this country also consider important. If the Senator could make this Senate and this country believe that what he said was the sentiment of the people of the South, then there would be reason for hope. If he had gone further and said, "we treat these people justly, we recognize their political equality, they are men;" if he had not asserted the dominance of the white race, as though it were a divine right in the white race to rule races of a different color, then there would be some reason to believe that the troubles which we are considering were at an end; but so long as the spirit of political superiority remains among the white people of the South, so long will these evils and dangers continue to disturb the country.

I was not one of those who in 1865, 1866, 1867, and 1868, when the measures of reconstruction were considered and adopted, believed that peace, continuous, undisturbed peace, would follow. I knew that neither civil war nor the kindness and generosity with which those who had been engaged in civil war were received by the people of the North could change the character of eight millions of people. I knew that the rising generation would carry with them the ideas, the principles, and to a certain extent the purposes which they had inherited from their ancestors. If I could have dictated a policy it would have been as liberal a policy in administration toward the South, but it would have been a more reluctant policy as to the restoration of those States to the Union. As evidence of it, I may say that I was one of twelve men only in the House of Representatives who voted against the admission of Tennessee in July, 1866. I then believed that the time had not come when with safety any of those States could be restored to power in the Union. But they are in the Union, and the question before us is a grave one: What is to be done?

I listened in the early part of this debate to the Senator from Missouri, [Mr. SCHURZ.] It is not often in his speeches that he gives us specific advice on questions of policy. On that occasion he did proffer one bit of advice as a remedy for the existing condition of things. He proposed that one-half of the colored people of the South should join the democratic party and vote the democratic ticket. That was a specific, clear bit of advice; but, for one, I cannot indorse it. Would the Senator have advised his countrymen, citizens of the United States, in 1854 and 1855, when the know-nothing excitement was at its height and the members of the order were taking possession of State after State with the design of wielding power in the legislation of this nation against all citizens of foreign birth—would he have advised German citizens in this country to have joined, one-half of them, the know-nothing party? When we were fighting the battles of the Union from 1861 to 1865, would he have dared as an American citizen, as a soldier in the cause of the Union, to have advised that half of the soldiers of the Republic should join the forces of the rebellion? If in the first case he had given such advice he would have been a traitor to the cause of liberty in two countries—his own and this. If in the second case he had given that advice, he would have been a traitor to the cause of liberty and of constitutional right in this country; and such advice given now to the negro population of the South is treachery not only to the negro race but to the rights of man.

It is the fortune of every progressive party, and especially of every organization that seeks to advance the interests of the human race, to find men from time to time abandoning the party. Every such movement is in itself revolutionary. It attempts to overturn the existing order of things and to provide something better. Therefore there are men who fall by the way; there are men who abandon party organizations in the belief, no doubt, (they always make the assertion, and no doubt in the belief,) that the party is not good enough for them. But I have observed, and with pain, during a third of a century, that every man, whether high or low, who has abandoned the cause of human rights has fallen under the power of the people.

A third of a century ago Mr. Webster was at the height of his fame. His mental powers were undiminished. He stood among Americans the first, the illustrious model on which his own great sentence was formed: "A superior and commanding human intellect, a truly great man; when Heaven vouchsafes, so rare a gift is not a temporary flame burning brightly for awhile and then giving place to darkness. It is rather a spark of fervent heat, as well as radiant light, with power to enkindle the common mass of human mind, so that when it glimmers in its own decay and finally goes out in death, no night follows, but it leaves the world all light, all on fire, from the potent contact of its own spirit."

The man who wrote those great words was himself the most illustrious example that America has furnished that there was a being of earth to whom those words could with justice be applied. In eighteen days it will be a quarter of a century since that man spoke in the Senate Chamber under peculiar circumstances. He had stood for thirty years the defender of two great American ideas. In 1820 on Plymouth Rock he had anathematized slavery as it had never been before on this continent anathematized. Twelve years later he had defended the Constitution and the Union in a speech which has no parallel; but there came a day, the 7th of March, 1850, when the ways parted, when it seemed no longer possible to defend liberty in its broadest sense and to defend the Union and the Constitution. This is his defense. The ways parted, and it seemed no longer possible to stand for liberty and for the Union. He made his choice—a fatal choice—but he had to him then presented the gravest personal and political question that could be presented to a public man. He had, with his associates, struggled for thirty years to maintain the Constitution and the liberty of the people under it. In the rock and tumult of those times he felt that concessions must be made; he yielded and fell. Liberty did not fall; the people of this country recovered from the shock. They closed their ranks as when one dies, and like a drop in the ocean disappears. The people were true to liberty, and they declared that the Constitution and liberty should stand together. Other men in this contest, in my opinion less important men, have had the courage, in the presence of such an example and such a fate, to abandon justice as the foundation on which human liberty and human rights can rest. They, too, have fallen—fallen justly. The law and the fate are the same now. They will be the same hereafter. There are four millions of people on this continent whom we have brought out of slavery. We are bound to them by many cords. For one I hope to be preserved from the thought of ever deserting them. I say nothing personal to myself, nothing of my party. I have fought as well as I was able to do in the minority. I can do that again. If the people of this country in 1876, or at any other time, shall falter in their devotion to human rights, to the rights of American citizens, to the establishment of liberty in America, of liberty as liberty, and not liberty for white people only, I hope to remain firm. If the country is not true in 1876 or in 1880, it still will return to its duty; and I say to the men of the South, in all kindness, in all sincerity, the way to peace is the path of justice—political justice, political equality, the recognition of the black man as your equal politically, and accept the consequences in good faith.

With power for the time in the hands of the friends of the negro, I am for the constant assertion of that power within the limits of the Constitution; and first and now, such legislation by the authority of the Constitution, including the thirteenth, fourteenth, and fifteenth amendments, as will give to every citizen his rights, not as a citizen of a State merely, but as a citizen of the United States.

The fourteenth amendment to the Constitution reads thus:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

"Citizens of the United States, and of the State wherein they reside." First citizens of the United States, and then citizens of the State wherein they reside. Now mark what follows:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

These words were chosen with care. The Senator from New York [Mr. CONKLING] remembers with what care the committee of fifteen, of which he was a member, selected those words. What is the first immunity of a citizen of the United States? The first immunity is that he is a citizen of the State where he resides, and therefore the Government of the United States is clothed with the power of dealing with its own citizens, to enter, by its law and by the power of its law, into every State, and secure to every citizen there his rights as a citizen of that State. If that be not so, then this constitutional amendment is a failure.

Mr. EDMUNDS. A fraud.

Mr. BOUTWELL. I would not have said it was "a fraud." The Senator from Vermont says it was a fraud if it be not as I construe it. The Supreme Court of the United States in the Slaughter-house case has taken a different view, and what do you say of the Supreme Court if it has taken a different view? I respect the courts, the decisions of courts, the mandates of courts; but then the law as laid down by the Supreme Court will not stand the test of time and scrutiny. That decision is contrary to English precedents from the act of settlement in 1668 to this time. I cannot believe that anywhere else there is a tribunal administering English law that would recognize a monopoly for business purposes covering eleven hundred square miles of territory and maintain it as a police regulation. I cannot but believe that in future times there will be a court which will say that it is the duty of the Government of the United States to protect its own citizens in the several States in all their rights as citizens of the several States.

I say, then, that the power of protection under this amendment is sufficient for such legislation as may be necessary to secure the black people and the white people of the South in all their rights; but we are to bear in mind, sir, that the mere existence of a constitutional provision is of no considerable value to the people unless it is enforced by law, and unless the law is enforced by magistrates who are willing that the law shall be executed.

But I come, sir, to consider, not because I am sure that there is a case to-day which justifies the application of the power that I invoke, but because I apprehend that the time may be near when we shall be compelled to consider the fourth section of the fourth article in reference to the power and the duty of the United States to guarantee to every State a republican form of government. I am of course familiar with the argument or the statement that that means only that the United States shall guarantee to each State a paper constitution which is republican in form, which does not provide for a hereditary monarchy or an order of nobility, and that there is no authority to inquire into the processes by which the government is organized and the powers by which it is kept in motion. If so, then that provision of the Constitution is a nullity; but I believe that it means that we are to inquire into the established method of expression or practice in the States under the form of government which they have.

Mr. EDMUNDS. And you are right.

Mr. BOUTWELL. I am glad now that for the first time in my life I have reached a conclusion upon a legal point that corresponds with that of the Senator from Vermont, [Mr. EDMUNDS,] but I should submit to him if it were otherwise even now.

The established method of expression of the popular will in a State, if that be the reading of the phrase "republican form of government," then the United States has the power to do what is necessary to be done in all these cases where there is any occasion for the application of the power.

The mere fact that somebody gets an office in a State, whether it be Mr. Hoffman in New York or Mr. Kellogg in Louisiana, by fraudulent practices, does not furnish a case for awakening the sleeping power of the Constitution; but when we find that through a period of years and as a general fact in reference to the affairs of that State fraud, corruption, and misconduct taint the proceedings generally or wholly, thus defeating the right of the people to enjoy the benefits of a republican form of government, then, I say, the time has come when the Government of the United States under this guarantee clause will find it its duty to disestablish a State and establish some form of government which shall secure to the people their rights.

Is Louisiana in this condition to-day?

I announce this doctrine now and here, because I have foreseen that if this work of disintegration, fomented by conspiracy and rebellion in the South, goes on, the time will come when the Government of the United States will be compelled to choose between the duty of protecting its citizens under this provision of the Constitution and accepting the fact that there are States in this Union whose citizens cannot be protected by the power of the United States.

I have said, sir, that I was not of those who expected that the difficulties in the South would be healed by the restoration of those States to the Union. Therefore I am not disappointed in the fact that there is disorder, confusion, fraud, domestic violence in the South; and I wish to say to the representative men of the South that their duty and their policy are in the same direction. Do justly by the emancipated men of the South. It is in vain that you tell us that northern men may emigrate to the South and make money. We can make money elsewhere. The world is large. My own State has citizens who have made homes in China, on the coast of Africa, in Madagascar, the Sandwich Islands; every continent and every sea they have visited, and upon every continent and upon every island they have made homes. It is not necessary that you give us security that we shall be well treated if we go South and may make money. We want something better. There is something that, as patriots interested in the welfare of the country, we prize more; and that is justice to our fellow-men who are with you. Promises to treat us well are no compensation for wrong done to our brethren who cannot find homes elsewhere.

But, sir, what is the ultimate and last and complete remedy for these wrongs? It is in educating the people of the South, black and white, upon the idea of human equality. So long as men believe there is a difference of race and that that difference affects political rights, so long this question of caste and condition will arise, so long will there be disorder and confusion in the State. The rising generation in the South is to be educated. And now I come to say what I know will be more disagreeable than anything I have said.

When the children of the white people and the black people are compelled to go into the same schools, sit upon the same forms, accept the same teachers, study the same books, become rivals in education and in the pursuits of life, you will have a community that will believe practically in human equality. Therefore it is that that provision which has been stricken out of the civil-rights bill in the other House

is of more consequence than all the other provisions of that bill and than all the provisions which the ingenuity of all the lawyers in both Houses could frame with reference to the future peace and prosperity of the South.

In that provision of compulsory common-school education, supported by universal taxation, I see the dawn of a day that will surely come when there will be peace in the South upon the accepted ideas of human equality—just human equality. Hotels, circuses, theaters, railway cars, open their doors and gates to all comers who can pay for what they desire. Money will be the passport that will carry black as well as white into all these institutions and to the enjoyment of all these privileges; but the common school, if shut by law or custom against one class of people, necessarily makes distinctions in society. These distinctions grow and increase, and all the ills of which we now complain will be augmented by the increase of population in the South. Sir, the policy I propose is due not to the negro race merely; it is due to the white race; it is due to the country.

Thus, Mr. President, I have treated the subject upon the idea that those questions which apparently now concern us, which affect the judgment of the Senate, which disturb the peace of the country, are only symptoms of a disorder, evidences of an evil. That disorder or evil can be controlled for the time being by the power of the Government. I have sought in the Constitution to find the source from which the power can emanate; but the relief, the permanent relief is in a system of public instruction for the South which shall know no distinction of race or color.

Mr. STEVENSON. Mr. President, I have listened with great attention to the Senator from Massachusetts, [Mr. BOUTWELL,] and I am sincere when I say that the large population of the South, of the West, and of the Southwest desire peace upon the basis of the Constitution as much as he does; but the honorable Senator from Massachusetts is entirely mistaken in attributing all the disorders to the South. Sir, the Senator seems to think that all our present perils which now threaten constitutional government are attributable to the southern people. It is not so, and the suggestion does them great injustice. The Senator looks to one side of this question. He referred to Daniel Webster and to his splendid ability; he might have added his patriotic devotion to constitutional liberty. But does the Senator remember that even Daniel Webster, great as he was, was hissed in Faneuil Hall for standing by the Constitution and for exhorting obedience to its exactions? Let me tell the Senator to-day, let me tell the Senate, let me tell the entire country, that if we desire peace and prosperity, if we desire to see turbulence and violation of law put down, we must rebuke sectional intemperance at the North as well as in the South. There is a sectional fanaticsm still nascent in the North more formidable, more mischievous, than any in the South. This spirit exists in the Senator's own State to-day, although he seems unconscious of it. It is a bigoted hatred against the South which nothing can propitiate. The South has already given to the colored race schools and all those rights which the Constitution accords them. They will never accord to them mixed schools so long as their manhood is left to them.

But, Mr. President, if every privilege was yielded which the Senator has asked it would not satisfy the sectional hatred which is still lurking in the breasts of some of the fanatics in Massachusetts, which would deny to the Southern people any rights under the Constitution. The Senator says Mr. Webster went down. Yes, sir; and his great crime was, the enforcement of the Constitution and the equal rights of all sections under it. That fanaticism, now that slavery is extinct, still pours out its hatred against the downtrodden, brave people of the South. It desires no justice to them. As a proof of this statement, sir, I read the utterances at a meeting which took place in the city of Boston but a week ago. A discussion occurred in an assemblage of Methodist preachers. One of these professed servants of Him whom the Scriptures say was all love gave vent to his feelings, which manifest as much of the evil one as any performance of civilized people ever does within or without the bounds of Christian civilization. The speaker to whom I allude in that meeting—composed of the professed embassadors of the Lord Jesus Christ—was Rev. B. I. Ives. I never heard of this man before, and if he is truly reported by a religious paper from which I read I never desire to see or to know him. In proof of this fanatical spirit of some of the Senator's constituents let him listen to what the Right Reverend Mr. Ives said—an utterance which disgraces civilization, which disgraces humanity, which libels Christianity, but a sentiment which I grieve to say was loudly applauded in the city of Boston. Mr. President, had such a sentiment been uttered in Kentucky, or in any southern State, I venture to say that it would have met with the scorn and detestation which it so richly merits. Such a sentiment would have been reprobated everywhere by republicans and democrats alike in Kentucky. It should be denounced everywhere. I now quote the language of this man:

> We are undertaking now to coax the devil out of the miserable whelps down South, when nothing but strychnine and cannon ought to be used; and that we rather agree with Phil. Sheridan's declaration during the war, that if he owned hell and Texas, he would lease out Texas and live in the other place, and that he longed for the appearance of some negro man able to become a leader wielding the sword and the torch.

And he capped the climax by publicly declaring "that he believed the *more he hated the rebels of the South, the more he loved God.*"

I ask the Senator was that the spirit of the North to the South when the Constitution was ordained? Was that the spirit which brought South Carolina and Virginia to the aid of the noble, brave men of New England who dared at the cannon's mouth to demand that the right of representation and taxation should go together, even if England denied it? O no, sir!

Mr. President, it was love; it was mutual dependence and mutual love of liberty that created this Union and ordained the Constitution; and that same love and that same confidence and mutual fraternity must alone maintain it. If the sentiment of insatiate sectional hostility announced by Mr. Ives, or the one-sided partisan views of the Senator himself are shared in by a large portion of the people of New England, then, as Mr. Webster said, "The days of constitutional liberty are numbered." I cannot, I will not believe that such a fate is in store for us. I speak for the people of a State that has always stood by this Constitution. In their name I say to the Senator from Massachusetts that love and confidence created this Union; mutual trust, mutual dependence, mutual forbearance can preserve it. Our model system of free republican government is the admiration of the world. It should be the exemplar to humanity struggling for freedom throughout the world. Let us stand by the Constitution; let no party spirit excuse usurpation or a viclation of its guarantees at any time or under any circumstance. Let all obey its behests and uphold its guarantees. Then we shall put liberty on a sure and perpetual foundation, and make our Government an asylum for the oppressed throughout the world. I desire to see liberty supported by law. I will denounce violence and disorder everywhere. I exhort my southern brethren to forbearance and a rigid adherence to law. But when the Senator from Massachusetts is justifying the recent oppressions of Federal power in Louisiana, let him remove the mote of party in order to see the sins and delinquencies of some of his own fanatical constitutents. I ask with confidence and I appeal with hope to republicans in the North and in the West to aid in the rebuke of usurpation and misrule in the South. Then shall we put the Constitution of our fathers on the rock of safety, and the inestimable blessings freedom won by their valor and intrenched behind the bulwarks of a written Constitution of limited powers will be perpetuated to us and to our children. Such an undertaking should meet a warm approval in Massachusetts, and be far above the low behests of sectional distrust or party discipline.

The VICE-PRESIDENT, (who had resumed the chair at seven o'clock a. m.) The question is on the amendment proposed by the Senator from Maryland, [Mr. HAMILTON.]

[Mr. NORWOOD addressed the Senate in a speech which appears in the Appendix.] Having spoken an hour and a half——

Mr. MORRILL, of Maine, rose.

The PRESIDING OFFICER, (Mr. GORDON in the chair.) Does the Senator from Georgia give consent to be interrupted?

Mr. NORWOOD. I will hear what the Senator from Maine desires to suggest.

MESSAGE FROM THE HOUSE.

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

A bill (H. R. No. 3855) to change the time and places for holding the circuit and district courts of the United States for the district of Minnesota;

A bill (H. R. No. 3996) conferring jurisdiction upon the United States courts in the Territory of Utah in certain cases;

A bill (H. R. No. 4536) prescribing the fees of jurors and witnesses in the courts of the District of Columbia;

A bill (H. R. No. 4559) to prevent and punish the false making and uttering of certain instruments;

A bill (H. R. No. 4662) to change the location of the office of the United States marshal in the northern district of Georgia;

A bill (H. R. No. 4743) to amend section 649 of the Revised Statutes of the United States;

A bill (H. R. No. 4744) to punish certain larcenies and the receivers of stolen goods; and

A bill (H. R. No. 4351) for the relief of the judge of the district courts of the United States for the western district of Pennsylvania.

The message also announced that the House had agreed to the amendment of the Senate to the bill (H. R. No. 1938) to extend the provisions of the act approved March 3, 1871, entitled "An act to provide for the collection of debts due from southern railroads, and for other purposes."

ORDER OF BUSINESS.

Mr. MORRILL, of Maine. I wish to address a word to the Senator from Georgia, [Mr. NORWOOD.] I do not desire to interrupt the Senator without his consent, but I understood the Senator to say as he commenced his speech that he was not particularly solicitous to go on this afternoon.

Mr. NORWOOD. I am not.

Mr. MORRILL, of Maine. If the Senator continues of that mind I have a suggestion to make. I am extremely reluctant to interpose against the proposition now before the Senate; but being in some sense charged with business of the Senate which is of an urgent character, I feel it my duty to say to the Senate, and especially to my honorable friend from Indiana, [Mr. MORTON,] that in my judg-

ment the Senate of the United States ought not at the present moment to occupy any more time on this proposition as against the class of business which I propose to submit to the Senate, namely the appropriation bills. As I have had occasion to say before this week, there are still nine appropriation bills to be acted upon by the Senate. The time left to us is very short—hardly twelve days, indeed not exceeding eleven including to-day—a shorter time than I have ever known so many bills of this character to be disposed of within; and therefore it seems to me that it is the absolute necessity of the Senate to pause in this debate at the present time to consider the appropriation bills, and I have risen with that view to say to my honorable friend and to the Senate that such is my judgment of the situation of the business of the Senate as relates to the appropriation bills, that the Senate cannot afford to spend further time in this debate at the present moment. When these bills shall have passed away from the Senate, there will be opportunity then for the Senate to proceed with the consideration of other questions.

I wish to say further that the usage justifies me in making this appeal to the Senate and commands me to do it. The appropriation bills are always the exigent necessity of the session. They must be attended to, whatever else suffers, and I appeal to my friends on both sides to consider them, according to the usage of the Senate and according to the general understanding.

I feel myself charged with making these observations to the Senate and endeavoring to arrest its attention at this time with the view of proceeding to the consideration of those measures. I appeal therefore to my honorable friend from Indiana to recognize this condition of things and allow this resolution to be laid aside for the purpose of taking up the Indian appropriation bill, which was reported on Monday and which has been awaiting the action of the Senate since that time.

The PRESIDING OFFICER, (Mr. GORDON.) Does the Senator from Maine submit a motion?

Mr. BAYARD. I wish to ask the Senator from Maine how many appropriation bills are now ready to be placed before the Senate, reported from the Committee on Appropriations?

Mr. MORRILL, of Maine. Four.

Mr. BAYARD. Will the Senator state what they are?

Mr. MORRILL, of Maine. They are the Indian appropriation bill, the post-office bill, the Military Academy bill, and the pension bill. I make no motion just at this moment, but I make the suggestion to the Senate.

Mr. MORTON. Mr. President, I regret that the Senator from Maine feels it to be his duty to make such a motion at this time. We have been engaged in this discussion now for some hours and entertained hopes of bringing it to a speedy conclusion; but if the debate is now broken, the labor and the physical inconvenience we have all suffered will be lost. I had supposed that the appropriation bills would not take very much time, that they were so close-rigged, had been so trimmed down that they would speedily pass the Senate, and would not perhaps occupy the time that they have on former occasions.

But, Mr. President, if this debate should be protracted so that the appropriation bills could not be passed, taking the worst view of it, and an extra session should become necessary, the responsibility will not be on those who are ready to vote upon this question now if this debate can stop. This Louisiana question has been discussed here for two years, more or less, and during this session it has occupied nearly one-half the time. More time has been spent in debating it than in debate upon all other questions put together; and I have felt that this prolonged debate was unnecessary, that we are all prepared to vote, to vote this resolution up or vote it down, and that it was important it should be settled in some way.

Let me call the attention of the Senate very briefly to what the President said in his late message on this subject:

> I have heretofore urged the case of Louisiana upon the attention of Congress, and I cannot but think that its inaction has produced great evil.

Are we at liberty to doubt that the inaction on the part of the Senate for the last two years, the failure of Congress to give expression and to define the status of the present government in Louisiana has resulted in violence and bloodshed in that State, and that our inaction has been used as an argument by the turbulent elements in Louisiana? They have been encouraged by our inaction to treat that government as a nullity and to resist it by violence and by blood, and the President has appealed to us upon the subject to come forward and take action. Allow me to read one further extract from the close of his late message. The President concludes the message by saying:

> I now earnestly ask that such action be taken by Congress as to leave my duties perfectly clear in dealing with the affairs of Louisiana, giving assurance at the same time that whatever may be done by that body in the premises will be executed according to the spirit and letter of the law, without fear or favor.

The peace of a State is in all probability involved in the settlement of this question. If Mr. Pinchback shall be admitted, it will be such a recognition of what is called the Kellogg government upon the part of the Senate of the United States that it will take away from the white-leaguers of Louisiana any pretext, excuse, or hope for setting aside that government. But if we shall fail to admit him, or if we shall fail to take action, we leave that government in the condition in which it has been for the last two years; we expose that people to the same disasters and to the same troubles under which they have labored. It is a grave question, involving considerations even of life and death. We are not clear of all responsibility in view of our failure to act for the last two years.

And in what position do we leave the President of the United States? If we shall fail to seat Mr. Pinchback, it will be because we repudiate one-half of the Kellogg government. We cannot consistently accept one-half and repudiate the other; and some of our friends here, I fear, have forgotten the origin of what has been called the executive interference in Louisiana. Some seem to think that the President had only recognized Kellogg as the governor of that State, and to forget that the first recognition the Executive gave to the government of Louisiana was to the Legislature a month before Kellogg became governor of that State. I read from the Attorney-General's dispatch of December 12, 1872, addressed to Mr. Pinchback when he was the acting governor *ex officio* by the impeachment of Warmoth:

> DEPARTMENT OF JUSTICE, *December* 12, 1872.
>
> Acting-Governor PINCHBACK,
> *New Orleans, Louisiana:*
>
> Let it be understood that you are recognized by the President as the lawful executive of Louisiana, and that the body assembled at Mechanics' Institute is the lawful Legislature of the State; and it is suggested that you make proclamation to that effect, and also that all necessary assistance will be given to you and the Legislature herein recognized to protect the State from disorder and violence.
>
> GEO. H. WILLIAMS,
> *Attorney-General.*

Here is the recognition of that Legislature more than a month before Mr. Kellogg came upon the stage at all. The President has appealed to us for two years to decide the question. Our failure to act will be regarded as a repudiation of that government. There may be fearful consequences attending it, and can we say that we are free of all responsibility? I therefore suggest to my friend from Maine—I know he simply wants to do his duty and that he does not interfere from any other motive—that there are principles of more important consideration attending the disposition of this measure now before the Senate than even the passage of the appropriation bills. If they shall fail, an extra session can be called, and the responsibility would hardly be with the republican party for that. We should then have a new House of Representatives organized, and the majority in that House would have an opportunity of displaying the spirit and purpose by which they would be actuated and of adopting a policy for the administration of this Government. I doubt whether our democratic friends are anxious to enter soon upon that experiment. I think, so far as mere political considerations are concerned, they would shrink from it much more than we should. For my part I would deprecate an extra session on my personal account, on account of my health and personal convenience and personal arrangements; but at the same time, if it becomes a public necessity by reason of our attending to these things that are so important and overshadowing in their importance, such as we now have before us, let it come.

Mr. BAYARD. Mr. President, among the earliest and most prominent lessons that were taught me with regard to the Government of this country was the necessity of separating the departments, the executive, the judiciary, and the legislative, which had their functions, neither to be invaded by the other. But it seems that on this question, which I had supposed was one exclusively for the Senate, a question of which under the Constitution they are the sole judges, being the judges of the elections, returns, and qualifications of their own members, we are, according to the doctrine of the Senator from Indiana, to be controlled in our action by the wishes of a different branch of the Government, to whom none of the responsibility and no portion of the power is confided under our form of government.

Therefore, Mr. President, with all respect for a co-ordinate branch of the Government, I apprehend that this Senate have nothing to do with the wishes personally of the Executive or his official wishes in regard to our action in determining who shall or who shall not become members of this body; and with due respect to the Senator from Indiana, I take it that his suggestion that we should be so influenced was improper in the strongest and most constitutional sense of the word.

Now, in regard to the disposal of business before this body, I recognize thoroughly the responsibility of the majority, who, having the power, should not escape the responsibility; and I would also say on the part of the minority and of each individual of it, there is a responsibility that nothing unworthy or simply dilatory or considered in partisan ends should enter into their conduct in the management of public business. I do not think the Senator from Indiana can lay his finger, and I do not understand that he will venture to make the charge that there has been for one hour during this session a disposition on the part of the minority in this Chamber to interfere with the regularity of public business, or for any reason, wise or otherwise, of a political or partisan nature, to attempt to control the operation and passage of bills in this body. Nothing of the kind has been done. I appeal to the record of our debates during the past two months—during the past three weeks especially. Let it be read; let it be seen who has in any degree made such debate as authorized any suggestion that delay was an object for any purpose of a partisan or political nature. No, Mr. President, I do recognize the power and the responsibility of the majority, and I do it with all respect; and so I have sat here patiently and properly at my place for more than twenty-four hours—yes, sir, for nearly twenty-eight hours now—

simply abiding the will and pleasure of the majority respecting their disposition of public business. There has been no attempt at delay. I have my own views of this system of protracted session. I cannot but think the people of this country in their calmer moments will have their views of these protracted sessions. The human frame and the human brain has its limit of power. Men already have sickened under this debate. One of our brethren stood here to-day unable to continue a debate that every man felt was urged by his conscience and by nothing else simply because of physical indisposition, caused by the prolongation of this session. There is no act of human life, however important, in which consideration is not given to the human instrumentality to perform it, except it seems the business of legislation in the Senate of the United States. I will admit that if there had been exhibited here a desire improperly, disrespectfully, regardless of rules or in abuse of rules to prolong debate, there might then come a necessity for this sitting out of measures of the present kind. I agree with the honorable Senator from Indiana that few measures could surpass in importance to the people of this country that which we have had under consideration for the past day and a half in continuous session.

I have nothing to say in regard to the prospect of an extra session which the Senator has referred to, which he has, with his usual consideration for his political opponents, warned us of the effect of. Sir, I neither desire that session nor do I shrink from it. My duties, come they as they may, will find me, I trust, placidly awaiting their execution. It has been, I think, more than three weeks ago that in conversation with a distinguished and leading Senator of the administration party on this floor I drew his attention to some report in the Republican, the Administration organ of this city, that there was a desire upon the part of the minority to delay the public business so that an extra session would be made necessary for the passage of bills essential for the continuance of the Government, and I told him then that there should not be one hour of the remaining weeks of the Senate's session when he could not command every vote of the minority on this floor to bring forward the regular business of the body and pass it and make an extra session unnecessary. It was said privately—it is now said publicly—although there was nothing in what was said to prevent its being known to all gentlemen who are interested in considering the transaction of business in this body.

And so now, Mr. President, I would say, if there were nothing else than a consideration for the proper frame of mind and body in which we are to consider the very important questions involved in the resolution from the committee of which the Senator from Indiana is chairman, we should have reasonable, proper, ordinary delay; and I mean by delay opportunity for that mental and physical refreshment and rest, which we all need. In twenty-eight hours I have had some fifteen minutes sleep, and I presume I am but like others who stand around me and who stand here with the same feeling and intent that I have stood.

I do not wish to find fault; I do not wish to upbraid gentlemen in any way in regard to the condition of the business and the fact that they are now pressed for time; but it seems to me that there is a decorum, that which our forefathers called a proper respect for the opinions of mankind, that would make us approach great questions in a manner worthy of them. How can we do this with frames enfeebled by fatigue and minds irritated by want of necessary rest? I am sure that the best rule for the government of this body is the unwritten rule that prevails between honorable and candid men in their private transactions, that there shall be simply good faith in all their dealings; and so far as I have been able to establish it, and so far as I hope in the future to assist it, I should be as much ashamed of a party trick that would delay action upon a necessary measure or obtain by indirection an advantage that I would not venture to proclaim openly—I should be as much ashamed of it in my capacity as a Senator representing in part a State upon this floor, as I should in my personal relations to gentlemen whom I see around me.

Now, Mr. President, it is for the Senate to say whether the regular order of business of the body—that is to say, the appropriation bills of money necessary to conduct our Government—shall be promptly, regularly, sensibly, moderately, and justly discussed while there is plenty of time for them, and no man doubts it, or whether they shall be pressed aside for this continuous and necessarily heated discussion of a political question which I will admit is far more valuable than money, because it touches the operations at the very foundation of a Government for which we propose to vote money to carry it on.

Mr. President, I shall vote with the Senator from Maine to take up and consider duly and regularly the necessary appropriation bills to defray the expenses of the Government. I shall not delay nor seek to delay or avoid discussion upon any other measure that may be brought before the body; but can we of the minority in opposition serve our brethren in this Chamber and our fellow-citizens all over this country out of it better than by an honest, candid expression of criticism to measures which we think would be hurtful to the public good? If our debate is to be conducted in a spirit worthy of the measures and the objects of this resolution, which are contained within it, then debate is laudable and profitable. We do consider that this debate is of the highest interest and importance, and the minority would have craved of those who control the business a proper opportunity for calmer consideration than has been given to us in the last twenty-eight hours.

But, sir, the Senate must control their business. I have spoken for myself, but I believe that I have expressed, lamely perhaps, but still in the main correctly, the opinions and wishes of the minority on this floor. We wish to see everything moderately, regularly conducted, so that no extraordinary session of Congress may be made necessary. I will not discuss with the Senator from Indiana what might be the political advantage or disadvantage of it, in what embarrassment the new House of Representatives might find itself. I only hope that, whatever may be the duties set before them, they may meet them with honest hearts, trusting to an intelligent and honest public opinion to sustain them when they have tried to do what is best for our common country. That is all we hope. I do not desire to see, and I entirely repudiate, if it were necessary, the suggestion that any thought of partisan advantage or disadvantage has actuated the course of the minority in the debates in this body during the present session of Congress.

Mr. MORTON. Mr. President, it is not my desire to attribute motives to any Senator, other than those which guide his conduct and his words; but of course I cannot help thinking, when this Louisiana question has been before us so long, has been so often discussed in every aspect, that we are now quite as well prepared to vote, and have been for several days, as we should be if the discussion were longer continued.

I beg leave to suggest that something is due to a State. The Constitution declares that each State shall have two Senators. That is the law of the existence of this body. The continued violation of that law, the extended violation of that law, would result if not in civil war in the destruction of the Government itself. Louisiana has the same right that Delaware and New York have to two Senators on this floor. For two years she has had but one. She has been denied one-half of her representation. Another candidate, duly commissioned, has been knocking at the door, and has been kept out upon grounds and upon pretexts that are in my judgment without adequate foundation. The question of admitting a Senator is one of the highest privilege as well as of the highest importance.

For these and other reasons that I have mentioned I hope that this Congress will not adjourn without this question being settled. But the other considerations to which I adverted go beyond the right of a State to representation, because they involve perhaps the peace and the prosperity of that State. I cannot say more than to express the hope that those who are disposed to do Louisiana justice will stand by this resolution until it shall be disposed of, and if there be those who are disposed to protract this debate so that the appropriation bills shall not be passed at this session and an extra session shall become necessary, then upon them the responsibility will rest before the country.

Mr. THURMAN. I wish to make one suggestion. The question now before the Senate is one to be decided by the Senate alone. It is not a question for the consideration of Congress; it is a question for the Senate, and the Senate alone. If, as we have been told, there is to be an extra session of the Senate on the 4th of March, at that extra session this question can be disposed of with ample time to consider it. There is no necessity therefore for occupying our time with it now, if by so doing we imperil the passage of the necessary appropriation bills. If the one or the other has to go over, manifestly the question now before the Senate, one which is to be determined by the Senate alone, is the question that should go over to that extra session of the Senate, which it seems to be admitted on all hands will convene on the 4th of March.

I shall therefore vote for the motion to take up the appropriation bill whenever that motion shall be made, believing that our first duty is to provide the means to carry on the Government, and that a delay of a few days in determining the question which is now before us will not prejudice the matter in the slightest degree.

Mr. MORRILL, of Maine. Mr. President, I am disposed to regard this entirely as a question of the order of business. I hope the Senator from Indiana does not suppose for a moment that I make this motion in any spirit of hostility to the measure with which he is charged. It is simply from the conviction on the part of the Committee on Appropriations that the absolute necessities of the service require the action to which I have referred.

With the purpose of proceeding to the consideration of the Indian apppropriation bill, which was reported on Monday, I move to lay the present resolution on the table.

The VICE-PRESIDENT. The question is on the motion of the Senator from Maine that the pending resolution be laid on the table.

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

The yeas and nays were ordered.

Mr. FERRY, of Connecticut. I paired with the Senator from Massachusetts [Mr. BOUTWELL] a short time ago upon any question of adjournment that might arise, he desiring to go out to take a nap, as he said. I presume that this question involves the principle of that pair. I therefore withhold my vote. I should vote "yea," and I suppose he would vote "nay."

The question being taken by yeas and nays, resulted—yeas 39, nays 22; as follows:

YEAS—Messrs. Allison, Anthony, Bayard, Bogy, Conkling, Cooper, Davis, Dennis, Eaton, Edmunds, Fenton, Frelinghuysen, Goldthwaite, Gordon, Hager, Hamilton of Maryland, Hamilton of Texas, Ingalls, Johnston, Kelly, McCreery, Merrimon, Morrill of Maine, Morrill of Vermont, Norwood, Ransom, Robertson, Saulsbury, Schurz, Scott, Sprague, Stevenson, Stockton, Thurman, Tipton, Wadleigh, Washburn, Windom, and Wright—39.

NAYS—Messrs. Boreman, Cameron, Chandler, Clayton, Conover, Cragin, Ferry of Michigan, Flanagan, Hamlin, Harvey, Howe, Jones, Logan, Morton, Oglesby, Patterson, Pratt, Ramsey, Sargent, Spencer, Stewart, and West—22.

ABSENT—Messrs. Alcorn, Boutwell, Brownlow, Carpenter, Dorsey, Ferry of Connecticut, Gilbert, Hitchcock, Lewis, Mitchell, Pease, and Sherman—12.

So the resolution was ordered to lie on the table.

HOUSE BILLS REFERRED.

Mr. WINDOM. Mr. President——

The VICE-PRESIDENT. The Chair will ask the Senator from Minnesota to give way while he lays before the Senate several House bills for reference.

The following bills were severally read twice by their titles and referred to the Committee on the Judiciary:

A bill (H. R. No. 3996) conferring jurisdiction upon the United States courts in the Territory of Utah in certain cases;

A bill (H. R. No. 3855) to change the times and places for holding the circuit and district courts of the United States for the district of Minnesota;

A bill (H. R. No. 4536) prescribing the fees of jurors and witnesses in the courts of the District of Columbia;

A bill (H. R. No. 4559) to prevent and punish the false making and uttering of certain instruments;

A bill (H. R. No. 4662) to change the location of the office of United States marshal in the northern district of Georgia;

A bill (H. R. No. 4351) for the relief of the judge of the district court of the United States for the western district of Pennsylvania;

A bill (H. R. No. 4743) to amend section 649 of the Revised Statutes of the United States; and

A bill (H. R. No. 4744) to punish certain larcenies and the receivers of stolen goods.

PETITIONS AND MEMORIALS.

Mr. CONKLING. I present a memorial signed by A. A. Low & Brother; Drexel, Morgan & Co.; J. & W. Seligman & Co.; E. D. Morgan, and a large number of leading bankers and merchants in the city of New York, remonstrating against the annulling of the contract with the Pacific Mail Steamship Company for the transportation of the mails between San Francisco, Japan, and China. They protest, for reasons which they state, against the injury which they allege would be inflicted upon commerce by suspending the postal and other service to which I have alluded. As a report has been made upon the bill to which this remonstrance refers, I move that it lie on the table.

The motion was agreed to.

Mr. SCHURZ presented a resolution of the Legislature of Missouri, in favor of the establishment of a branch mint at Saint Louis, Missouri; which was referred to the Committee on Finance.

Mr. BOREMAN presented several petitions of members of the medical profession of the State of West Virginia, praying for such legislation as will the better promote the efficiency of the Medical Corps of the Army; which were referred to the Committee on Military Affairs.

Mr. HOWE presented a petition of citizens of Wisconsin, praying an amendment to the Constitution of the United States prohibiting the importation, manufacture, or sale of alcoholic liquors, to take effect from January 1, 1876; which was referred to the Committee on Finance.

WITHDRAWAL OF PAPERS.

On motion of Mr. HAMLIN, it was

Ordered, That Sarah Parker have leave to withdraw from the files of the Senate her petition and papers, on leaving copies of the same with the Secretary.

BILLS INTRODUCED.

Mr. HOWE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1325) authorizing the Wisconsin Central Railroad to straighten the line of their road; which was read twice by its title, referred to the Committee on Public Lands, and ordered to be printed.

Mr. STOCKTON asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 1326) to authorize the purchase of certain improvements in ordnance, and pay for the use of the same, heretofore made; which was read twice by its title, referred to the Committee on Naval Affairs, and ordered to be printed.

Mr. LOGAN subsequently said: I wish to ask to what committee the bill in reference to ordnance was referred, which was introduced a few moments ago.

The VICE-PRESIDENT. The Committee on Naval Affairs, the Chair is informed.

Mr. LOGAN. I do not know of any ordnance department belonging to the Navy. I think it should go the Committee on Military Affairs.

The VICE-PRESIDENT. Does the Senator make that motion?

Mr. LOGAN. I move the reference of the bill to the Committee on Military Affairs.

The motion was agreed to.

Mr. CAMERON asked, and by unanimous consent obtained, leave to introduce a joint resolution (S. R. No. 17) authorizing the President to terminate certain treaties; which was read twice by its title, referred to the Committee on Foreign Relations, and ordered to be printed.

INDIAN APPROPRIATION BILL.

Mr. WINDOM. I move that the Senate proceed to the consideration of House bill No. 3821, being the Indian appropriation bill.

Mr. WEST. I move that the Senate do now adjourn.

The VICE-PRESIDENT put the question on the motion to adjourn, and declared that the noes appeared to prevail.

Mr. SARGENT. I ask for the yeas and nays. Let us take up the appropriation bill.

The yeas and nays were ordered; and being taken, resulted—yeas 6, nays 52; as follows:

YEAS—Messrs. Bogy, Harvey, McCreery, Oglesby, Patterson, and West—6.

NAYS—Messrs. Allison, Anthony, Bayard, Boreman, Cameron, Chandler, Clayton, Conkling, Conover, Cooper, Cragin, Davis, Dennis, Eaton, Edmunds, Fenton, Ferry of Michigan, Flanagan, Goldthwaite, Gordon, Hager, Hamilton of Maryland, Hamilton of Texas, Hamlin, Ingalls, Johnston, Jones, Kelly, Lewis, Logan, Merrimon, Morrill of Maine, Morrill of Vermont, Morton, Norwood, Pratt, Ramsey, Ransom, Robertson, Sargent, Schurz, Scott, Spencer, Sprague, Stewart, Stockton, Thurman, Tipton, Wadleigh, Washburn, Windom, and Wright—52.

ABSENT—Messrs. Alcorn, Boutwell, Brownlow, Carpenter, Dorsey, Ferry of Connecticut, Frelinghuysen, Gilbert, Hitchcock, Howe, Mitchell, Pease, Saulsbury, Sherman, and Stevenson—15.

So the Senate refused to adjourn.

Mr. INGALLS submitted an amendment intended to be proposed to the bill (H. R. No. 3821) making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1876, and for other purposes; which was referred to the Committee on Indian Affairs, and ordered to be printed.

Mr. WINDOM. I now renew my motion to take up the Indian appropriation bill, and I want to finish this bill to-night if we can.

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

Mr. WINDOM. Before the Secretary proceeds to read the bill, I wish to make a very brief statement as to the amount appropriated in comparison with the amount appropriated last year. The appropriations for the fiscal year ending June 30, 1875, were $5,690,000. As reported in this bill the amount for the coming fiscal year is $5,127,924, being less than last year by $562,076. The Senate committee have added to the House bill $277,317, and I can state in a moment what the items are, so that Senators may understand them.

The bill reported to the Senate is less than the estimates for 1876 by $1,723,757; and I think if Senators will glance through the bill they will find that there is very little objectionable matter in it. I think it has been kept very clean. The $277,000 added by the Senate committee is composed mainly of the following items: For the Chippewas of Lake Superior, $30,000; for the Osages, to pay interest on funds arising from the sale of lands, $38,700. We have added to the appropriation for the Apache Indians $100,000; for the Arickarees, Gros Ventres, and Mandans, $10,000; for the Utes, under treaty stipulation, overlooked by the House, $45,000; for the Round Valley reservation, $30,000; to increase the amount for Oregon, $10,000; and for the peace commissioners, which was omitted in the House bill, $15,000. This makes $278,700 more than the aggregate which I mentioned a moment ago; but we have made several small reductions; so that the aggregate is only $277,000.

I hope that, weary as the Senate is, it will take into consideration the present condition of business before the Senate and enable us, if possible, to complete this bill before we adjourn to-night.

Mr. DAVIS. Mr. President, I move——

Mr. MORRILL, of Maine. Will the Senator from West Virginia yield to me a moment?

Mr. DAVIS. Certainly.

Mr. MORRILL, of Maine. I move that debate on amendments to this bill be limited to five minutes.

The VICE-PRESIDENT. The Senator from Maine moves that debate on the amendments to this bill be limited to five minutes by each Senator.

The motion was agreed to.

The VICE-PRESIDENT. The Secretary will read the bill.

Mr. DAVIS. We have now been in session about twenty-eight hours, and I appeal to my colleague on the committee who has charge of this bill to let us adjourn, and we will come here to-morrow and understand everything properly about the bill. None of us are in a condition to consider it properly this evening.

Mr. WINDOM. The Senator from West Virginia who is a member of the Committee on Appropriations knows that there are three other bills prepared by that committee ready to be presented to the Senate. He also knows that there are but eleven days left of this session; and although we are weary, I think we can stay here an hour or two longer to finish this bill. I appeal to the Senate to remain at least and make an effort to do it.

Mr. DAVIS. I know well what my colleague on the committee has stated, that we have four appropriation bills now ready. I also know that there is not a Senator here who is not weary, and none of us perhaps are now in a condition to consider this bill properly. We know this is an important bill, and I therefore ask my colleagues on the committee not to insist upon going on to-night, but let us come here in the morning for the purpose of disposing of it. I must insist on my motion to adjourn.

HOUR OF MEETING.

Mr. MORRILL, of Maine. Will the Senator yield to me one momemt to make a motion which I think will be satisfactory?

Mr. DAVIS. Certainly.

Mr. MORRILL, of Maine. I desire to appeal to the Senate and ask unanimous consent to take from the table the resolution which I offered on Monday last to provide for the meeting of the Senate at eleven o'clock hereafter.

Mr. MORRILL, of Vermont, and others. Not to-morrow.

The VICE-PRESIDENT. The Senator from Maine asks unanimous consent to take up the resolution providing that the Senate shall meet at eleven o'clock. The Chair hears no objection.

Mr. MORRILL, of Maine. Let it be read.

Mr. MORRILL, of Vermont. I would suggest to the Senator from Maine that it be after to-morrow. If the Senate is to remain and finish this bill to-night, it will certainly hardly desire to meet early to-morrow.

Mr. MORRILL, of Maine. I hardly expect the Senate will do that either. Let the resolution be read.

The Chief Clerk read as follows:

Resolved, That the daily hour of meeting of the Senate shall be eleven o'clock a. m. from and after to-morrow.

Mr. CAMERON. I should like to know by what rule of the Senate that resolution can be considered now?

The VICE-PRESIDENT. By unanimous consent. The Chair asked for objections and there was no objection made. The question is on the adoption of the resolution.

The resolution was agreed to.

Mr. THURMAN. Let us understand that resolution. It does not apply to to-morrow. ["No."]

Mr. DAVIS rose.

Mr. FRELINGHUYSEN. I wish to say to the Senator from West Virginia that we have just laid aside a resolution which excited a good deal of interest and on which many persons wished to speak for the very purpose of disposing of the appropriation bills. I think the Senate in good faith is bound to stand by this bill and work two or three hours so that we can get through with it in time.

Mr. DAVIS. The Senator from Maine asked me to yield while I was about to move an adjournment. I now make that motion with his consent, as I understand.

Mr. MORRILL, of Maine. I hope the Senate will not adjourn.

The VICE-PRESIDENT. The question is on the motion to adjourn.

The motion was not agreed to.

INDIAN APPROPRIATION BILL.

The Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. No. 3821) making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1876, and for other purposes.

The Chief Clerk proceeded to read the bill, as follows:

That the following sums be, and they are hereby, appropriated out of any money in the Treasury——

Mr. STOCKTON. I have just heard read the words "hereby appropriated." I should like to submit whether this is a time, after twenty-eight hours' session, to appropriate anything. I move that the Senate do now adjourn. I am not willing to vote to appropriate anything to anybody in the present condition of the Senate.

Mr. WINDOM. I call for the reading of the bill.

The VICE-PRESIDENT. The Senator from New Jersey moves that the Senate do now adjourn.

Mr. LOGAN. We just took a vote and voted down that motion.

The VICE-PRESIDENT. A few words of the bill have been read since. The question is on the motion to adjourn.

The question being put, a division was called for; which resulted—ayes 22, noes 28.

So the Senate refused to adjourn.

The VICE-PRESIDENT. The Secretary will resume the reading of the bill, and the amendments of the Committee on Appropriations will be acted upon in the order in which they are reached in reading the bill.

The first amendment of the Committee on Appropriations was on page 1, line 1, before the enacting clause, to strike out the word "re solved."

The amendment was agreed to.

The next amendment was on page 1, line 10, before the word "agents" to strike out "sixty-nine" and insert "seventy," so as to read:

For pay of seventy agents of Indian affairs, at $1,500 each, except the one at Iowa, at $500, namely, &c.

Mr. DAVIS. I wish to say a word on that amendment. That is an increase of agencies. It is an increase of three over last year.

Mr. WINDOM. An increase of one only from last year. We have added two in Dakota and dropped one in the Indian Territory, making an increase of one in the aggregate.

Mr. DAVIS. Mr. President, I see the Senate is not in a condition to listen. I have something to say on this amendment. It has come to our attention in committee, or rather to my attention while I was present in committee. I will, however, reserve what I wish to propose until to-morrow and let the committee's amendments be acted on first.

Mr. MORRILL, of Maine. The Senator can raise the question when the bill is in the Senate.

Mr. DAVIS. Very well.

The amendment was agreed to.

The next amendment of the Committee on Appropriations was in line 29, in the enumeration of the agencies for the tribes in Dakota, to strike out "Brulé" and insert "White River."

The amendment was agreed to.

The next amendment was, in line 33, before "for," to strike out "four" and insert "five," and in line 34 before "Abiquiu" insert "Pueblo;" so as to read:

Five for the tribes in Mexico, namely, Pueblo, Abiquiu, Navajo, Mescalero, Apache, and Southern Apache agencies.

The amendment was agreed to.

The next amendment was in line 65, to increase the aggregate appropriation for pay of Indian agents from $102,500 to $105,000.

The amendment was agreed to.

The next amendment was in line 84, before "interpreters" to strike out "seventy-five" and insert "seventy-eight," so as to read:

For pay of seventy-eight interpreters, as follows:

The amendment was agreed to.

The next amendment was in the provision for interpreters, in line 101, to strike out "thirteen" and insert "twelve" before "for;" in line 102 before "Red Cloud" to insert "two at Fort Berthold, and one each at;" in line 104 to strike out "Fort Berthold;" and in line 105 to strike out "Brulé" and insert "White River;" so as to read:

Thirteen for the tribes in Dakota, namely, two at Fort Berthold, and one each at Red Cloud, Spotted Tail, Yankton, Ponca, Crow Creek, Grand River, Cheyenne River, Sisseton, Devil's Lake, Black Hills, and White River agencies, at $400 per annum each.

The amendment was agreed to.

The next amendment was in the provisions for interpreters in line 111, to strike out "six" and insert "seven" before "for;" and in line 113, after "Apache" to insert "Pueblo;" so as to read:

Seven for the tribes in New Mexico, namely, two for the Navajo agency, and one each for the Cimarron, Mescalero, Apache, Southern Apache, Pueblo, and Abiquiu agencies, at $500 each per annum.

The amendment was agreed to.

The next amendment was in the provisions for interpreters, to strike out "three" in line 133 and insert "four" before "for;" and in line 134 before "White Earth" to insert "Boise Fort;" so as to read:

Four for the tribes in Minnesota, namely, Boise Fort, White Earth, Red Lake, and Leach Lake special agencies, at $400 each.

The amendment was agreed to.

The next amendment was in line 141, to increase the aggregate number of interpreters at $400 each from forty-seven to forty-nine; in line 142, to increase the aggregate number of interpreters at $500 each from twenty-eight to twenty-nine; in line 143, to increase the appropriation for temporary interpreters from $600 to $1,100; and to increase the aggregate amount appropriated for this item, in lines 144 and 145, from $33,400 to $35,200.

The amendment was agreed to.

The Chief Clerk resumed the reading of the bill and concluded the reading of the following clause, on page 7, lines 146 to 152:

For pay of three Indian inspectors, at $3,000 each, $9,000: *Provided*, That after the commencement of the next fiscal year there shall be but three inspectors; and the provision of law requiring that each agency shall be visited and examined by one or more of the inspectors at least twice in each year is hereby repealed.

Mr. BOGY. I move to strike out this entire clause, from line 146 to line 152.

The PRESIDING OFFICER, (Mr. FERRY, of Michigan, in the chair.) That amendment will not be in order until the amendments of the committee have been acted upon.

The reading of the bill was continued. The next amendment of the Committee on Appropriations was in line 190, to increase the appropriation for the Arickarees, Gros Ventres, and Mandans, to be expended in goods, provisions, &c., from $75,000 to $85,000.

The amendment was agreed to.

The next amendment was after the word "dollars" in line 191, in the appropriation for the Arickarees, Gros Ventres, and Mandans, to insert the following proviso:

Provided, That $10,000 of said amount be available immediately: *Provided further*, That the Secretary of the Interior be, and he is hereby, authorized to use so much of this appropriation, not exceeding $775, as he shall deem just and proper, to reimburse L. B. Sperry and William Courtenay for the losses sustained by them by the destruction of certain personal property by fire at the Fort Berthold agency, Dakota, on the 12th day of October, 1874.

Mr. INGALLS. I would like to hear some explanation of this proviso.

Mr. WINDOM. The $10,000 added was to make up for a loss by fire which occurred last year. It was a loss of agency buildings and a loss of goods. The amount appropriated for Mr. Sperry and Mr. Courtenay stands upon a rather different basis from any other private claim. These gentlemen were agents at Fort Berthold, and at the time of the fire they neglected their own property and saved a large amount of Government property. In addition to that, Mr. Sperry, for whom the appropriation is made, has managed Indian

affairs so admirably for Fort Berthold and has saved the Government so large an amount of money that the committee thought he ought to be reimbursed for this loss.

Mr. INGALLS. The first clause of the proviso, from the statement of the Senator from Minnesota, is nothing but a deficiency appropriation, and it appears to me it should not be adopted by the Senate. With regard to the second clause of the proviso, it is in direct violation of a rule of the Senate which declares that no amendment shall be received upon an appropriation bill "whose object is to provide for a private claim, unless it be to carry out the provisions of an existing law or a treaty stipulation." If Mr. Sperry and Mr. Courtenay have suffered any loss in the service of the Government, it is a matter for which a bill might properly be introduced for their relief, be referred to a committee, and acted upon by the Senate; but it is certainly entirely out of place on an appropriation bill. Besides that, it is entirely unfair and unjust to a great many other private claimants who have equally meritorious claims and who would be glad to have them paid. I hope the Senate will not set the precedent of adopting this amendment in violation of an express rule of this Senate.

Mr. SARGENT. The resolution in reference to the meeting of the Senate hereafter at eleven o'clock was passed in the legislative day of yesterday. There is no legislative session of Thursday, but it was the legislative day of Wednesday when that resolution was passed. Consequently on Friday, that is to-morrow, we meet at eleven o'clock, according to the letter of the rule. It is very necessary that this should be understood, so that if we are to meet at eleven o'clock Senators may be here in order to make a quorum. I have no doubt myself as to the construction of the resolution, as it was adopted in the legislative day of yesterday.

The PRESIDING OFFICER. The Chair understood that when the Senate adjourned to-day it would meet on Friday at the usual hour, but thereafter at eleven o'clock.

Mr. SARGENT. The object was to meet on Friday at twelve o'clock. I will make that motion and would make it now, except that I want to make a remark in justification of the motion, which is that all of us have been here for nearly thirty hours. I am entirely worn down and have had but one hour's sleep since yesterday morning. I consider it a great prejudice to health to remain here, and no doubt it is the disposition of Senators to adjourn now and come back to-morrow at twelve o'clock. I think we shall have nothing that resembles factious opposition to the appropriation bills. I submit the motion that when the Senate adjourn to-day it adjourn to meet at twelve o'clock on Friday.

Mr. HAMILTON, of Maryland. And that we adjourn now.

Mr. CONKLING. May I make an inquiry for information? If we pass the order that when the Senate adjourn to-day it be to meet at twelve o'clock to-morrow, on what day does the resolution fixing the hour of meeting at eleven o'clock take effect?

The PRESIDING OFFICER. "From and after to-morrow"—on Saturday.

Mr. CONKLING. "From and after" the Chair would hold meant from the next day?

The PRESIDING OFFICER. It would take effect on Saturday. The Senator from California moves that when the Senate adjourn to-day it be to meet on Friday at twelve o'clock.

The motion was agreed to.

Mr. SARGENT. I now move that the Senate adjourn.

Mr. WINDOM. No; we are going on well.

Mr. SARGENT. No; we are not going on well. The Senate is not in a condition to consider legislation after this exhausting session.

Mr. WEST. The question is not debatable.

The PRESIDING OFFICER. The question is not debatable.

Mr. SARGENT. The clerks are entirely worn out, and the reporters have had no sleep.

The PRESIDING OFFICER. The question is not debatable. The question is on the motion to adjourn.

The question being put, there were on a division—ayes 24, noes 14.

So the motion was agreed to; and (at four o'clock and forty minutes p. m. of Thursday, February 18) the Senate adjourned till Friday, February 19, at twelve o'clock noon.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *February* 17, 1875.

The House met at eleven o'clock a. m. Prayer by the Chaplain, Rev. J. G. BUTLER, D. D.

The Journal of yesterday was read and approved.

ORDER OF BUSINESS.

Mr. RANDALL. I call for the regular order of business.

Mr. DAWES. I move that the House resolve itself into Committee of the Whole upon the tariff bill, and pending that motion I move that all debate upon the bill in Committee of the Whole be limited to three hours and a quarter.

Mr. LAWRENCE. Will not the gentleman allow me to report back some bills from the Committee on War Claims?

Mr. AVERILL and Mr. RANDALL called for the regular order.

The SPEAKER. The regular order of business is the joint resolution reported from the Committee on Elections, which they were authorized to report at any time; but pending that the gentleman from Massachusetts [Mr. DAWES] moves that the House resolve itself into Committee of the Whole on the tariff bill, and submits a motion to limit debate.

Mr. RANDALL. In case the motion of the gentleman from Massachusetts is voted down, will it not be in order to go into Committee of the Whole on the state of the Union on the Army appropriation bill?

The SPEAKER. A motion to go into Committee of the Whole is in order always.

Mr. RANDALL. And a motion to go into Committee of the Whole on an appropriation bill requires only a majority.

The SPEAKER. Certainly.

The question was taken on the motion of Mr. DAWES to limit debate; and on a division there were—ayes 58, noes 42; no quorum voting.

Tellers were ordered; and Mr. DAWES and Mr. WOOD were appointed.

The House divided; and the tellers reported—ayes 62, noes 65.

So the motion was agreed to.

The question recurred on the motion to go into Committee of the Whole on the tariff bill; and being put, there were—ayes 71, noes 64; no quorum voting.

Tellers were ordered; and Mr. DAWES and Mr. WOOD were appointed.

The House again divided; and the tellers reported—ayes 90, noes 56.

So the motion was agreed to.

TAX AND TARIFF BILL.

The House accordingly resolved itself into Committee of the Whole on the state of the Union, (Mr. HALE, of Maine, in the chair,) and resumed the consideration of the special order, being House bill No. 4680, to further protect the sinking fund and provide for the exigencies of the Government.

The CHAIRMAN. By order of the House all general debate upon this bill will be limited to three hours and a quarter. The gentleman from Illinois [Mr. BURCHARD] is entitled to the floor.

Mr. BURCHARD. Mr. Chairman, for several years past the agreeable duty has fallen to members of Congress to reduce taxation. We are presented for the first time since the close of the war of the rebellion with a bill reported from the Committee on Ways and Means proposing to increase instead of lessen the revenues of the Government. The bill does not increase the taxation upon the country above what it has been during the past six years. Prior to 1870 and 1872 there was collected from customs revenue over $200,000,000, and a larger amount from internal revenue than this bill will give. The proposition is to collect as large an amount as has been heretofore collected from some of the same items or upon different items from those upon which duties are imposed.

The question at once occurs: Is there any necessity for raising more revenue? Are the receipts in the Treasury or the receipts that may be expected to come into the Treasury during the next fiscal year and from year to year sufficient to meet what should be the proper expenditures of the Government? This will depend upon the amount of necessary expenditures as well as the receipts. The Secretary of the Treasury has sent to Congress in the report presented for the fiscal year 1874 an estimate of the necessary expenditures for the next fiscal year, the year 1876. His estimate is that the expenditures will be $272,778,000. The estimate made by him of receipts are $293,000,000, without any provision for the sinking fund, giving a deficit after paying $32,140,914 for the sinking fund of $11,920,914. In my judgment the duty of this House is not to see what is required for the Government for this fiscal year ending 1875, so much as to look into the future and to examine as to what is required for the necessities of the Government for the next fiscal year. The Secretary shows in the actual receipts for one quarter and in the estimated receipts for the remaining three-quarters of the present fiscal year there will be a deficit of $22,093,748.43 for the present fiscal year. If we attempted to provide for the sinking fund as the law requires, it would be impossible, Mr. Chairman, in my judgment, to impose taxation that would meet the deficit for the sinking fund for the present year. If we attempted to impose taxation to meet the probable deficit of $22,000,000, it would require three times the increased revenue that will be provided by this bill for the next four months. But how much is to be provided for the next fiscal year; and to that I wish to call the attention of the House.

The Secretary of the Treasury, in the same report to which I have already called attention, after speaking of the reductions made by the last Congress, recommends to us economy. He says that he would impress upon Congress the importance of the most rigid economy in the public expenditures. The general depression following the late financial panic has compelled the people to lessen their individual expenditures, and the Government should not be slow to follow their example.

The present condition of the revenues requires the utmost economy in public expenditures, and the most careful scrutiny of the estimates