Mr. GARFIELD. If my colleague has ever in his life heard of such a thing as an *ex parte* proceeding, he might take what he has read as an example and an answer to his suggestion.

Now I say that the man who reads this exhibit of the proceedings and the methods by which this prosecution has been brought about, the hurrying of a citizen forward and loading him with excessive bail and rushing him into trial almost immediately and the whole course of that proceeding—I say the man who reads it in the light of current history cannot fail to be impressed with this truth: that an ulterior purpose lies behind, and this is but the cover and the cloak for a raid to be made for political purposes in the name of a party upon the title of the President to the office he holds. It is in view of this that the people whom I try to represent, and whom to some extent I know I do represent, feel that their efforts at pacification have not been met in the spirit in which they were offered, and that if this sort of proceeding goes forward you not only cripple the President in his efforts to bring about that pacification, but you cripple every man who attempts to sustain him.

If you desire to rob him of whatever supports he has had hitherto, the course you are taking is best calculated to do that thing. I say these things not to arouse old antagonisms, but to deplore the course you are pursuing. I say them as much in a spirit of sincere regret as I ever uttered a sentence in my life. The hope that we were coming back to each other this course of conduct is tending rudely to dissipate; the hope that we should see eye to eye, and stand hand to hand again in the old fellowship is weakening day by day, and will disappear, if this policy and this line of conduct be pursued. It is, if possible, to prevent such a result that I have attempted to state, in this summary way, how these proceedings appear to me and to my associates.

This is all I desired and more than I intended to say.

Mr. HARRIS, of Virginia. I move that the House do now adjourn.

Mr. CHALMERS. I should like to ask the gentleman from Ohio a question before he takes his seat.

Mr. CLYMER. I ask the gentleman from Virginia not to press his motion just now. I desire only five minutes. I would be very glad to say some few things in reply to the gentleman from Ohio.

Several MEMBERS. You will have the floor to-morrow.

Mr. CLYMER. I do not wish to impose on the patience of the House, and if such be the wish of the House I will yield for a motion to adjourn.

Mr. WHITTHORNE. I move that the House do now adjourn.

LEAVE OF ABSENCE.

Pending the motion to adjourn,

By unanimous consent, leave of absence was granted to Mr. KEIGHTLEY, for one week, on account of sickness.

The motion to adjourn was then agreed to; and accordingly (at five o'clock p. m.) the House adjourned.

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk, under the rule, and referred as stated:

By Mr. BICKNELL: The petition of William R. Goldsmith and others, for a post-route from Elizabeth to Buena Vista, Indiana—to the Committee on the Post-Office and Post-Roads.

By Mr. BRIGGS: The petition of Albert Smith & Brother, citizens of Peterborough, New Hampshire, that a pension be granted to Olivia Whiting—to the Committee on Revolutionary Pensions.

By Mr. CONGER: The petition of John Howard, Edward Fitzgerald, and 150 other citizens of Port Huron, Michigan, for the passage of laws to protect the food fishes of the great lakes and the waters connected therewith from destruction by improper modes of fishing and other means—to the Committee of Ways and Means.

By Mr. ELLSWORTH: The petition of C. W. Howland and 62 others, of Maple Rapids, Michigan, that the tariff duties on wool remain unchanged—to the same committee.

By Mr. FENN: The petition of citizens and the board of commissioners of Lemhi County, Idaho, recommending the erection of a military post at Lemhi Indian agency, Idaho Territory—to the Committee on Appropriations.

By Mr. FRYE: The petitions of B. A. Neal and 80 others, shipowners of Maine; of the Inland Seaboard Coasting Company and Independent Ice Company; and of John S. Emory & Co., and 75 others, shipowners, of Massachusetts, for the improvement of Potomac River—to the Committee on Commerce.

By Mr. GARFIELD: The petition of Arthur W. Irving, for a pension—to the Committee on Invalid Pensions.

By Mr. GAUSE: Papers relating to the claims of William Porter and William S. and Anne Turner—to the Committee on War Claims.

By Mr. HASKELL: The petition of citizens of Crawford County, Kansas, for the retention of the tariff on castor beans and their products—to the Committee of Ways and Means.

By Mr. HATCHER: The petition of the president, professors, and students of Cape Girardeau Normal School, Missouri, for legislation promotive of public education—to the Committee on Education and Labor.

By Mr. HUBBELL: The petition of George McAllister and 101 others, of Beacon, Michigan, against any change in the present duties on imports—to the Committee of Ways and Means.

By Mr. HUMPHREY: The petition of the Horticultural and Agricultural Societies of Missouri, for a uniform rate of interest—to the Committee on the Judiciary.

By Mr. HUNTON: The petition of citizens of Loudoun County, Virginia, that the duty on wool remain unchanged—to the Committee of Ways and Means.

By Mr. JONES, of Ohio: The petition of C. & G. Cooper & Co., against the imposition of a higher rate of duty on wrought-iron lap-welded boiler-flues—to the same committee.

By Mr. KEIGHTLEY: The petition of N. M. Pugsley, J. J. Woodman, and 150 other citizens of Van Buren County, Michigan, against any reduction in the duties on foreign wool—to the same committee.

Also, the petition of A. P. Shepardson and 57 others of Saint Joseph County, Michigan, of similar import—to the same committee.

By Mr. KETCHAM: Papers relating to the claim of Lieutenant F. H. E. Ebstein—to the Committee on Military Affairs.

By Mr. KIDDER: A paper relating to the establishment of a post-route from Springfield, via Marshton, Lone Tree, George Henry's Store, Caddsville, to Middletown, Dakota Territory—to the Committee on the Post-Office and Post-Roads.

By Mr. LIGON: The petition of citizens of Macon County, Alabama, for aid to build the Texas Pacific Railroad from Vicksburgh to San Diego, California—to the Committee on the Pacific Railroad.

By Mr. McMAHON: The petition of Green Wilson, for the removal of the charge of desertion—to the Committee on Military Affairs.

By Mr. MORGAN: Papers relating to the claim of Michael C. Henderson—to the Committee on War Claims.

By Mr. MORRISON: The petition of C. W. Hilyard and other citizens of Belleville, Illinois, for the encouragement of rifle practice—to the Committee on Military Affairs.

By Mr. O'NEILL: The petition of Mrs. Eliza H. Frailey, for an increase of pension—to the Committee on Invalid Pensions.

By Mr. PAGE: The petitions of W. W. Theobald, publisher of the Alameda County Independent; of J. A. Filcher & Co., publishers of the Placer Herald; of William E. Dorgie, publisher of the Oakland Herald; and of C. B. Higby, publisher of the Calaveras Chronicle, Calfornia, for the abolition of the tariff duty on type—to the Committee of Ways and Means.

By Mr. POLLARD: Resolutions of the North Missouri Wool-Growers' Association, against a reduction of the tariff on wool—to the same committee.

By Mr. REA: The petition of Elizabeth A. Edwards and other citizens of Maryville, Missouri, for an amendment to the Constitution prohibiting the several States from disfranchising United States citizens on account of sex—to the Committee on the Judiciary.

By Mr. ROBINSON, of Indiana: The petitions of S. D. Wisehart and 67 other citizens of Millville; of T. W. Gronendyke and 65 others, of Mount Summit; and of C. C. Stewart and 25 other citizens, of Springport, Indiana, against any change of the duty on flaxseed and linseed oil—to the Committee of Ways and Means.

By Mr. STONE, of Michigan: The petition of David Devendorf and 355 other citizens of Kent County, Michigan, against any reduction of the duties on foreign wool—to the same committee.

By Mr. TURNEY: The petition of citizens of the twenty-first congressional district of Pennsylvania, against a reduction of present tariff rates and against taxing tea and coffee—to the same committee.

By Mr. WATSON: A paper relating to the establishment of a post-route from Kinzua, Pennsylvania, via Eden, to Degolier—to the Committee on the Post-Office and Post-Roads.

By Mr. WELCH: The petition of the Southern Nebraska Wool-Growers and Sheep-Breeders' Association against a change of duties on wool and woolen goods—to the Committee of Ways and Means.

By Mr. WILLIAMS, of New York: The petition of C. G. Hall, J. Hopkins, and others, against any change in the tariff—to the same committee.

Also, the petitions of John Ward and of Henry Smith, H. D. Graves, and others, for the amendment of the pension laws—to the Committee on Invalid Pensions.

By Mr. WILLIAMS, of Wisconsin: The petition of citizens of Buffalo, New York, vessel-owners, for the establishment of a lake-coast light and fog-signal station at Racine Point, Lake Michigan—to the Committee on Commerce.

By Mr. WILLIAMS, of Oregon: The petition of citizens of Marion County, Oregon, for an extension of time for the completion of the Northern Pacific Railroad—to the Committee on the Pacific Railroad.

Also, the petition of Cowlitz Company, Washington Territory, of similar import—to the same committee.

By Mr. WRIGHT: The petition of Alice B. Munroe, for a pension—to the Committee on Invalid Pensions.

IN SENATE.

WEDNESDAY, *February* 20, 1878.

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

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

PETITIONS AND MEMORIALS.

Mr. MATTHEWS presented three petitions of S. E. Blaisdell and

others, manufacturers of and dealers in carriage-wheels, of Chicago, Illinois, and the petition of W. O. Barr & Co., of Hagerstown, Indiana, and others, business men, of Ohio and Indiana, engaged in the manufacture of carriage-wheels, praying for an extension of letters-patent granted to James D. Sarven for an improvement in carriage-wheels; which were referred to the Committee on Patents.

Mr. FERRY presented a memorial of George McAllister and 107 others, workingmen, of Beacon, Michigan, engaged in the mining of iron ore, remonstrating against any reduction of the duties on foreign imports and against the reimposition of the war tax on tea and coffee; which was referred to the Committee on Finance.

Mr. SPENCER presented the petition of Tilman Powell, late of Company I, First Regiment Alabama Cavalry, praying for the passage of a law removing charges of desertion against him so as to enable him to draw arrears of pay claimed to be due him for services rendered; which was referred to the Committee on Military Affairs.

Mr. CAMERON, of Wisconsin, presented a memorial of the Legislature of Wisconsin, in favor of the establishment of a mail route from Friendship, in the county of Adams, to Liberty Bluffs, in the county of Marquette, in that State; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. BAILEY presented the petition of W. B. Miller and 18 others, citizens of Memphis, Tennessee, praying that a proper amount of silver may be coined into dollars of the present value of gold, and that the same may be declared legal tender to the amount of $20; which was referred to the Committee on Finance.

Mr. HARRIS presented the petition of Joseph C. Hodges, of Jefferson County, Tennessee, praying to be compensated for certain horses and mules taken from him by the United States Army; which was referred to the Committee on Claims.

Mr. BECK presented the petition of John G. Newlie, of Cumberland Gap, Kentucky, praying compensation for wood taken by United States troops and rent of premises occupied by the same during the late war, and praying that the papers on file in the Quartermaster-General's Office be called for and made a part of the petition; which was referred to the Committee on Claims.

Mr. HOAR presented a memorial of J. L. O'Brien and others, workingmen and women, of Cherry Valley, Worcester County, Massachusetts, engaged in the manufacture of woolen goods, remonstrating against a reduction of the duties on foreign imports and against the reimposition of the war tax on tea and coffee; which was referred to the Committee on Finance.

Mr. ALLISON presented resolutions of the Board of Trade of Burlington, Iowa, against the passage of a law imposing a tax on incomes; which was referred to the Committee on Finance.

He also presented a memorial of Cyrus Snyder and others, citizens of Iowa, remonstrating against any change in the present rate of duties on linseed and linseed oil imported into the United States; which was referred to the Committee on Finance.

Mr. MAXEY presented the petition of E. Kirby Smith, of Tennessee, praying for the removal of his political disabilities; which was referred to the Committee on the Judiciary.

Mr. INGALLS presented the petition of Elisha M. Luckett, late second lieutenant Company B, Second Regiment Pennsylvania Volunteers, praying to be allowed arrears of pension; which was referred to the Committee on Pensions.

Mr. WALLACE presented a resolution of the select and common council of Erie, Pennsylvania, in favor of conveying to the United States certain real estate in that city upon condition that the Government will proceed to construct thereon buildings for the accommodation of the United States courts and other offices of the United States; which was referred to the Committee on Public Buildings and Grounds.

REPORTS OF COMMITTEES.

Mr. SARGENT, from the Committee on Naval Affairs, to whom was referred the bill (S. No. 777) to organize a life-saving and coast-guard service, reported it with an amendment.

He also, from the same committee, to whom was referred the joint resolution (S. R. No. 14) for the purchase of copies of the "General Register of the Navy and Marine Corps of the United States," reported it with an amendment.

Mr. DAWES, from the Committee on Public Buildings and Grounds, to whom was referred the bill (S. No. 770) fixing the compensation of the telegraph operators of the Senate and House of Representatives, asked to be discharged from its further consideration and that it be referred to the Committee on Appropriations; which was agreed to.

BILLS INTRODUCED.

Mr. SPENCER asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 779) for the relief of Tilman Powell; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. OGLESBY asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 780) to provide for indemnity to the several States under the acts of Congress approved March 2, 1855, and March 3, 1857, relating to swamp and overflowed lands; which was read twice by its title, and referred to the Committee on Public Lands.

Mr. ARMSTRONG (by request) asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 781) to revive and amend an act entitled "An act for the final adjustment of private land claims in the States of Florida, Louisiana, and Missouri, and for other purposes;" which was read twice by its title, and referred to the Committee on Private Land Claims.

Mr. BAYARD asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 782) to authorize bondholders and other creditors of railroad corporations to elect receivers in suits in equity pending in courts of the United States; which was read twice by its title, and referred to the Committee on the Judiciary.

Mr. WALLACE asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 783) granting a pension to Austin B. Snyder; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

PAPERS WITHDRAWN AND REFERRED.

On motion of Mr. WADLEIGH, it was

Ordered, That the papers in the case of Lieutenant Edwin R. Clark be taken from the files and referred to the Committee on Military Affairs.

On motion of Mr. ALLISON, it was

Ordered, That the petition of Caroline R. Hart, with the accompanying papers, be taken from the files and referred to the Committee on Claims.

THE HOG CHOLERA.

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

Resolved, That the Commissioner of Agriculture be requested to furnish to the Senate such information and facts as may be in his possession, relative to the disease of hogs, commonly called "hog cholera," with such suggestions as he may deem pertinent.

The Senate proceeded to consider the resolution.

Mr. EDMUNDS. I suggest to the Senator that the constant, and, I think, the right practice is in respect of Department officers to have the resolution mandatory, so that they are "directed" instead of "requested."

Mr. COCKRELL. Then let it be changed in that respect.

The VICE-PRESIDENT. The resolution will be so modified.

The resolution was agreed to.

ORDER OF BUSINESS.

Mr. INGALLS. There are two or three private pension bills on the Calendar, and if there is no other business to present, I ask to have them considered.

Mr. EDMUNDS. I do not wish to have the unfinished business displaced.

Mr. INGALLS. No, sir; that is not my purpose.

The VICE-PRESIDENT. The unfinished business will come up at the end of the morning hour.

ELIZABETH D. STONE.

Mr. INGALLS. I move to take up Senate bill No. 285.

The motion was agreed to; and the bill (S. No. 285) granting a pension to Elizabeth D. Stone was considered as in Committee of the Whole. It directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Elizabeth D. Stone, widow of Brinton Stone, late an acting assistant surgeon in the United States Navy.

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

MARY EMMA BAPTIST AND CHILD.

Mr. INGALLS. I move to take up Senate bill No. 686.

The motion was agreed to; and the bill (S. No. 686) granting a pension to Mary Emma Baptist and Daisy Baptist, minor child, was considered as in Committee of the Whole. It directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the names of Mary Emma Baptist, widow of John Baptist, private Company A, Twenty-fourth Regiment United States Colored Troops, and Daisy Baptist, minor child of John and Mary Emma Baptist.

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

ANNA L. ROBBINS.

Mr. INGALLS. I move to proceed to the consideration of Senate bill No. 697.

The motion was agreed to; and the bill (S. No. 697) granting a pension to Anna L. Robbins was considered as in Committee of the Whole. It directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Anna L. Robbins, widow of Eliphalet H. Robbins, late first lieutenant of Company A, Third Massachusetts Cavalry.

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

WILLIAM B. WHITING.

Mr. INGALLS. Senate bill No. 647, granting a pension to William B. Whiting, was laid over a day or two since on the request of the Senator from California, [Mr. SARGENT.] I should like to have that bill acted on at the present time, and I make a motion to that effect.

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

Mr. WITHERS. This bill was laid over the other day at the suggestion of the Senator from California, who desired to look into the

matter further. I was absent at the time temporarily, and on account of my absence the bill was passed over.

Mr. SARGENT. The bill came up in its regular order on the call of the Calendar, and I objected to its consideration on account of the absence of the Senator from Virginia, [Mr. WITHERS.] I will state now, as I then stated, that the facts set forth in the report do not convey to my mind an intelligible history of the case. I have written to the Secretary of the Navy to get the history of this case. The bill raises the question, in my judgment, whether an officer on the retired list receiving three-fourths of his sea-pay, an enormous pension, is entitled, nevertheless, to another pension for the disability for which he was put on the retired list. That is a very grave question, and involves the expenditure of millions of money by the Government; and it would hardly seem in the line of charity. Considering the gravity of the principle of the case I want to be well informed of the facts, and for that reason I am not now, and shall not be, until I get an answer to my letter from the Department giving the record of this gentleman, prepared to argue the case as I desire to argue it.

Mr. WITHERS. Then of course I consent to the bill going over, if the Senator is not ready now to go into an argument of the case. I do not desire to have it passed until he is ready to argue it.

The VICE-PRESIDENT. The bill will go over by consent.

FRANKLIN INSURANCE COMPANY.

Mr. DORSEY. I move that the Senate proceed to the consideration of the bill (S. No. 611) to extend the charter of the Franklin Insurance Company of the city of Washington.

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

The bill was reported from the Committee on the District of Columbia with an amendment, to add to it the following proviso:

Provided, That Congress reserves the right to alter, amend, or repeal this act.

Mr. HOAR. Mr. President, I desire to inquire of the chairman of the Committee on the District of Columbia what sort of an insurance company this is, and whether it is a company undertaking to do business that is confined entirely to the District?

Mr. DORSEY. This insurance company was organized by an act of Congress in 1818 for twenty years. The charter was extended in 1838 for twenty years more, and it was further extended in 1858 for twenty years more. During all that time I am informed that the company has been doing business only in the District of Columbia and has conducted its business admirably, that it is made up of the very best business men of this city, has paid its losses, and is in all respects a most respectable company. The corporators ask now for a further extension of twenty years, which I believe has been granted them three times before. The Committee on the District of Columbia see no possible objection to the bill, especially with the amendment at the close.

Mr. HOAR. I am not disposed to object to the continuance of the life of a District insurance company which has been in existence so long and which has proved itself a sound, solvent, and well-managed company doing business in this District; but I am entirely opposed to the creation of any new company or the continuance in existence of any old company created for the purpose of doing an insurance business throughout the country under an act of Congress to have their headquarters in the District of Columbia, for the reason that the scrutiny which is requisite to the safety of the public against these companies is totally impossible under any existing regulations of law, and a sufficient scrutiny is very improbable under any law that Congress is likely to pass. I put the question for that reason. Everybody knows that this District has become an Alsatian harbor of refuge for broken-down men engaged in the life and the fire insurance business, who get up insolvent companies and plunder the public; but the statement of the chairman of course is entirely satisfactory as to this particular company.

The VICE-PRESIDENT. The question is on the amendment reported by the committee.

The amendment was agreed to.

Mr. EDMUNDS. Mr. President, I should like to ask the chairman of the Committee on the District of Columbia whether there is any provision in the existing charter or in the renewals of it for any individual liability on the part of the directors or the stockholders, as is the modern doctrine in respect of all corporations?

Mr. DORSEY. I believe there is no personal liability in this District in respect to the stockholders in an incorporated company, and I believe in this case there is no special liability named.

Mr. EDMUNDS. I see by the sixth section of the original act, which I assume this pamphlet in my hand to contain a correct copy of——

Mr. DORSEY. It does. I received it from the president and compared it with the law.

Mr. EDMUNDS. I have no doubt it is correct. I see that it provides:

That the members of the company shall not be liable for any loss, damage, or responsibility, other than the property they have in the capital or funds of the company, to the amount of the shares respectively held by them, and any profits arising therefrom not divided.

When we grant or extend charters in the States now to an insurance company or any other stock company we provide for an individual liability in case the debts of the company shall exceed the amount of its capital stock and also provide for an individual liability of every director or anybody else who shall assist or participate in the withdrawal of any part of the capital stock. It appears to me, as we are going to set this company on foot again for twenty years, that these salutary provisions which experience has proved to be wise and necessary ought to be inserted, and I would suggest to my friend, the chairman of the committee, that he let the bill go over and prepare amendments of that character.

Mr. DORSEY. I have no objection.

Mr. EDMUNDS. I do not know anything about it, but it ought to go over as a matter of security.

The VICE-PRESIDENT. The bill will go over.

GRACE AIKINS.

Mr. KIRKWOOD. I move that the Senate proceed to the consideration of Senate bill No. 704 granting a pension to Grace Aikins.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill. It directs the Secretary of the Interior to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Grace Aikins, widow of William R. Aikins, late a private of Company A, Eleventh Iowa Infantry.

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

COMPENSATION OF POSTMASTERS.

Mr. FERRY. I move that the Senate take up for consideration the bill (S. No. 596) to regulate the compensation of postmasters, and for other purposes.

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

The VICE-PRESIDENT. The pending question is, will the Committee of the Whole agree to the amendment offered by the Senator from Maine, [Mr. HAMLIN,] which will be reported.

The CHIEF CLERK. It is proposed to insert as section 6 the following:

SEC. 6. That the provisions of the fifth and sixth sections of the act entitled "An act establishing post-routes, and for other purposes," approved March 3, 1877, for the transmission of official mail matter, be, and they are hereby, extended to all officers of the United States Government, and made applicable to all official mail matter transmitted between any of the officers of the United States, or between any such officer and either of the Executive Departments or officers of the Government, the envelopes of such matter in all cases to bear appropriate indorsements containing the proper designation of the office from which the same is transmitted, with a statement of the penalty for their misuse. And the provisions of said fifth and sixth sections are hereby likewise extended and made applicable to all official mail matter sent from the Smithsonian Institution: *Provided*, That this act shall not extend or apply to pension agents or other officers who receive a fixed allowance as compensation for their services, including expenses for postage.

Mr. HAMLIN. That amendment, I believe, if adopted, will carry out by law just what is now practiced by the Government. In other words, the Government now uses official envelopes in certain cases and supplies stamps in certain other cases. If this amendment shall be adopted, it will supply official envelopes to all persons entitled to use them, thus saving the expense of printing the stamps. The amendment contains one other provision: it allows the publications of the Smithsonian Institution to be sent free through th ails like public documents. At the last session of Congress, when the right to send public documents free through the mails under the frank of a member of Congress was granted, the Smithsonian publications, I think, were omitted by mistake. It is simply putting the Smithsonian publications in the same category with other public documents, putting them just where they were formerly.

It was suggested yesterday, and very truthfully, that a very large proportion of the postage of Senators was as much of an official character as though it emanated from the correspondence of a Department. That is true. It was suggested that members of Congress should equitably have the same right of transmitting official letters as Government officers. The difficulty in undertaking to draw distinctions between what is an official communication which a Senator may receive, is so great, and the amount of private correspondence, that which might be purely private compared with that which might be official, would be so small, that I suggested if you make the law applicable to Congress at all, the better thing was to do it clearly and to restore the privilege of members precisely to what it was before the franking privilege was repealed. I voted for the repeal of the franking law. I should do so again to-day if you included with it your public documents. The abuse never existed in relation to the frank of members to the extent or any degree of that extent which has existed among Government officials when the stamp has been gratuitously under the law furnished to all Government officials. But the evil under the old system, in my apprehension, and which led me to vote for its repeal, was the vast amount of printed matter that loaded down your mails and incurred a vast expense for unnecessary and useless things that were scattered abroad. I believed a great saving could be made by stopping the publication of such matter; and that it was, and that alone, which induced me to favor the repeal of the franking privilege. But at the last Congress, unwisely, as I thought then and as I think now, Congress restored the frank to all public documents, and we are printing them by the tens of thousands. That being the case, I think equitably the whole thing should be restored; and, for that purpose, I have prepared an amendment for the consideration of the Senate, which I now offer.

The VICE-PRESIDENT. Is it an amendment to the amendment already pending?

Mr. HAMLIN. It is an amendment providing an additional section, 7.

The VICE-PRESIDENT. The amendment pending would be the first in order to be disposed of.

Mr. HAMLIN. I think the question should be first taken on the section which I now propose.

The VICE-PRESIDENT. The amendment now proposed will be reported.

The CHIEF CLERK. It is proposed to insert as an additional section:

That Senators, Representatives, and Delegates in Congress, the Secretary of the Senate and Clerk of the House of Representatives, may send or receive free through the mails all written or printed communications not exceeding two ounces in weight; and the name of each Senator, Representative, Delegate, Secretary of the Senate, or Clerk of the House of Representatives shall be written upon all letters or communications by them respectively sent through the mails.

Mr. HAMLIN. I omitted to put in the Vice-President. I ask the Clerk to insert "the Vice-President."

The VICE-PRESIDENT. That modification will be made.

Mr. HAMLIN. I wish to say to Senators that the limitation of two ounces is the old limitation, and I thought it best to readopt it.

Mr. FERRY. Mr. President, I ask my colleague whether it would not be best not to embarrass the passage of this bill, which is of so much importance to arrest these frauds, and let this amendment be offered to the bill for the classification of mail matter, which is now pending before the committee? I am satisfied that it will interfere with the early passage of the bill. If not here it may embarrass it in the other House; and I should be unwilling to do anything that would arrest the passage of the bill or hinder it so that it may not soon become a law. Every Senator knows the importance of this measure, and if it is to be delayed by appending to it the restoration of the franking privilege, I think the revenues of the Government will suffer more than can well be justified. I appeal to my colleague to withhold the amendment which he has now suggested until the other bill (Senate bill No. 539) for the classification of mail matter, wherein the rates of postage are somewhat regulated, is before the Senate. His amendment would be more applicable to that bill, and I trust the Senator will defer his amendment until that bill is before the Senate, when he can take the sense of the Senate upon his proposition.

Mr. HAMLIN. I should be very glad to accommodate the chairman of the committee, but I think it is very appropriate in connection with this legislation, which seeks to regulate the transmission of mail matter by the Departments, to let that of members of this body and the other House go in the same connection. If the House shall not see fit to adopt the provision, they can strike it out, and the Senate may then consent to do so. I think that on the other hand it will strengthen and not weaken the bill; I therefore propose to let it stay. I wish to make a further modification in the amendment. I omitted the President as well as the Vice-President; say "the President, Vice-President," and then go on as it is in the amendment.

Mr. SAULSBURY. I should like to ask the Senator from Maine who proposes this amendment if I understood it correctly. I understand that the purport of the amendment is to restore the franking privilege in full as it existed some years ago?

Mr. HAMLIN. Precisely.

Mr. SAULSBURY. That is, that the President and Vice-President, members of Congress, &c., may send letters under the franking privilege and receive letters under it.

Mr. HAMLIN. That is it, sir.

Mr. SAULSBURY. I think we have already gone far enough in that direction. I think we had better pay our postage on our letters, and send out, as we are now allowed to do, what is published by authority of Congress under the frank. That I was in favor of; that I voted for; that I am still in favor of; but the postage on our private correspondence we had better attend to ourselves. For that reason I shall vote against the amendment.

Mr. EDMUNDS. I wish to say just one single word about this proposition. I voted against the repeal of the right of members of Congress to frank their letters when the repealing act passed. I shall vote for this amendment to restore it. The ground upon which I do it is not to have the public pay for the private correspondence of members in any proper sense of privacy, but on the ground that the public should pay as it ought to pay in my opinion, if there is any paying about it, because it costs nothing practically to send it through the mails. It is a tax upon members of Congress instead of a payment by them; and the Government should carry through its organized mails the correspondence between members of Congress and the citizens of the United States. This is a Government of the people, and the citizens of the United States ought at all times to have the freest and most complete communication with their representatives through the mails by letters of inquiry, of advice, of remonstrance, inclosing petitions, asking about the state of bills or public policy—everything that enters into the interest and happiness of a free and self-governing people. In my opinion it is saving at the spigot and wasting at the bung, as the phrase is, in a very marked way, to declare that Senators and members of Congress shall be taxed for their necessary correspondence with their constituents relating to public affairs. Of course, a gentleman sometimes writes a private letter to his lady-love, or to his wife, or to his clerk at home, or to whoever it may be; but everybody knows that ninety-nine in one hundred of all the letters that the members of this body send and receive are upon public subjects; and that sort of correspondence instead of being taxed, in my opinion, ought to be encouraged.

Mr. LAMAR. I wish to say, Mr. President, that I shall vote for this amendment for the reason that, as a member of Congress, I have very little private correspondence. The correspondence of a member of Congress is almost entirely public, and I think that the expense ought not to fall upon a Senator or a Representative.

Mr. COCKRELL. I think with the Senator from Michigan that this amendment ought not to be added to this bill. This bill is intended to relieve the Post-Office Department from a gross wrong which is being perpetrated upon it daily. I trust that the bill will pass in its present form. I shall vote against this proposed amendment.

Mr. WALLACE. I would vote for this amendment if it were confined exclusively to official business, but I can see no reason why the franks of members of Congress shall be used in session and out of session with reference to political transactions between them and their constituents, or with reference to private business. If the amendment be framed so as to relate exclusively to the official communications of members of Congress, I should think it a proper one to ingraft upon the law. Otherwise I propose to vote against it.

The VICE-PRESIDENT. The question is on the amendment proposed by the Senator from Maine, [Mr. HAMLIN.]

The question being put, there were on a division—ayes 37, noes 15.

Mr. COCKRELL and Mr. WALLACE called for the yeas and nays, and they were ordered.

Mr. SAUNDERS. Let the amendment be reported again.

The VICE-PRESIDENT. The amendment will be reported at length, as modified.

The CHIEF CLERK. It is proposed to insert as an additional section the following:

SEC. 6. That the President and Vice-President of the United States, Senators, Representatives, and Delegates in Congress, the Secretary of the Senate and Clerk of the House of Representatives may send or receive free through the mails all written or printed communications not exceeding two ounces in weight; and the name of the President and Vice-President, and of each Senator, Representative, Delegate, Secretary of the Senate, or Clerk of the House of Representatives shall be written upon all letters or communications which they respectively send through the mails.

Mr. MORRILL. When this measure was originally introduced I thought that it was a most magnificent sham; that, so far as the Government itself was concerned, nothing would be made by repealing the franking privilege. The Government has made nothing. But I did think that we might combine with that abolition a system by which the expense of printing public documents would be largely diminished. I had strong hopes that we might adopt the French and English system of publishing documents at their actual cost and of selling them to all those who might desire them, with perhaps a few exceptions of documents that are worthy of being printed by Congress and distributed gratuitously among the people. As long as I have any hope of accomplishing that object I shall adhere to my opinions and vote against the restoration of the franking privilege. I confess my hope has been growing dim year by year, seeing little or nothing done in the direction that I should desire to see congressional action take; but at the same time I shall now vote against the restoration.

Mr. HOWE. Mr. President, as the yeas and nays have been ordered by the Senate I want to say one word. I feel about this matter of franking precisely as I felt when we abolished the right, but I think differently on the subject and I shall vote directly the reverse of the way I voted at that time. I voted to abolish what was called the franking privilege. I did not want then and I do not want now the Government to be put to the expense of carrying my correspondence free. I am willing to pay for that. I am not willing now and I never was willing to pay for carrying the correspondence of all my constituents. I thought when we abolished that right that all who corresponded with me on their business would pay not only for the transmission of their letters to me, but for the transmission of mine to them. I am perfectly willing to transact their business here and employ a large portion of my time in doing it; but, while I accept that duty, I do not want to be charged, and I do not think it is right that representatives should be charged, with the cost of the postage on the correspondence involved in it. My experience has not justified the expectation I had at that time. I should be perfectly willing to accept the suggestion of the Senator from Pennsylvania and to exclude the private correspondence of Senators from this privilege, but for one consideration: it will always raise this question, whether the letter you send is on private business or on public business.

Mr. WALLACE. Would not the Senator from Wisconsin err on the side of the Government and pay the postage?

Mr. HOWE. I would not have any question about that myself; I would always know exactly how to discriminate; but I am afraid the postmasters, and I am afraid the public, and occasionally a newspaper, would be found that did not judge precisely as I did on that subject, and I do not want to court any such issue. I would even rather the Government would pay postage on the whole than to meet such an issue as that; and therefore I cannot accept that suggestion, as reasonable as it really is. Instructed by a few years of rather severe experience, I have concluded to give up the *rôle* of reformer and vote for this amendment.

Mr. SAULSBURY. Mr. President, when the question of the repeal

of the franking privilege was up I thought it was an unwise measure. I thought then and I think now it was a political movement. The Philadelphia convention which renominated President Grant incorporated in the platform a provision declaring in favor of the repeal of it, and that was the secret, in my opinion, of the repeal of the franking privilege. But we have repealed it, and we have got used to the new order of things, and I am in favor of adhering to it.

Now, in reference to the proposition of the Senator from Pennsylvania, we might, perhaps, if we sat down to carefully calculate whether that was a public matter or not, be able to determine and discriminate; but if we get in the habit of putting franks on letters we shall put them on letters that do not pertain to the public business, and I would therefore rather not put them on any. We can pay our postage; and if our constituents write to us upon unimportant matters, let all do as I frequently do, not answer their letters. That is my view. Send out every document that is published for public information by Congress by means of the frank, and let us keep up our own correspondence at our own expense.

Mr. SARGENT. Mr. President, I would vote for this amendment upon another bill or by itself. I would vote for it if it were put on the bill suggested by the Senator from Michigan, [Mr. FERRY.] I do not desire to put it here because it will lead to controversy, or I am afraid it will, and I believe the bill embodies a reform very necessary to be worked for the benefit of the revenue. I am not deterred in any vote I might give because I think the legislation at all questionable. If there is anything in burdening the mails, it has been done by previous legislation by enacting that everything that we print shall go free. I think that that is right. We receive some five hundred and more copies of the Agricultural Report. I get mining reports, reports of Hayden's expeditions, and other books intensely interesting to my constituents, and they write to me continually for those books and have especially done so during the period that the franking privilege has been abolished, and I have found that my postage expenses amounted to $10, $20, $30 a week as it might be in order to send these books, interesting to them, interesting to me only so far as I was able to gratify them. I thought that if the Government went to the expense of compiling them and printing them, it ought also to be at the expense of circulating them, and that it was no part of a Senator's duty to pay for circulating those documents.

Now I really do not believe that it is the part of a Senator to pay the postage on an enormous mass of correspondence which he is compelled to keep up. My constituents, and I have no doubt the constituents of other Senators, write upon tariff legislation, inquire with reference to the prospect of the passage of the silver bill. They write and want to know why a patent for a mining claim has not been issued; they desire to know about various questions of land, multifarious questions, requiring labor and accuracy in investigation and inquiry in order to answer them. So far as the trouble of looking up that information is concerned, although it is sometimes very burdensome indeed and entails very heavy labor, I am willing to undergo it. Sometimes in order to get that information, however, I have not the time and am compelled to write to the Departments. This is in no sense my business, or my private correspondence. It interests only the constituents and citizens of the United States in all the various States who desire to know in reference to these things, and there is no propriety at all in requiring Senators to pay postage in answer to these any more than there is in requiring a Department to whom similar questions are addressed to pay out of the compensation which those Department officers receive the postage for a return. Instead of writing to the Commissioner of the General Land Office to know in reference to the status of a case in his office, a Senator is addressed. He gets the information and sends back his reply. Why should he be required to pay the postage on that reply more than the Commissioner of the General Land Office, who would else reply?

The amount of correspondence of a Senator, although voluminous, when it is considered that he has to write the letters himself, yet as an ingredient in the mail matter it is quite slight. Really the great trouble, if any at all, is in the mass of documents which we send.

I make this explanation in regard to my vote in this matter because I do not wish to appear as desiring a cheap notoriety or popularity by opposing a proposition of this kind. I think the proposition is just and right in itself, and I am willing to vote for it whenever it can be put upon a bill not so vital to the revenue and the purity of the service as I think this is.

The VICE-PRESIDENT. The question is on the amendment of the Senator from Maine, on which the yeas and nays have been ordered.

The Secretary proceeded to call the roll.

Mr. ARMSTRONG, (when his name was called.) I am paired with the Senator from South Carolina, [Mr. PATTERSON.] If present, he would vote for the amendment and I should vote against it.

Mr. VOORHEES, (when his name was called.) In consistency with my former vote on this subject, I vote "nay."

Mr. WINDOM, (when his name was called.) To be inconsistent with a former vote and put myself right, I vote "yea."

The roll-call having been concluded, the result was announced—yeas 33, nays 21; as follows:

YEAS—33.

Allison,	Butler,	Christiancy,	Dawes,
Beck,	Cameron of Pa.,	Conkling,	Dorsey,
Burnside,	Chaffee,	Conover,	Edmunds,
Garland,	Ingalls,	Matthews,	Teller,
Grover,	Johnston,	Morgan,	Windom,
Hamlin,	Jones of Florida,	Paddock,	Withers.
Harris,	Kirkwood,	Ransom,	
Hoar,	Lamar,	Saunders,	
Howe,	McDonald,	Spencer,	

NAYS—21.

Bailey,	Davis of Illinois,	Merrimon,	Voorhees,
Bayard,	Eaton,	Morrill,	Wadleigh,
Booth,	Eustis,	Oglesby,	Wallace.
Cameron of Wis.,	Ferry,	Plumb,	
Cockrell,	McCreery,	Sargent,	
Coke,	McMillan,	Saulsbury,	

ABSENT—22.

Anthony,	Dennis,	Kernan,	Rollins,
Armstrong,	Gordon,	McPherson,	Sharon,
Barnum,	Hereford,	Maxey,	Thurman,
Blaine,	Hill,	Mitchell,	Whyte.
Bruce,	Jones of Nevada,	Patterson,	
Davis of W. Va.,	Kellogg,	Randolph,	

So the amendment was agreed to.

The VICE-PRESIDENT. The question now recurs on the former amendment offered by the Senator from Maine, which will be reported.

The Chief Clerk read the proposed amendment, as follows:

SEC. 7. That the provisions of the fifth and sixth sections of the act entitled "An act establishing post-routes, and for other purposes," approved March 3, 1877, for the transmission of official mail matter, be, and they are hereby, extended to all officers of the United States Government, and made applicable to all official mail matter transmitted between any of the officers of the United States, or between any such officer and either of the Executive Departments or officers of the Government, the envelopes of such matter in all cases to bear appropriate indorsements containing the proper designation of the office from which the same is transmitted, with a statement of the penalty for their misuse. And the provisions of said fifth and sixth sections are hereby likewise extended and made applicable to all official mail matter sent from the Smithsonian Institution: *Provided*, That this act shall not extend or apply to pension agents or other officers who receive a fixed allowance as compensation for their services, including expenses for postage.

The amendment was agreed to.

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

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

EAGLE AND PHŒNIX MANUFACTURING COMPANY.

Mr. BAYARD. I ask the Senate to take up House bill No. 1891.

There being no objection, the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. No. 1891) for the relief of the Eagle and Phœnix Manufacturing Company of Columbus, Georgia.

The Committee on Finance proposed to amend the bill so as to read:

That the Eagle and Phœnix Manufacturing Company of Columbus, Georgia, be, and is hereby, relieved from the payment of the taxes heretofore assessed upon its capital stock as banking capital or capital employed in the business of banking, and upon all future similar assessments of banking tax, so long as no part of its capital is employed in the business of banking, and said capital continues to be, as now, employed in the business of manufacturing: *Provided*, That nothing in this act shall be construed to exempt said company from the payment of the tax upon deposits, as required by law from savings-banks or savings institutions, nor from any tax or penalty which may be hereafter incurred by issuing and circulating, or continuing in circulation, notes or bills or certificates of deposit, as currency or as a substitute for notes, bills, or currency.

The amendment was agreed to.

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

Mr. ROLLINS. I desire to ask a question of the chairman of the Committee on Finance with reference to this bill. It was reported, as I understand, by the Committee on Finance?

Mr. BAYARD. Unanimously.

Mr. ROLLINS. Then I desire to ask in what respect it differs from the bill reported the other day from the Committee on Finance in reference to savings-banks in New Hampshire—in what respect this claim is more equitable and just than theirs was?

Mr. BAYARD. I will explain to the Senator that this was a manufacturing company having a capital of $1,250,000, every dollar of which was invested in the manufacture of woolen goods, in mills, and machinery; it had not one dollar and never had one dollar of capital invested in savings-bank or banking business.

Mr. ROLLINS. Allow me to suggest that the New Hampshire savings-banks had not one dollar of capital stock.

Mr. BAYARD. The Senator will let me go further. Having this capital invested in mills and machinery only, the company was authorized by the Legislature of Georgia for the sake of the employés of the manufacturing company to receive their savings on deposit, but in order to obtain that power they were obliged to pledge the capital they had engaged in mills and machinery to protect those who received their certificates of deposit.

Mr. INGALLS. Did they pay interest on them?

Mr. BAYARD. No. They paid the tax fixed by law upon the savings deposits; they paid the tax in full upon all the circulation of certificates of deposit; but they did not pay a tax upon banking capital because they had no banking capital engaged in their business. It was, if I may explain to the Senator, precisely as though a mortgage had been made upon their property totally disconnected with banking business, as a pledge for the redemption of the certificates which they issued as currency among their working people. The tax of the United States on currency was paid in full as appears by a certificate which I hold in my hand from the Commissioner of

Internal Revenue. The tax upon the deposits of savings was paid in full. Then came the question whether the mills and machinery and the capital invested in them should be taxed as banking capital, because it had been pledged as security for the certificates given to these working people. Under the law the Commissioner of Internal Revenue for years decided not; but from 1873 to 1877 the company was taxed upon deposits and circulation in full as they were assessed. In 1877 a new construction was made that the capital of the company which was pledged for the redemption of the circulation should be treated as banking capital, although not one dollar was engaged as banking capital, but simply pledged as a security for the redemption of the circulation. Then it was that these taxes for four or five years past were created by this new construction and made to swell to an amount that I have an idea would prove very disastrous to the company if they were called upon to meet them. It is not therefore an exemption of capital even connected with banking, except so far as it may have been said to be pledged for the redemption of the circulating notes; that is all; and upon that state of facts there is no difference of opinion in the Finance Committee, but there has been a unanimous recommendation that it would be a defeat of the object of the law to tax as banking capital property which was incorporated for manufacturing purposes only and which was simply pledged for the redemption of circulation which has paid the full tax prescribed by law.

Mr. ROLLINS. It seems to me that the Senator from Delaware has not answered my question. I desired to know wherein this differs in the matter of equity from the case presented a few days ago. I understand that the case of the New Hampshire banks was reported by the Finance Committee, and for aught I know unanimously; but I noticed when that case was pending before the Senate nearly a solid vote from the other side of the Chamber was found against the measure. Now, what I desire to ascertain is why our friends on the other side should so earnestly advocate this measure, which I am inclined to believe is a just one, while they opposed that; and I want to find out, if it is possible for me to do so, the difference between the two measures, for I desire to support this if possible and to give it my vote. The only explanation which I have heard made was one suggested in private conversation by the Senator from Georgia, that he misapprehended the bill the other day and voted under a misapprehension.

Mr. GORDON. I think the Senator is mistaken. I do not remember voting on that bill at all. I have no recollection of his bill and do not remember when it passed the Senate.

Mr. ROLLINS. I may be mistaken, but my impression is that the Senator's vote will be found recorded against the bill. Now I desire to do equal and exact justice. If this bill is right I shall vote for it, but I desire first to know in what respect it differs from the other bill.

Mr. BAYARD. I believe the honorable Senator from New Hampshire voted for the other bill. It obtained his support. He believed the other bill to be right in principle and just in practice and he voted for it, and I think it has become a law. Am I mistaken? Did not the honorable Senator support the other bill?

Mr. ROLLINS. I did vote for the other bill, but it has not yet become a law.

Mr. BAYARD. Then I take it for granted that the Senator supported it believing it to be just and right. I must confess——

Mr. ROLLINS. I want to vote for this bill, but I was led to suppose there might be some marked difference between the two bills for the reason that I found gentlemen on the other side earnest in the advocacy of this bill who were equally earnest in opposing the other. For that reason I supposed there might be some difference in the two bills.

Mr. BAYARD. The other bill was not antagonized by me at all; therefore I cannot say what reasons may have actuated the minds of other Senators or the opinions they may have had.

Mr. ROLLINS. I ask the Senator did he vote for the other bill?

Mr. BAYARD. I did not, because there were measures ingrafted on it that I did not thoroughly comprehend, and I thought the effect of the exemption from taxes reached further and destroyed certain guarantees for the payment of taxes due from owners of national-bank stock that was not contemplated by the committee. I did not oppose it, because I did not feel warranted in doing so. It was one of those cases in which I withheld my vote, because I did not fully comprehend the entire extent of the exemption; that was all.

Mr. ROLLINS. If it will not interrupt him, let me ask the Senator in what respect did that measure go further than this in relieving in the matter of taxation?

Mr. BAYARD. I regret exceedingly that the honorable Senator should mingle two measures or make the merits of one become the demerits of the other. I have endeavored with great frankness to state to the Senate the precise facts of this case. If this case is just and right and fair, and commends itself to my honorable friend's judgment and approval, how can he feel that the errors of others, supposed by him to be errors, upon another bill should justify his opposition to the present bill.

Mr. ROLLINS. I do not intend that they shall.

Mr. BAYARD. Then my honorable friend will support the present bill, and let the other stand as it has already passed the Senate.

Mr. HILL. I think I can answer the question of the Senator from New Hampshire in a very few words. I do not remember the bill to which he refers distinctly, nor its provisions. My recollection is that the bill to which he alludes, the New Hampshire bill, was a bill to release from taxes assessed upon banks as savings-banks. There is no proposition to relieve this company from any tax of that kind. It has paid all the taxes that were levied upon it as a savings-bank. It has paid all the taxes assessed upon the circulation of its certificates. It has paid those taxes, and it does not ask that they be refunded or that it be released from those taxes either in the past or in the future. This bill asks simply this: the capital stock of this company is invested in spindles, in the manufacture of woolens, to the amount of $1,250,000. When by an amendment to its charter the Legislature authorized it to establish a savings-bank department, for the benefit of its employés chiefly, although its capital stock was not invested in that savings-bank department, and although all the taxes on the savings deposits were paid and have been paid in full, the returns regularly made, by a singular construction it was claimed that the capital invested in manufacturing should also be taxed; that this $1,250,000 which is invested in manufacturing, in machinery, in spindles, in a factory business, shall be taxed as banking capital. The Senate will see that there was no such feature as that in the New Hampshire case. This is no application to relieve the company as a savings-bank from taxation.

Mr. ROLLINS. As I understand, it is an application to relieve a manufacturing company, the company having engaged in banking business, from taxation; and where is the difference?

Mr. HILL. Simply to relieve it from the tax on the capital stock invested in manufacturing; not to relieve it from the savings-bank tax.

Mr. ROLLINS. The other bill was to relieve the deposits of depositors in savings-banks. The savings-banks had paid the tax upon the special deposits—all that had been assessed by the Commissioner of Internal Revenue; but it was an attempt to relieve the small depositors in those banks and prevent the assessment from going back over a period of years; and I say here that case is quite as equitable as the case now presented by the Senator from Georgia.

Mr. HILL. That may be; I do not know; but this bill does not ask what the Senator says that bill asked, and nothing like it. What that bill asked may be something that is equitable; I will not pass judgment on that. I do not remember voting upon the bill to which the Senator alludes at all.

Mr. ROLLINS. This bill proposes that the stock in this incorporated company, a manufacturing company, shall be relieved of the tax imposed by reason of its having done a banking business over a period of years.

Mr. HILL. It simply asks that it be relieved from so much as taxes its capital stock as banking capital.

Mr. ROLLINS. The New Hampshire banks asked to be relieved of the tax on deposits.

Mr. HILL. No, sir. There is no relief from the tax on deposits.

Mr. ROLLINS. I am speaking now of the New Hampshire banks.

Mr. HILL. There is no relief here from any tax of that kind. It is simply a release from the tax assessed on its capital stock when that capital stock is not in banking but in manufacturing.

Mr. FERRY. If Senators will allow me, I think the substantial difference between the two cases is this: that in the case in New Hampshire there was a general banking business, a discount business done, but in the case in Georgia there was no discount business done.

Mr. HILL. No, sir.

Mr. ROLLINS. I beg pardon.

Mr. FERRY. So I am advised.

Mr. ROLLINS. Now, I will take a case of one of those banks where the savings deposits were nearly a million and a half of dollars, and the special deposits which had paid the tax were about $28,000 only. The bank had been in existence since 1830, been doing all the while a legitimate and proper business as a savings-bank. It was a just and equitable case, and I was sorry to see arrayed against it such a solid vote on the other side of this Chamber. I have faith in the Finance Committee; I believe they have made these two reports properly, and I am inclined to believe both should be sustained, and therefore I feel inclined to support the measure now pending before the Senate.

Mr. GORDON. I simply want to correct a statement; I do not want to debate the bill. The Senator from New Hampshire recognizes the justice both of his own and of this bill, and the propriety of passing both. I only want to correct a statement that he made of the earnestness with which his bill was opposed on this side. If he will refer to the RECORD he will find that neither my colleague nor myself voted against the bill; that a number of democrats voted for it, and that a number of republicans voted against it.

Mr. ROLLINS. I think your colleague voted against it.

Mr. HILL. Not at all, sir. I have referred to the RECORD.

Mr. DAWES. Mr. President, I do not think it necessary to discuss the New Hampshire bill in considering the merits of this. I was in favor of the New Hampshire bill, and I am in favor of this. I think the Senator from Delaware stated pretty clearly the ground of this bill, although I do not know that he was fully heard on this side of the Chamber; and therefore if I restate anything that the Senator from Delaware stated it will not be because he did not state it fairly, but because I apprehend that there are Senators here who are opposing this bill who do not quite understand its real scope.

Here was a manufacturing corporation that had a very singular charter under which they might do anything they pleased. They did devote it to manfacturing purposes, with $1,250,000 capital. They added to that, which they had a right to do under their charter, a small savings-bank business, confined to their operatives. During a few months, a short period of scarcity of change, they issued their paper, what we call in common parlance, shinplasters, and that exposed them to three separate taxes, one under the provision that every savings-bank that has a capital stock shall pay a tax upon its deposits. They had a capital stock, although every dollar of it was in manufacturing, and that exposed them to that tax. It also exposed them to a tax on the currency, because they had distributed for a short time their promises to pay. It also exposed them to a tax upon all their capital as a bank, although every dollar of their capital had been employed in manufacturing. They paid the tax as a savings-bank, they paid the tax upon their currency. After all that was done the United States claimed a tax upon the whole capital as capital of a bank, amounting to $25,000 I am told. It is that tax, and that alone, that they ask to be relieved from, and we put into the bill that they shall be relieved from it so long as they do not do any banking business, or any discounting business, or circulate any currency. The moment they do that, by this very bill they come right back to where they were before.

It does seem to me that nothing can be more just than to relieve them from that tax upon their capital as a bank. They never dreamed that they were a bank; they did nothing as a bank except for the little time that they issued their promises to pay among their operatives in the mills, and for that they paid their tax, and then they paid a tax as a savings-bank, from which we have relieved banks for years and years. Whenever a bank which happened to have a capital stock did a savings-bank business, we have relieved them specially. But they paid that tax; and this is a bill that it seems to me the Senate will not object to the moment they understand it.

Mr. TELLER. Do they not now receive deposits as a savings-bank?

Mr. DAWES. Yes, they receive deposits as a savings-bank, but it is a limited business among their operatives. They have not asked in this bill to be relieved from that tax.

Mr. TELLER. Do they not receive deposits as a savings-bank from anybody who chooses to make them?

Mr. DAWES. I suppose they do, but the business in point of fact is confined to the operatives almost entirely. Whether, however, they do a business that is thus confined or not, this bill does not relieve them from any such tax as that, as the Senator from Colorado will see by examining it. This bill does not propose to relieve them from the savings-bank tax, but only from the tax on capital, the whole $1,250,000 as the capital of a bank, as if it discounted, as if it issued bills, as if it did what national banks do, no part of which did it ever do, but it only got itself by indirection within the provisions of this statute.

Mr. HAMLIN. Mr. President, I had my attention called to this matter the other day; and, what I do not very often do, I have taken the pains to give it a very considerable investigation, and there are two or three suggestions which occur to my mind that I am going to state which control my vote.

I am not going to vote against this bill because somebody else voted against another bill; I am not going to vote against this bill because I voted for another; but I am going to vote for it because I believe it is right. I think that is about the best basis a man can put his vote on. I do not think it is very material how another man may vote on this or any other question; but what is the true merit of the case? I think there has been a mistaken idea running all through the investigation of this case both by the law officers of the Government and the Committee on Finance, although the Committee on Finance have come to what I believe a just and correct conclusion. I think the Attorney-General made a mistake when he decided that the stock of this manufacturing company was in any true sense of the word capital in a savings-bank. It was not. What was it? They created that corporation for manufacturing purposes. They added to it a little provision, which I suppose was beneficial both to the corporation and to the operatives, and perhaps to a few men who were not operatives, by which they could have a little savings-bank. They had it, and if I understand the case aright they paid to the utmost mill all that was due from that savings-bank upon any just principles of banking.

Now, was the capital stock of that company a part of the stock of that savings-bank? I say it was not. It was all used for its manufacturing purposes legitimately, but there was just this in it, to make the persons who made their deposits in that savings-bank, whether they were operatives or others, feel perfectly safe that their deposits would be secure, the capital stock of this manufacturing company was pledged—as what? Not as stock of the savings-bank; but there was a pledge made that that stock should be held to make the deposits good, and it never was designed, never was intended, and never in the proper sense of banking principles was it a part of the capital. The corporation pledged it, I grant, to make those deposits good, and that was all there was of it, and it does seem to me that this is a question which has but one side to it.

Mr. ROLLINS. Mr. President, one word more and I shall have said all I wish to say about this bill. I was led to examine into this measure by reason of the votes on the other side of the Chamber in regard to the other bill considered a few days since. I have investigated it as thoroughly as I have been able to do, and I am satisfied that the measure is right, and I shall give it my vote.

Mr. PLUMB. Mr. President, it seems to me that whenever we undertake to take out from under the operation of our tax laws cases of this kind, we are adopting an unwise precedent. There is no taxation known to our law that is at all logical, no taxation that is imposed upon anybody that the person who has to pay the tax supposes to be fair or proper, no taxation that the recipient of it is not willing and desirous to escape from.

It seems that we have a law which the Attorney-General, the officer specially provided for that purpose, has decided applies to this kind of capital, and it is not denied at all that this capital was, while engaged in manufacturing primarily, also made the basis of a credit upon which these people borrowed money just as other banks or as banks generally do, borrowed money from their depositors. This was made the basis of a credit of that kind. I think it is only fair that on account of that credit the capital stock ought to pay this tax, because it is within the terms of the law, as decided without any question, and because it is no more unjust and no more unfair that it should pay than that taxes should be paid in a large majority of other cases.

It has so happened, accidentally and designedly, that a large portion of the capital that is known as bank capital has been invested in manufacturing, has been invested in real estate, and in other enterprises, which are not discounting by any manner of means, but invested of course as this capital was, for the purposes of profit; and if we are to except and exempt from the operations of the law capital which is used for the purpose of giving credit to a banking institution for the purpose of securing deposits, and thus enabling it to realize profit from the capital which it thus borrows, why not go to work and make the exception in regard to other institutions which have locked up their capital in manufacturing and in real estate and in other enterprises?

I remember the other day noting the failure of a bank in the town in which the Senator from Illinois lives, Decatur, and the fact that that bank had invested $300,000 in manufacturing enterprises in that city, all the capital in fact that it had; and yet every dollar of the capital has been taxed and those people are not here asking us to remove the tax; but, if we are to adopt the principle of relieving as a matter of sympathy people from the taxation on unprofitable enterprises, we shall have of course a great deal of that thing to do.

As I said before, all tax that is imposed by Government is illogical; all taxation which does not rest practically on income is illogical; and the Government simply puts its hand on that property which it sees and believes it can most easily collect taxes from, governing itself only by its necessities and ability to get the tax speedily and at as little cost as possible. It would be perfectly proper, just as proper as the levy of two-thirds of the taxes which are paid to the Government, to say that all money invested in real estate should pay a tax, and so of any other investment, because it is entirely a discretionary power. There is no limit to it in logic or anything else.

I think we are establishing an unwise principle in exempting special interests from taxation in this way. We are constantly appealed to by the officer having charge of the revenue of the Government for new means of increasing that revenue. We are told that we have got to levy taxes on something else in order to meet the constantly increasing expenses with diminishing revenues of the Government; and instead of diminishing all the while our power of getting taxes we ought to enlarge it.

Mr. WADLEIGH. Mr. President, the policy of the Government of the United States has been to exempt from national taxation the deposits in savings-banks, on the ground, as I suppose, that to tax them would be to discourage the saving of their earnings by people in poor circumstances. Now, it so happens that in the State of New Hampshire some two or three savings-banks, for the purpose of accommodating the people in their vicinity, have received small deposits, not as savings in any connection with their savings-bank business, but deposits which were treated by the trustees or directors of those savings institutions as special deposits, and used in a quasi-banking manner. Those deposits have all paid the national tax which is assessed on national banks or upon the banking business; but the Comptroller of the Currency, in contradiction to the ruling of his predecessor, has held that notwithstanding the amounts of these special deposits were trifling, the whole amount of deposits in those savings-banks should be subject to taxation as bank deposits different from other savings-banks, simply because very small amounts had been received by these trustees as special deposits in the way I have named. A decisive objection against the correctness of that ruling may be found in this fact, that those savings-banks have no lawful right under their charter to go outside of their regular business of savings-banks. In every case where the trustees have done so they have done so not in accordance with the charters of the institutions they were conducting, but solely and simply on their own responsibility. The depositors in the savings-banks cannot be held liable for that action in any way whatever; they are not responsible for it under the laws of the State of New Hampshire; but the trustees who chose to go outside of their duties as directors or managers of the chartered institution are personally responsible, and those persons have paid the tax. Now, I ask my friends on this side who the other day voted against the New Hampshire bill——

Mr. COCKRELL. And those on the other side who voted against it.

Mr. WADLEIGH. Yes, and those on the other side who voted against it too, what equity there is, what equity there can be, in charging these depositors who had nothing to do under the law with this business, who were not responsible for it in any way under the law, with a tax upon their deposits as banking capital, simply because the trustees outside of their duty have seen fit, for the personal accommodation of their neighbors, to take in a few thousand dollars and check it out in a different way, and which has nothing whatever in law to do with the business of the institution.

That is all I have to say, Mr. President. I shall vote for this bill; I think it is right, and I shall vote when the other matter comes before the Senate as I did the other day for that.

Mr. COCKRELL. It was very unfortunate for the bill that was up and advocated by the Senator from New Hampshire that he did not make as explicit a statement of the condition of it as is made by his colleague.

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

The bill was read the third time, and passed.

THE CALENDAR.

Mr. EDMUNDS. I call for the regular order.

Mr. ANTHONY. Will the Senator allow me to offer an order?

Mr. EDMUNDS. If it does not lead to debate, I shall not object.

Mr. ANTHONY. I think it will lead to no debate.

Mr. EDMUNDS. Very well.

Mr. ANTHONY submitted the following resolution:

Resolved, That on Monday next at one o'clock the Senate will proceed to the consideration of the Calendar, and continue such consideration from day to day until the same shall have been gone through with; and bills that are not objected to shall be taken up in their order, and each Senator shall be entitled to speak once for five minutes, unless upon motion the Senate should at any time otherwise order; and this order shall take precedence of the unfinished business.

Mr. SAULSBURY. Is that a limitation upon debate on those bills?

The VICE-PRESIDENT. The Chair so understands.

Mr. ANTHONY. A limitation of debate upon bills that are not objected to.

Mr. ALLISON. Does the order apply to Monday only?

Mr. ANTHONY. No; it continues until the Calendar is gone through with.

The resolution was agreed to.

WYOMING JUDICIAL DISTRICTS.

Mr. EDMUNDS. I call for the regular order.

The VICE-PRESIDENT. The Senator from Vermont calls for the consideration of the regular order, being the unfinished business of yesterday, which is Senate bill No. 732.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 732) to annul an act of the Legislative Assembly of the Territory of Wyoming, entitled "An act to provide for the organization of Crook and Pease Counties, and to provide for holding court therein," approved by the governor of said Territory on the 13th day of December, A. D. 1877.

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

Mr. PADDOCK. I hope, sir, that this bill may not be passed. In the first place, it is a very extraordinary piece of legislation to repeal by act of Congress the statute of a Territory, particularly when that statute relates solely and exclusively to a matter of internal polity. Since the session of yesterday, when this question was up, I have conferred with the Delegate representing that Territory in the lower House of Congress, and he informs me that the almost unanimous expression of the people of that Territory is that this person, this judge, is not such a one as can be useful in the most important district in the Territory to which he had before been assigned; that this act of the territorial Legislature became necessary in order to give full protection to the interests of the people in that most important section or district of the Territory. He states that the prominent business people, the lawyers, the bankers, the merchants, and men interested most largely in the real estate of the Territory, remonstrated in the first place against his nomination; that the Legislature by a unanimous expression in both houses, in addition thereto, remonstrated against the nomination and afterward remonstrated against the confirmation of this person with the same unanimity of expression. It is not stated—I have heard no statement from the Delegate or from others—that this judge is an unworthy person by reason of his want of integrity. It has not been said that he is a dishonest person, or anything of that kind; but that he is incompetent, that he is slow, that he is not in respect of legal acquirements and judicial deportment such a judge as they need and ought to have for the important business of that important district; that litigation moves very slowly in the courts under his administration, and that taxation has become or will be made burdensome to the people for that reason.

It seems to me that under such circumstances, when there has been such a universal demand on the part of the people and by representations of the Legislature, the judicial interests of that Territory require different action than that proposed by the Judiciary Committee; that this bill should not be passed, and I sincerely hope that it may not. Certainly, sir, the Legislature had the right and it was its duty with such a state of facts presented to it to arrange the judicial districts and assign the judges as they believed the best interests of the people demanded.

Mr. TELLER. Mr. President, since the adjournment yesterday, I have conferred with the Delegate from Wyoming, and he has handed me a dispatch dated the day before yesterday, from some of the most prominent men in the district to which this judge was originally assigned. I noticed yesterday what was said by the chairman of the committee with reference to the character of the men who had petitioned for this man's confirmation. I now hold in my hand a dispatch signed by ten of the most prominent men of the district, most of whom are personally known to me to be men of worth, men of character, and men of property. I am informed by the Delegate from Wyoming that he presented to the Committee on the Judiciary some evidence at least that a portion of the names on the petition had been placed there without the authority of the signers purporting to have signed it, that some considerable number of the signatures to the petition were forged. I do not say that the incumbent had anything to do with that. It might have been the zeal of his friends; but a portion of the signers, at all events, now repudiate it. I was informed after the adjournment of yesterday by a gentleman who is very familiar with the action of the press of that Territory that the press have universally denounced this man as unfit for the position; and my informant mentioned two at least of the most influential journals of the Territory as being very bitter, as he stated, against this man.

Now, Mr. President, it is not possible that this arises out of any prejudice against him without foundation. It is not possible that a whole community would have risen against a man who was sent there as a judge, unless there was some reason for it, and the community have spoken through its Legislature, the only method by which it could address itself to this body and to the nation, having no redress in any other way that I know of. When we fail to do anything for them, then they turn around and practically legislate this man out of the Territory. Then what is it proposed to do here? By the organic act we gave the Legislature the power to district the Territory as they might see fit; and yet now we say they cannot exercise that power, but we will legislate for them. The case may be very extreme, and in some instances there may be justification for congressional interference with the action of the territorial Legislature; but it does not seem to me that this is a case which is worthy of attention on our part.

Mr. DAVIS, of Illinois. Mr. President, I do not often trouble the Senate with any remarks on current bills; but I am constrained to say a word or two upon this case.

It seems to me the question involved here is entirely higher than the question that is sought to be presented by the Senator from Nebraska and the Senator from Colorado. The question here now is, not whether this man is a fit man for the place or not. The simple question is, whether the power of the President and the Senate of the United States can be abnegated by the territorial Legislature. The President is authorized to appoint a judge for the Territory; the Senate has the power of confirmation. This officer was appointed last summer. He was nominated to the Senate at the special session. The Judiciary Committee took every way of ascertaining the truth about his fitness for the office. There are two sides to the question in the Territory, very evidently; but I do not want to go into a defense of Judge Peck. The simple question now is, whether the Legislature of Wyoming can practically displace a judge who has been appointed by the President and confirmed by the Senate. To do that is the sole object of this act of the Territory. It has not any other object at all. In other words, the point is whether this man, who is authorized by the Constitution and laws of the country to administer justice there, shall do it at the will of the Legislature of Wyoming or not. That is the simple question to be decided. It strikes me that the legislation is amazing. I am amazed at the governor of the Territory for signing the act, and were I President of the United States I would very soon settle that question with him.

Mr. PADDOCK. May I inquire of the Senator from Illinois in connection with that remark if he does not think it is well for the governor of a Territory, when a unanimous vote of a Legislature is had for the passage of a bill, to pay some heed to that expression of the Legislature and sign the bill?

Mr. DAVIS, of Illinois. A governor who is fit for his place, when he sees that by clamor an act is passed, which act displaces a judge and insults the Government—a governor who would sign such an act should be, if I had the power, displaced instantly. It is not the question now whether Judge Peck can be useful in that Territory or not; I doubt whether he can; but we are to act upon the legislation that is presented to us. The Senator from North Carolina [Mr. MERRIMON] said it was extraordinary; that we were nullifying an act of the Legislature of the Territory. Why, sir, all legislation in the Territories is subject to our approbation. A great many laws have been passed in Territories that Congress has been obliged to annul, that it would not give its consent to.

Mr. CHAFFEE. Will the honorable Senator allow me to ask him one question?

Mr. DAVIS, of Illinois. Yes, sir.

Mr. CHAFFEE. If he had the power would he appoint a man judge when the territorial Legislature unanimously protested against his appointment?

Mr. DAVIS, of Illinois. That is another question. I would endeavor to appoint the best man. If I found that the Legislature of the Territory was controlled by bad men and that the best men of the Territory were in favor of the appointee, I would disregard the voice of the Legislature and take that of the good men of the Territory.

Mr. TELLER. I would inquire of the Senator whether he has any information of that kind? My information leads me to think otherwise.

Mr. DAVIS, of Illinois. I do not want to go into the controversy whether Peck was a proper judge or not. I am merely answering the inquiry of the Senator from Colorado, [Mr. CHAFFEE.] The Judiciary Committee investigated the subject as fully as they could. They spent more time upon it than they did upon any other question that was before them, and they were nearly unanimous upon it that he ought to be confirmed; that the better class of people in the particular district of the Territory where he served desired his appointment.

But, Mr. President, the Legislature is to apportion the three judges in the organized parts of the Territory. What right have they to come in and say, "We will give two of these judges the whole organized Territory and assign the third judge to a portion of country where nobody lives at all?" Is not that practically nullifying the action of Congress? Is it not practically setting the President and the Senate of the United States at defiance? And can we sit here and uphold such legislation as that? It is a higher question entirely than whether Peck is a proper judge or not. It seems to me, sir, that the legislation is extraordinary, and that if Congress, now when they have a chance to set their seal of disapprobation upon it, should go off on the question as to whether this man can be a useful judge or not, they would be setting a very bad example, and that in fact we might just as well abdicate our duty in reference to the confirmation of officers.

Mr. HOWE. Mr. President, if I do not mistake the issue here, it seems to me I shall make no mistake by possibility in the decision I make upon the issue. I suppose there can be no doubt that we are measurably responsible, not only for the legislation for the United States, but for the legislation for the Territories. Having the power to affirm or disaffirm a territorial act, if a given act is unwise and we affirm it, it is our own act, and not the territorial act alone; and we must meet that responsibility. Now, the act we are considering is one which paralyzes one-third of the judicial department for a Territory. Congress, wisely or unwisely, has divided the Territory of Wyoming into three judicial districts, and has equipped those three districts. The Legislature of the Territory has dismantled one——

Mr. TELLER. I should like to ask the Senator from Wisconsin a question. Did Congress divide it into three districts? The territorial Legislature, as I understand, divided it.

Mr. PADDOCK. Congress provided for three districts, but the Legislature was charged with the responsibility of districting the Territory.

Mr. HOWE. We had better be entirely correct about this. It will take but one or two men to correct me on any point in this debate. I was not strictly correct in saying that Congress had made three districts. Congress has provided for three districts and has provided for paying judges for three districts, has provided for reserving to the National Government the selection of those judges, has selected them, and, as I said some time ago, the Territory has seen fit, by an act of its own, to paralyze one of those judges, to dismantle him, to dismiss him, not from his office but from all duties under his office; and the simple question is presented to the Senate to-day whether we will affirm or disaffirm that act. We must be responsible for the act or for annulling it. Is there any possible justification for our paying three judges to administer the laws in that Territory and allowing but two of them to work?

Mr. PADDOCK. Will the Senator from Wisconsin allow me a word? The three judges together constitute the supreme court of the Territory, which has appellate jurisdiction of course from the district court. Now, if it is possible that two judges who are acceptable to the Territory can perform the duties of district judges, and if the other one is so distasteful, is so obnoxious to the people, that he is useless, so far as acting as a district judge is concerned, does not my friend think it might be well enough to settle the difficulty and leave the case in the way in which it was done in this instance?

Mr. HOWE. No, Mr. President, I do not think it would be well enough to leave the case in that way, if the facts are even as stated by the Senator from Nebraska. As I said, we pay three judges, not only to hold law terms of the court, but to hold *nisi prius* terms; we pay them adequately, or we assume to do so; and we should have judges there, and they should be permitted to do their work. Now, three judges have been selected. It is said that one of them is distasteful to the people of the Territory—at least to the Legislature of the Territory. It may be so; it may be justly so; but that is not the remedy; I submit to the Senator from Nebraska, I submit to my excellent friend, the Senator from Colorado, that is not the remedy.

Mr. TELLER. What remedy have they?

Mr. PADDOCK. Where is the remedy for the people?

Mr. HOWE. There is, or there used to be, a presumption that the power which can appoint and dismiss——

Mr. PADDOCK. But that power has been appealed to again and again in vain.

Mr. HOWE. That the power which can appoint and dismiss a judge can administer a remedy for an unsuitable judge. The honorable Senator from Nebraska says that that power has been appealed to, appealed to once and again, and appealed to in vain. Well, it proves one of two things: that upon the same information either the territorial Legislature or the President and the Senate of the United States have been wrong. It does not follow conclusively because the President has nominated and the Senate has advised the confirmation of a man, that therefore he is a proper man. It is not conclusive; it is a pretty strong circumstance. My friend from Colorado [Mr. TELLER] shakes his head even at that conservative proposition and thinks it is not even a circumstance that tends to show that a man is suitable. I want to insist upon that proposition, if I am permitted to do so; I want to urge it as circumstantial evidence. I want to accompany it with this other statement, that because the Legislature of a Territory objects to a judge, that is not conclusive evidence that he is an unfit man for the place.

Mr. PADDOCK. If the Legislature unanimously, backed by the people unanimously, represent that he is not a good judge, that he is not the man they want, that he is useless, is not that a good *prima facia* case that he is not the man to be there?

Mr. HOWE. Not even that is conclusive. I will be more just than my friend from Colorado. I will admit that that is a circumstance tending to show the unfitness of the man. That is not this case, let me say here, for fear I shall forget to say it at the proper time. The question now is about the fitness, not of Judge Peck, but of that law; and I put it to the conscience of every Senator here to say is that a fit law? If it is not, remove it; do not stand making faces at the judge; repeal that law; then we will consider the question of the judge again.

I assume, and I think I must have some credit with my friend from Colorado when I assume, that the appointing power, the President and the Senate, when sufficient light shall have been poured upon them, will say either that this man is not a suitable man for judge and will retrace the steps already taken, or will continue to say that he is a suitable man, and if they insist upon it I should hope the people of Wyoming as good citizens will say, "We will acquiesce in the deliberate judgment of the President and the Senate." We all of us have to acquiesce in the action of these bodies when we do not approve of it. It is not harder for the people of Wyoming to acquiesce than for the people of Wisconsin.

But the case is not as strong as the Senator from Nebraska has intimated. The people are not unanimous against this judge.

Mr. PADDOCK. My authority is the Delegate, the only authoritative representative here, who has a seat and a voice in the other branch of Congress from that Territory. He told me this morning that he believed he could safely say that nine-tenths of the people of that Territory were opposed to the continuance of this judge in office.

Mr. HOWE. Probably no census has been taken on this question. The parties have not been numbered; but even if nine out of ten concur in the opinion of the Senator from Nebraska, that does not conclusively prove absolute unanimity among the people of Wyoming.

Mr. PADDOCK. That fact backed by this further fact that the Legislature in both of its branches by a unanimous vote of both parties has made the same demand, made the same representation of the feeling and sentiment of the people, I think ought to sustain the position.

Mr. HOWE. It does not prove the unanimity. I shall still insist upon that.

Mr. PADDOCK. Comparative unanimity, even to the superlative degree, I should say.

Mr. HOWE. But, Mr. President, I thought I had other and conclusive evidence for saying that the people of that district, and certainly the bar of that district, upon a trial of this man were decidedly in favor of his continuance, that it was a good appointment to be made and not a bad one. I may be mistaken upon this point, but these people are not excluded from approaching the President or from approaching the Senate. Certainly, if this is a bad judge, a corrupt judge, a dishonest judge, I do not think anybody connected with the appointing power will insist upon keeping him there in that place. I have not heard that intimated, I think, until since this debate commenced, and I do beg of Senators to confine their efforts to correcting this abuse, if there is one, to changing the judge and not changing the districts.

Mr. SAUNDERS. Allow me——

Mr. HOWE. Very well.

Mr. SAUNDERS. I want to correct the Senator in this one particular, that it is not a matter which has been brought up in the last few days or to-day, but it was brought before the Senate before Judge Peck was confirmed. It was announced by telegrams and by letters that went into the hands of Senators that this opposition was so great in that Territory that the Legislature would do this very thing if he should be confirmed. They stated that he would be given some district where he could do no harm—that was the language—so that it is not a new thing at all.

Then, while I am on the floor, I will state that the argument of the Senator from Wisconsin seems to be a good deal like the talk that they had legislated or tried to drive this man out of the Territory. They are doing no such thing. They have done what the law requires

them to do. They have provided three districts for the three different judges, and he is allotted to one which does not give satisfaction here, because it is said there are not enough people in it. There may be people there or there may not be, but it answers his purpose just as well, if he is fitted for the place, as though he had a well-populated district, because the supreme court in the Territory have three districts, and then they sit *in banc*, the three coming in together and making the supreme court. They do not legislate him out of this position at all; they have only happened to give him a district that does not suit——

Mr. HOWE. The Senator talks so much better than I do that I will resign the floor and let him go on. [Laughter.]

Mr. SAUNDERS. I do understand something about territorial life. I have lived a number of years in a Territory myself, and I have happened to be in office in a Territory, and I know something about these matters. I never knew a territorial Legislature to be a unit as one man, both parties and both houses being unanimous, on any one thing that when it was investigated they were not found to be right in; never, sir. I believe these people are right or they would not do this. There are men there of intelligence, men equal to the intelligent people of any other country. It takes that kind of people to settle a new country, it takes men of nerve, men of intelligence, men of ability. They are the class that settle these new Territories; and I say when they come up here as one man and ask this of us, as they asked it before this man was confirmed, giving us the opportunity to reject him, which we did not do, we ought to hear them.

The Senator from Wisconsin will excuse me for interrupting him so long. I did not intend to do it. I beg his pardon, but I felt that it could do no harm to him, we are such good friends, for me to trespass on his time.

Mr. HOWE. I am very much obliged.

Mr. TELLER. Mr. President, it seems to me that the position of the committee is not at all different from what it would be if this judge was here complaining that there had been an improper districting of the Territory; that is to say, that he had not so desirable a district as he would wish, for that is all it amounts to. What would Congress think under those circumstances if he came here and said: "Mr. Blair, who is one of the judges, has a much more desirable district in which to live; the members of the bar there are much more courteous, and in every respect it is a better district; and I think you ought to interfere and give me another and different district?" Upon principle that is the same as the claim now here. I do not think Congress is called upon here to interfere in this case.

The honorable Senator from Wisconsin said that it was a presumption of law that the appointees of the President, after they had been confirmed by this body, were certainly fit for their places; but that I dissented to by a shake of my head. I recollect when living in a Territory, that a judge, nominated by a very excellent President, confirmed by the vote of the honorable Senator from Wisconsin, I have no doubt, came into the Territory in which I lived, and as I stated yesterday sold his judgments from the bench. I know that affidavits came here in quantities; I know that proof which would have convicted any man before any jury on the face of the earth came here; and I know for years that man sat on the bench, and to-day I can prove from the records of a corporation in the city of New York the very time when the money was paid him and every dollar that was paid him. And yet the people of the Territory of Colorado endured that man's presence for more than two years while they were knocking at the doors of this Senate; I myself in person was knocking here, backed by the entire bar of the Territory; but for two years we were unable to have that man removed. The entire bar of the Territory practicing in the supreme court continued every case on the docket except one, for fear of this man, not of his imbecility, for he was an able man, but of his dishonesty. The people were without remedy. So, when anybody says to me now that these people have a remedy, I say theoretically they have, but practically they do not have it. When any Senator says to me that there is a presumption that the man who goes out from the East with a commission to preside over the courts in the Western Territories is honest, I tell him it is an extremely violent presumption, and I shall beg leave in most cases to dissent.

I have seen not only in Colorado, but in other Territories, justice dealt out by the dollar. I have seen men sitting on the bench, with the whole people of the Territory protesting, selling their judgments as notoriously as indulgences were sold in the early days of the Roman Church, and I have seen Congress and the President relying upon the presumption that the Senate now relies upon and refusing to interfere. It is not strange, then, that men who have lived in a Territory for half a life-time, and who have seen these things, can stand up here and justify the radical measures of the people of Wyoming. I have seen in a Territory adjoining Wyoming, conservative as I am, a case where I do believe that the good opinion of the whole country, the best judgment of the whole country, would have sustained the people in revolution to get rid of a judge; and yet he did not go out of office until the expiration of the term for which he had been appointed. If these people had the ordinary remedies, I do not say but that I should object to this kind of radical measure, but I contend that in principle it is exactly the same as if this man were here to-day saying "the people in Wyoming have through their Legislature given Judge Blair, my associate, a better district than you have given me. and therefore you ought to interfere."

Mr. HOWE. Mr. President, if in order, I will conclude what I had to say, first tendering my thanks both to the Senator from Nebraska and the Senator from Colorado for the very efficient aid they have rendered me in this feeble endeavor. [Laughter.] The Senator from Colorado who has just taken his seat would have rather quickened my sense of obligation and gratitude if he had not traveled so far from the question which I think is before the Senate. When he appeals to history and to his own past experiences as the citizen of a Territory, of course he gets beyond all questions which I can possibly discuss; but he raises, I will say in this connection, just this question, that the appointing power is properly or improperly vested in the President and the Senate; if properly vested in the President and the Senate, then there is a remedy practical, not merely theoretical but a practical remedy here; if it is improperly in the President and the Senate, if they cannot be trusted with territorial appointments, the remedy is not to pass such acts as this, but to pass a new territorial law, a new organic law for the Territories and take from the President and the Senate the power of selecting the judges. Is not that all there is of it?

Mr. TELLER. I should like to vote for that law myself.

Mr. HOWE. Propose the law, and we will consider it.

Mr. TELLER. It is the law now in another case.

Mr. HOWE. Not in this case. It is not this bill.

Mr. TELLER. There is a bill pending.

Mr. HOWE. This act proposes no such remedy. This act proposes to take a district out from under a judge, not to strip the Senate and President of any of their prerogatives, not to strip the judge of the Territory of any of his, except that of holding court where there are people to attend court. That is not the only vice there is in this act of the Legislature. It contains the very extraordinary provision, not only that a judge of the Territory shall not hold a *nisi prius* term of the court where there are any people, but it directs the governor of the Territory, whenever a change shall happen in the incumbency of one of the judgeships, to redistrict the Territory of his own will and upon his own motion. If there were nothing else in the act but just that direction to the governor, it does seem to me every lawyer as able as my friend from Colorado would say that that is a vice sufficient to call for a remedy, a greater vice, I really think, than the selection of Judge Peck to be judge of Wyoming, after all the testimony I have heard from my excellent friend.

Mr. President, I think we are confronted now simply with an act of that Legislature, and we have got to pass judgment not only upon it, but we have got to submit ourselves to judgment, ourselves to approve or disapprove that act. If we shall approve that act by our decision it may lead me to doubt, with my friend from Colorado, whether the Senate is a proper body either to advise appointments or to advise legislation.

Mr. CHRISTIANCY. Mr. President, being one of the members of the Judiciary Committee, before whom this investigation has been had, it is proper perhaps that I should say something in reply to what has been said by the Senator from Colorado and the Senators from Nebraska.

It is broadly asserted here that all the people of the Territory of Wyoming are opposed to this judge. Now, the committee took great pains in getting at the facts in reference to the controversy between a portion of the people there and the Legislature on one side and another portion of the people and the judge upon the other. We had before us testimony, and a large amount of testimony, from the bar of that district, from the tax-payers of that district, and testimony under oath, and we had certified statements of the business done by that judge at the various terms; and after considering all those things we came to the conclusion that the judge was not an improper man to be appointed. What has been said here about the people of the Territory being all one way is mere assumption. It is not true, as the evidence before us clearly showed. It is not true.

A reference has been made to the Delegate of that Territory and his statement made before the committee. The statement of the Delegate made before the committee was almost entirely mere matter of opinion; there was not any testimony of any consequence certainly introduced before us to back up that statement.

Mr. PADDOCK. I should like to inquire of the Senator from Michigan if it is not true that there was an affidavit presented to the committee setting forth that a large number of signatures or a considerable number of signatures to the most prominent petition were not genuine.

Mr. CHRISTIANCY. For myself I do not recollect that such an affidavit was presented there. The chairman can state.

Mr. EDMUNDS. I will get the affidavit the Senator refers to, and the other evidence if the Senator wants it.

Mr. CHRISTIANCY. I heard a statement made by the Delegate. It was claimed that such was the fact.

Mr. PADDOCK. I was so informed this morning by the Delegate.

Mr. CHRISTIANCY. It is possible the Senator may be correct in that, but the chairman of the committee is more familiar with the subject and has gone to get the papers.

I will say further that there was no charge against the integrity or against the capacity of this judge in fact, but it was said that he was too slow in disposing of cases. The testimony of the bar, certainly

of the majority of the bar, as I recollect it, if not almost the entire bar of the district, was the other way, and the tax-payers——

Mr. HOAR. In order that I may understand the honorable Senator, let me ask when was this investigation of the committee of which he is now speaking? Prior to the appointment?

Mr. CHRISTIANCY. Very recently.

Mr. HOAR. Not at the time of the appointment, but of late.

Mr. CHRISTIANCY. Both.

Mr. PADDOCK. He was appointed during the called session in the first place, I remember, and then again at the regular session.

Mr. CHRISTIANCY. This was more recent than the first appointment. The evidence before the committee induces me to believe that in an old-settled community having settled habits, where social ties prevail, and where men are somewhat restrained by them, he would be a very acceptable judge. But it did appear very conclusively before us that as to a certain portion of the people of that Territory somewhat addicted to drinking and gambling he was a very unacceptable judge. So much did appear.

Mr. PADDOCK. Mr. President——

Mr. CHRISTIANCY. If the Senator will allow me to go through my statement, I will submit to any catechism he may choose to propose when I am through.

So much, then, as to the judge himself. Now I come to the act of the Territory; and here I agree entirely with the Senator from Wisconsin that whether that be a wise or an unwise act, we stand responsible for it. It is our act. The Legislature of a Territory is but our agent. We having the right and duty to approve or disapprove the legislative act of a Territory; we therefore stand responsible for whatever those acts may be.

Now, would the Congress of the United States resort to a contemptible trick, scarcely worthy of pettifoggers, like this, to get rid of an unwelcome judge? Can we in the Congress of the United States approve such a course as that to get rid of a judge who is not popular among certain classes of people? That is the question which is now presented to us. It has been said that this bill which is now proposed here is a very radical measure. It is not the bill that is radical. The bill is presented to get rid of a most unworthy and radical trick of the Legislature of Wyoming Territory. It is that act which we seek to get rid of which is the objectionable measure. No man doubts who looks at that act, no man can doubt, that it was a mere trick unworthy of a legislative body, to endeavor to get rid of a judge in that way, to assign him to a region unorganized and inhabited only by Indians.

That, it seems to me, is all there is in this question. For one I am not willing to sanction that legislation of the Territory of Wyoming. I think it is unworthy of any legislative body, and yet we must either set it aside or it becomes our act. I am not willing to bear the responsibility of such an act as that, and therefore I shall vote for a bill to annul it.

Mr. PADDOCK. I should like now to make an inquiry of the Senator from Michigan. The Senator himself is somewhat familiar with territorial organizations, I think; and I should like to inquire of him if it is not within his personal knowledge—and while I make that inquiry I state it is within my own personal knowledge—that in newly organized Territories it has often happened that one or even two of the judges were not at once, not at first assigned to districts. It often happens that when they are assigned they are assigned to districts in which there are no people at the time of the assignment and for quite a period afterward. These judges are not district judges; they are not so denominated by the organic acts under which they are appointed. They are supreme judges; they are judges of a supreme court for the Territory, and these supreme judges are to be assigned to districts to be established by the Legislature, with such limits and boundaries as may suit the convenience of the people and the necessities of the situation. Sometimes they are not assigned, all of them, for a year or more after the Territory shall have been organized and the judges appointed. Hence I cannot see any force in what the Senator has said in reference to this assignment by the Wyoming Legislature.

Now, in reference to this gentleman who happens to occupy this position, much has been said in relation to his fitness and his unfitness. I will state what my impression has been from what I have learned in reference to his characteristics and his qualifications, although it may not be exactly in order to do so, and although I ought perhaps not to say it here; but nevertheless I will say it, since so much has been said that seems to make it necessary in defense of the Legislature and the people of Wyoming. I understand that he is thought by the people of that country to be one of those pretentious reformers whose assumed piety and superiority in morals, integrity, and honesty over the average citizen of a western Territory are such as to lead him to consider himself in a certain sense an apostle to the border country, sent there for missionary work, to reform a depraved people. He has at all events, as I think from what I hear, succeeded in impressing upon the people of that country the unhappy belief that he does feel himself superior to his fellow-citizens among whom he has been called to serve, in respect of his moral aims and theories and worth, and possibly he may be one of those gentlemen to whom it is a pleasure to part their names in the middle, and whose deportment and whose assumptions, good men although they may be, are not acceptable to a stirring, active, earnest, energetic people, such as those who are, to my knowledge, in the Territory of Wyoming.

Mr. CHRISTIANCY. The Senator has put so many questions that I hope he will allow me to put to him one.

Mr. PADDOCK. Certainly.

Mr. CHRISTIANCY. I ask where he has that evidence? The committee have had some evidence before them, and under oath a good deal of it. Now I want the authentic evidence of the propositions which the Senator from Nebraska has made.

Mr. PADDOCK. I said that my information concerning the peculiar characteristics of this judge as they were understood and spoken of by my informant came from the very best authority that can be commanded or thought of in this District to-day; that is the accredited, the authoritative representative of that Territory in the other branch of Congress, the only gentleman who is here by authority of the people of that Territory to speak for them at all. This is about the opinion he expressed to me of him and of the impression he had made in Wyoming. I give it from the gentleman with rather more moderation as to exactness of statement than he gave it to me.

Mr. CHRISTIANCY. I just wish to say in reply to the last remark that we have had that Delegate before us, and we have had a great deal of other testimony besides that of the Delegate, and we have therefore had quite as much opportunity to judge of the matter as the Senator from Nebraska who has heard the Delegate.

Mr. INGALLS. Mr. President, a territorial experience of several years in the early history of Kansas has given me some opportunity of knowing the difficulties and troubles under which the inhabitants of Territories labor. I am a believer in the American idea of self-government, carried to its fullest logical extent, and in the doctrine of the right of the majority to rule wherever they may be, either in a State or Territory, or in this body, or anywhere else. The inhabitants of Wyoming when they became citizens of that Territory did not cease to be entitled to the rights and privileges of American citizenship. Many of them are emigrants from the older States in this Union. They left their early homes to build up in that remote precinct of the world the institutions of civilization and found a new State under circumstances of great disadvantage and privation.

Now, sir, if there has been an attempt made to force upon these people a judge who in their opinion is disqualified or incompetent or unfit to discharge the duties of that position, or who is objectionable to them, one under whose judicial ministrations they are not willing to sit, it is their right to express that disinclination and to carry out their views and execute their wishes in any way within their power consistent with the organic act and the Constitution of the United States.

Personally I know nothing about Judge Peck, whether, as the Senator from Nebraska intimates, he parts his name in the middle or his hair in the middle, or does not part either at all; but it cannot be denied that the opposition of the people of Wyoming is so great as to be practically unanimous; that the Legislature of that Territory, without a single dissenting voice, have expressed their disapprobation of his incumbency; that the act which is here sought to be abrogated was passed unanimously by both bodies and received the sanction of the territorial governor. Well, sir, in the face of testimony like this, as to the wishes of those people and to the fitness of that judge to exercise his functions, I am compelled to assume that the question is concluded. We have no right to force upon a reluctant people a judge under whom they do not wish the laws to be administered. They are competent to decide upon his qualifications, whether he is honest or dishonest; and when they have remonstrated, as I understand they did, against his appointment in very large numbers, when their disapprobation was expressed before our action was had here in the matter of confirmation, I believe they were justified in resorting to any measure short of absolute violence and nullification that would relieve them from his ministrations. Now, I understand that all that the Legislature of Wyoming has done is to redistrict the Territory. There is no attempt to interfere with the administration of justice; there is no effort to close the courts or to deny any suitor a forum where his rights can be tried; no complaint upon this score. This is simply the last effort of a free people of an independent, self-governing community to relieve themselves of an act of the grossest injustice.

I believe, therefore, that having protested against the appointment of Judge Peck; having done all in their power to express to the Senate and to the Executive their convictions of his unfitness, they have asserted one of their reserved rights in saying that if he is to be retained and draw the compensation and perform the duties of a judge, he shall hold his court among the Indians and the soldiery of the counties of Crook and Pease, rather than in the more densely inhabited parts of the Territory, if they so desire.

Mr. MATTHEWS. Mr. President, if I understand the facts as they have been developed by the statements of gentlemen who have spoken on this question, they are very simple so far as they are material to the proper determination of this question. It seems that from some cause, good or bad, sufficient or insufficient, the President of the United States, by and with the advice and consent of this body, in the exercise of constitutional functions, has appointed one of three judges to exercise judicial power in the Territory of Wyoming who is unpalatable to the whole or a portion of the people in that Terri-

tory; and in order to thwart the action of the Federal Government in this exercise of its constitutional duty, the Legislative Assembly of that Territory has passed a law, the design of which and, as far as it is effectual, the effect of which is to prevent this judge from practically exercising judicial power in the Territory; and we are called upon to say whether we approve or disapprove of that legislative act.

I am surprised, Mr. President, that there should be any division of opinion or any hesitation on the part of any Senator in respect to his vote upon this question, as I am equally surprised at the principles and the doctrines which are stated by gentlemen in justification of their intended vote against this bill. There was a time when it was a question in this country whether a State in the exercise of an alleged sovereign power never conceded to the General Government, having made itself merely a party to a compact in respect of which it was to judge of its infraction and the mode and measure of redress, had a right, or not, to nullify acts of Congress passed in pursuance of its interpretation of the Constitution. That doctrine has, if not theoretically, certainly practically, been settled beyond further controversy.

There was also a question many years ago as to whether it might or might not be expedient on the part of Congress in making provision for territorial organization to submit certain questions of legislative policy to the determination of popular votes on the part of the people of the Territory; and we had a sort of a hybrid constitutional doctrine very much talked about at that time, that was quite appropriately nicknamed "squatter sovereignty." I supposed that that also had been relegated to its proper place and had passed out of the whole observation of the people as a possible constitutional doctrine.

Why, sir, the very theory of all our action in regard to territorial governments is that owing to the circumstances of the people in the Territories they are not competent to exercise the rights and the powers and the duties and the privileges of local self-government. Whenever they have arrived at that period in their growth and progress, whenever they have attained the conditions of such a state, they do under the consent of Congress come into the possession of the full faculty of local self-government, and are invested with all the rights and privileges of a State in the Union co-equal with all other States; and that is what is meant by local self-government. It belongs to States; it does not belong to Territories. It is granted to the people only by degree and to that extent which according to the peculiar circumstances of each Territory is regarded by Congress as expedient.

Therefore, it is contrary to every true, sound, constitutional idea that the people, the inhabitants of a Territory, have the right, according to their own whim and caprice or according to their own judgment of the necessities of the occasion, to say who shall or who shall not sit in judgment in the exercise of judicial functions and in the administration of law over them. Is it the doctrine that because, forsooth, a judge appointed by the constitutional authority is not palatable to the people who are the suitors in his court they should have the right to say whether the law should be administered there at all or not? Is that the doctrine that grave and reverend Senators are willing practically to put in force?

Mr. PADDOCK. I do not understand the situation to be such as the Senator states. There has been no obstacle interposed in the way of the execution of the law, in holding the courts of that Territory.

Mr. MATTHEWS. According to the admissions of Senators who are opposing the bill, this act of the Legislative Assembly of the Territory of Wyoming was passed with the design and for the purpose of preventing this particular judge from trying any cases in that Territory, so far as they possibly could by such a districting of the Territory as would deprive him of actual jurisdiction. The motive of it was to nullify the action of the Federal Government; the motive of it was to set aside the organic act of the Territory. The very purpose, as avowed here by these gentlemen, was to defy the authority of this body, sitting constitutionally, to advise the President in respect of this very appointment. We are told that they served notice on us in advance that if we, upon the evidence submitted here through the agency of our own committee, should come to the conclusion to advise and consent to this appointment, they would not regard our judgment, but would take the case into their own hands and put in operation and force such measures as seemed to them to meet the exigencies of the case.

One Senator says that like cases have happened where revolution would have been justified. Sir, this is nothing less, only it is not bold and open and forcible. It is merely an evasion by which an actual nullification of the laws of Congress is effected. Is it possible that Senators are willing, even upon the facts as alleged and claimed, to set a precedent like this? Admitting that this judge is all that he is represented to be in respect of his unfitness, can we afford to set this example? We might as well abdicate all constitutional authority and functions in respect of our territorial governments.

In another aspect I protest against the doctrine: I do not believe with the Senator from Kansas who last spoke, that because a judge is unpalatable to the suitors, they ought to have the right to set his authority aside; neither do I believe that they are the most competent to decide who is or who is not a proper judge. I do not believe in the modern doctrine of selecting judges by popular vote. I know the experiment has been in operation for many years in several of the older States, and all that can now be said of it is that it has not broken down; but the time will come, I feel confident, when the evils of the system will become so intolerable that they will not longer be tolerated.

When you come to take into consideration the report made by our committee in regard to the question raised on which this legislation of the Territory is justified, as to the actual state of the case, as to the qualification of this judge, we find that upon the evidence, as I understand it, it is still a case where, contrary to the assumptions made by the gentlemen who have spoken, contrary to the vote of the Legislative Assembly of the Territory, we ought still, with all the light and knowledge since acquired, to vote as we did to confirm this appointment; but whether we ought or not, having done so, we are bound as a matter essential to our own dignity, to our own constitutional duty, to see to it that the officer of our appointment is not set aside by this indirection.

Mr. SAUNDERS. Mr. President, if I viewed this case in the light in which it seems to be viewed by some Senators, that there was a disposition or rather an act on the part of the Legislature to drive this individual out of the Territory and give him no rights whatever, then I might be disposed to vote for the bill. But, sir, I do not so understand it. I understand that they have in their wisdom, whether right or wrong, divided the Territory into three different districts. That that is their right, there is no doubt. They have said that this man shall take a certain part of that Territory, while two other judges shall take the other parts into which it is divided. Now the Senate proposes to come in and settle this difficulty by saying to the Territory of Wyoming, "You cannot do any such thing; we will prevent you from anything like the arrangement of your own affairs in your own way." I was sorry to hear the remarks made in the manner they were by the Senator from Ohio. They remind me too much of the old slavery days when it seemed there was a disposition to oppress and to say to the people, "You must bear this; we have said it; we have fixed it, and you must take it and swallow the pill whether it is bitter or not." I do not like that kind of disposition.

Mr. MATTHEWS. Will the Senator allow me to interrupt him a moment for the purpose of correcting him?

Mr. SAUNDERS. Certainly.

Mr. MATTHEWS. Certainly the ancient doctrine, the doctrine of the free-soil and republican party, was that the authority and legislative power of Congress over the Territories was plenary, unconditional, and absolute.

Mr. SAUNDERS. I am very well aware of that. I remember that only a few years ago, comparatively speaking, Congress provided that all the under-officers of a Territory should be appointed by the governor, that he should appoint the justices of the peace and the sheriffs and such officers. After a while they discovered that the people had some ability in the Territories and were able to take care of themselves to some extent, and Congress in its wisdom left that out and said that it would leave it to the local legislative body to provide for those officers, and if they saw fit to have them elected by the people they could do so. That was left to the people of the Territories by degrees, and they occupy a different position in the Territories now to what they did a few years ago.

I am glad that a feeling is growing more and more in favor of giving them the rights of self-government. As was suggested by a Senator a few moments ago, a bill might be brought in which would allow the people of a Territory to elect their own governor and their own officers. When such a bill is properly presented before the Senate I shall vote for it, because I believe they are capable of managing their own affairs just as well as the same number of people in any of the States of the Union. Thus believing, I argue that the Legislature of Wyoming in this instance had the right to do just as they have done, that is, to divide the Territory up into three different districts and to allot the judges to the several districts respectively as they saw fit to do.

It has been suggested here that the only way the people of a Territory can manage its affairs is to do as they did in this case. They did protest. They protested here by letter and by telegram, saying, "This man is objectionable to us; we do not want him; and if you confirm him we will do" just as they now have done. They then said they would do it. Now, I say, taking that position, is it proper, is it right that we should compel them to take this man and do something else with him? What can you do if they reject him? Will you take from the Legislature the right to dispose of these judges as they see fit? If you do, you might as well blot out at once the provision of a judicial tribunal for the Territories and be done with it.

I hold, then, that the Legislature had this right, and having the right, having been sworn to do their duty and having unanimously done it, it is our business to sustain that Legislature of these people, and hence we ought to reject the bill.

Mr. DAWES. If the Senator from Nebraska, in saying that the Legislature of the Territory had the right to do as they did, means to be understood simply as saying that they had the power to do as they did, no one would differ from him. The Congress of the United States has given them that power. They had no power except as Congress gave it to them. Formerly, as the Senator from Ohio has said, Congress itself exercised the entire jurisdiction to the minutest details over the Territories under the doctrine that it had supreme control of the Territories of the United States to do as it pleased. In process of time it became inconvenient as well as unwise for Congress here

to exercise that power, and it went one step further and created legislatures there, and provided that their laws should be in force upon condition that such law should receive the assent of Congress, and their laws were not to be in force until they had the affirmative action of Congress. That brought every matter of detail in a Territory under the supervision of Congress.

Mr. SAUNDERS. If the Senator will allow me, that was the time I alluded to, when Congress thought that the people in the Territories were not capable of self-government.

Mr. DAWES. It was not in any such day at all, nor in any such spirit, nor in any such intention. It was evidently the growth of the popular sentiment in this country that just so far as it was wise and expedient, so far as it resulted in good, it would be conceded to those people to manage for themselves, just as we tried the experiment in the District ten miles square where the capital is situated, which was committed to the exclusive control of Congress. We set up a parliament here and clothed it with the power of the British Parliament, and all its pomp and ceremony and all its royalty; and we have been reaping the bitter fruits of it to this day. What has been the result—and I commend it to the Senator from Nebraska—what has been the result of the people of this District trying to see how much power they could exercise under the doctrine of the Senator from Nebraska that they have the power to do this and therefore they have the right to do it, and we ought to uphold them in doing it? The relation to us of this District is very much that of a Territory, getting all power from Congress. It was conceded to them and they set up a kingdom here, and the consequence was what I commend to the Territory of Wyoming: Congress took it all away from them.

Mr. SAUNDERS. Very well. Now——

Mr. DAWES. I will go on; the Senator will pardon me. While the Territory may have the power to do this, Congress has just as much the power to review what is done, and it is just as much our duty to review what they have done as it was their power to do it. It is brought before Congress, and brought before Congress in this way: A Territory that gets all its power from Congress conceded to it, having nothing originally at all, has served notice on Congress, according to the Senator from Nebraska, that if we did not do as they wanted us in the appointment of a judge they would nullify our act. That is just exactly the plain English of what I heard from the Senator a moment ago. He says that they served notice on us that if we confirmed that judge they would do just exactly what they have done, and now he says we ought to uphold them in doing it. I submit that is another form of putting the question, shall we surrender to these Territories absolute control of all their affairs as we do to a State, the appointment of their own judges, the enactment of their own laws, the election of their own officers as a State? Why not take them in gross into the Union, then, and make them States?

Mr. EDMUNDS. Without any Federal jurisdiction?

Mr. DAWES. Exactly, without any Federal jurisdiction, as the Senator from Vermont says. There would not need to be any formal admission if we surrender, according to the suggestions of the Senator from Nebraska, whenever they serve notice on us. When the doctrine of the Senator from Nebraska is pushed so far as to serve notice on us, it is quite time we take the Federal courts out of the Territories unless we make them conform to our views.

Mr. PADDOCK. I should like to say in connection with the Senator's statement that if there shall be surrendered to these Territories the right as the Senator suggests to appoint all these officers or to choose them by the people of the Territories, it would be a serious hardship on the effete and broken-down politicians of the older States of the East for whom these Territories have become a sort of Botany Bay. People who have lost their home support from one cause and another and have found it necessary to go elsewhere in order to get themselves into official position would be left out in the cold, and Massachusetts would be in a bad way in that respect, I have no doubt.

Mr. DAWES. I quite agree with the Senator that the policy of making these Territories the asylum of broken-down politicians and foot-loose ex-judges of States or other sorts of politicians is just as bad as it can be.

Mr. PADDOCK. Or experimental moral philosophers.

Mr. DAWES. Or experimental moral philosophers; and if the Senator from Nebraska has any other characters to suggest I will embrace them in my statement. That has nothing to do with the question. I quite agree with the Senator from Nebraska that we ought to go on in the spirit in which we have been traveling for the last forty years, leaving in the hands of the citizens of these Territories, just so far as is consistent with the public good, the management of their own affairs. But this is not the way for the Territory to obtain that management nor is it the way for it to be wrenched from Congress. It is simply the question, presented in the bill before us, whether Congress shall surrender to the Territory or whether the Territory shall conform, as in times past, and as in all other Territories they have, to the administration of the law according to its forms enacted here. The idea that the appointing power consisting of the President and the Senate of the United States shall be dictated to by a territorial Legislature and that a Senator shall think it a part of his duty to uphold that Legislature in attempting that, is a mistake I think of policy so far as the Territory itself is concerned, and I know it is in spirit nullifying the whole Constitution and law in respect of the Territories.

Mr. PADDOCK. In answer to what the Senator has just said, I venture to make the statement that there has been no Territory organized in this country for the last twenty years which has not furnished some precedent for this very act. I say that there has not been a Territory organized in the early history of which it did not happen that the lines of the districts were changed and the judges transferred from one district to another, either by the wishes of the citizens and the bar of the districts in which the judges lived or at their own request?

Mr. DAWES. All that is perfectly fair and proper. If that was all that had been done here, the Senate would not have been troubled; but I learn from the other Senator from Nebraska that this was done with another purpose and for another end; and we were notified——

Mr. PADDOCK. I will say in answer to that that it has been often done before.

Mr. DAWES. According to that Senator the question was presented to us distinctly, will you abdicate, will you surrender your constitutional rights and defer here to the Territory, or will you exercise them yourselves?

Mr. SAUNDERS. I wish to say to the Senator that I do not want him to misrepresent me.

Mr. DAWES. I beg the Senator's pardon if I have done so.

Mr. SAUNDERS. I did not say or intend to say any such thing. I did not understand anything of the kind as that the Territory had so notified us. I understood it to have been done in an advisory way. I understood it to come from them by giving simply their opinion of the matter and that the threat was not made to nullify the laws of Congress at all, but they said to Congress: "This man is not endurable to us; we cannot endure him, and therefore we do not want you to appoint him; for if you do we shall give him a district of the Territory where he will have but little to do." That is what I said.

Mr. DAWES. I do not know in just what terms the suggestion was made to us, and I did not know it had been made to us at all until the Senator said just exactly that what they have done they gave us notice they would do, if we did not surrender our right to confirm a judge nominated by the Executive. I want to suggest to Senators who are so ambitious to take the entire and absolute control of the Territories off from Congress in all departments of government and surrender it to these Territories, if under those circumstances the entire expenses of the Territory ought to be paid by this Government. At this day all the expenses of the administration of a Territory, of its Legislature, are paid out of the Treasury of the United States. These judges have to be paid out of the Treasury of the United States. The courts that they hold are paid for out of the Treasury of the United States; and this ambitious territorial Legislature proposes to dispense with such of the judges of these courts as they do not like.

Mr. HOAR. My colleague has discussed this question, conceding to the opponents of the bill reported by the Judiciary Committee the claim that the territorial Legislature had the power by law to pass this act, which was done to set aside the act of this Government, assuming to argue the question upon their premises. I do not understand, however, that my colleague meant to declare his own opinion to that extent, or if he did that that is the law. The organic act of the Territory of Wyoming contains this peremptory and mandatory clause:

> The said Territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such time and place as may be prescribed by law; and said judges shall respectively reside in the districts which shall be assigned them.

Now, the territorial Legislature, in defiance of that express mandate, as legally binding upon them as the mandates of the Constitution of the United States are upon us, proceeded to establish a pretended judicial district in which there are no inhabitants, composed of the country where Custer was killed, as I understand, and in which residence by white inhabitants is practically impossible.

Mr. PADDOCK. Oh, no; that is impossible. Custer was killed away north.

Mr. HOAR. That is the information I have from the chairman of the Committee on the Judiciary; but at any rate it is a district without white inhabitants.

Mr. DAWES. Let me inquire of my colleague who is to name the judicial districts by the organic act?

Mr. HOAR. The territorial Legislature; but Congress provides that they shall divide the Territory into three judicial districts.

Mr. DAWES. Is it the argument that they cannot change them?

Mr. HOAR. No, not at all; but the argument is that there are not three judicial districts in any practical, legal, or reasonable sense. Suppose the Constitution of the United States commanded Congress to divide this country into nine judicial districts and we should proceed to say that one district should be composed of some island bordering on Alaska, in which there was not a single white inhabitant, and in which there were no persons or affairs the proper subject of judicial action, would not the Senator who voted for that bill violate his oath to support the Constitution of the United States just as flagrantly as if he had undertaken to move upon the President of the United States and dislodge him from his authority in the White House? This act of the territorial Legislature is not only in defiance of the constitutional authority of the President and the Senate to appoint this judge, an authority which the Senate advised the Presi-

dent of the United States to exercise on full consideration and on full hearing of the objections now brought against this judge, but it is also a defiance of the express mandate of the land which every member of that territorial Legislature was bound to obey under the same constraint that we are bound to obey the requisitions of the Constitution of the United States.

Mr. TELLER. I should like to inquire of the Senator from Massachusetts whether he means to be understood as saying that the organic act required three districts which could not be changed.

Mr. HOAR. No, sir. I mean——

Mr. TELLER. Then here is another question.

Mr. HOAR. Let me explain that.

Mr. TELLER. I have the answer that you do not mean that.

Mr. HOAR. I propose to complete my answer. If the Senator trusts to my courtesy for a question I must have a right to my language to answer.

Mr. TELLER. But I want to ask another question.

Mr. HOAR. I wish to explain the first answer. No, sir; it is not necessary that they should be; it is not necessary that they should remain unchanged. That is not the point. It is necessary that they should be judicial districts where a judge may reside. A territory in which there are no affairs the subject of judicial authority and no white inhabitants over whom this jurisdiction of a judge may rest and extend, is not a judicial district in any meaning of the terms to the apprehension of any sensible man. I will ask the Senator from Colorado a question in turn. Suppose the Constitution required Congress for purposes of the jurisdiction of the Supreme Court of the United States or the circuit courts to divide the territory of the United States into nine judicial districts. Would he deem it a compliance with his view of his duty to proceed to make of one of those judicial districts Covehead or Pettyhunk or some little island off the coast inhabited by the remnant of some barbarous tribe of Indians, none of them amenable to the laws?

Mr. TELLER. That is not the case before the Senate at all. There is nothing of that kind attempted in Wyoming.

Mr. HOAR. It is the case before the Senate exactly, unless I have totally misunderstood the representation of facts made to the Senate by the members of the Judiciary Committee who have stated them; and if in any respect I have overstated the facts upon this point, I shall be thankful to the learned chairman of the committee to correct me.

Mr. EDMUNDS. Not a bit.

Mr. HOAR. The chairman says not a bit.

Mr. TELLER. Mr. President, I want to say one word. In the first place, I have not subscribed to the doctrine that we are charged with having enunciated, that Congress may not interfere. I have always held that Congress has full power over the legislation of the Territories. When the Legislature of Wyoming passes an act providing for the election of a justice of the peace of a township, I know that the Senate, the House concurring, with the approval of the President, may repeal that act. I simply say that this bill is exactly in principle, notwithstanding all that is said about it, as if Mr. Peck were here complaining that he had not been fairly dealt with and somebody else had another and better district. I say the district to which he has been assigned is not, as I understand, at all an unorganized section of country. It is organized into counties by this very act of the Legislative Assembly; and it is not usual that there should be a large number of people in a section of country before it becomes organized in the West.

Mr. DAWES. What is the meaning of the provision that in the event of a vacancy occurring in the office of the judge the governor of the Territory is empowered to redistrict the Territory?

Mr. TELLER. I will come to that. There is nothing in my judgment in the suggestion of the honorable Senator from Massachusetts [Mr. HOAR] that this means practically that they shall divide the business of the Territory, for that is what I understand to be his position, substantially like——

Mr. HOAR. Will the Senator permit me to correct him? I took no such position, and I desire the Senator to confine himself to the position which I did take, which is this: that each of those districts must be in substance a judicial district, that there must be something which constitutes them, within the meaning of that term, a judicial district.

Mr. TELLER. That I understand to be the case now. Nobody here denies that the district to which this man is assigned has its proper proportion of territory. There is no proof before the Senate that it is not a judicial district within the meaning as laid down by the Senator from Massachusetts.

Mr. HOAR. Let me call the attention of the Senator to the fact that the Judiciary Committee report that it is a district without white inhabitants.

Mr. EDMUNDS. It is the one in which poor Custer was slain.

Mr. TELLER. No, sir; I beg the honorable Senator's pardon. It is not near where Custer was slain. He was not killed in that vicinity at all, nor within two hundred and fifty miles of it.

Mr. EDMUNDS. My information is different.

Mr. TELLER. Then that shows simply that we are proceeding here without knowing what we are about.

Mr. EDMUNDS. I do not know but that the Senator is.

Mr. TELLER. While the power may exist, it is a question whether we ought to exercise it. One Senator states that there are no white men there; another one says there are; another says it is where Custer was killed. Men who are familiar with the country know it could not be where Custer was killed. He was not killed in Wyoming; he was killed in Montana, at Cloverdale.

Mr. CONKLING. Mr. President, I feel moved to say a word, not so much about the bill as about this general matter, owing to the strictures which fell from the Senator from Nebraska, [Mr. PADDOCK.] He undertook to classify Judge Peck, and he ranged him among a class of people in aversion for whom I should not like to yield to the honorable Senator from Nebraska. He described hollow, pretentious, unreal men, vaunting themselves about their superior virtue and dwelling in contentment over the distinctions existing between them and a common humanity. If Judge Peck were one of those persons, and if the Legislature of Wyoming had been moved by distaste for him to adopt this legislation, I think about as strong a case as could well exist of that kind would be made. But now I want to say of Judge Peck that he lived long in the State of New York; he was a lawyer of good repute and of large instruction. Knowing him, knowing his kindred and family, (on both sides somewhat wide and somewhat honored,) I never heard before, nor did I ever suspect, that Judge Peck deserved such designation as the honorable Senator has been pleased to bestow upon him, and I must think after hearing him that he is misadvised in that regard.

Mr. PADDOCK. The Senator will allow me to remind him that for the statement I made I quoted the only authoritative representative of the Territory here.

Mr. CONKLING. Mr. President, hearsay is proverbially dangerous evidence.

Mr. PADDOCK. Official, nevertheless.

Mr. CONKLING. I have the pleasure to know the Delegate to whom the Senator refers. I have conversed with him on this subject. I accept readily all he says; and still I venture to repeat my observation that the Senator is not well grounded in the aspersions, for such I think them, which he is pleased to bestow upon Judge Peck.

Mr. President, I shall have done when I have added that I believe Judge Peck to be a well-instructed lawyer, a pure and upright man, and one who has faculty and training enough to acquit himself fitly of the duties which wait upon him. That this controversy is unfortunate, nobody can doubt. Be Judge Peck the most eminent judicial minister that could be found, he has great disadvantages to cope with, owing to the condition of feeling which has grown up; and to him more than to anybody else will be ultimately addressed the question how and how long he shall stand in front of such a controversy. As I said, I do not wish to discuss the bill; it has been sufficiently discussed; but I did not like a constituent to bear away a crown somewhat thorny, such as the honorable Senator imposed upon him.

Mr. EDMUNDS. Mr. President, I do not wish to weary the Senate with useless repetitions; but after what has transpired in the observations of the Senators from Nebrasks and Colorado, I think it due to Judge Peck that the Senate should perfectly understand the question, so far as he is concerned, although it has in my opinion nothing to do with the real and exact question as to whether the supremacy of the United States in the Territories in respect of these Federal courts is to exist, or the supremacy of the territorial Legislature. But it would be very unjust to Judge Peck to leave the matter, after what has been said, in the attitude that it now stands.

I have known Judge Peck personally for more than thirty years. When I came to the bar a lad in Vermont, he was a member of a leading firm of practitioners in the city in which I now reside. He was honored and respected by everybody; he had learning and skill at the law; and no person ever accused him or uttered a suspicion against his high honorable character, and his capacity. Twenty years ago or thereabouts, he removed to the city of New York, his wife being, I think, a daughter, certainly a near connection, of Chancellor Paige of New York. He has practiced there since. When the question of his confirmation came up, according to our usual practice, (and I hope I shall not get over the proper rule of the Senate about secrecy in what I may state; I will try not to do so;) the papers in the Attorney-General's office touching the subject were sent for, and it appeared that he was recommended for this office by almost the entire body of the leading members of the bar of the city of New York, among whom he had lived, and with whom he had practiced for twenty years; and he was appointed.

Now I come, Mr. President, to the history of his experiences in Wyoming Territory, and what I state I state as the responsible representative of the Judiciary Committee upon the facts as we found them to be upon information and evidence. One of his first misfortunes was that one of the delegates in the Territorial Legislature, a lawyer practicing before him, the judge found it necessary to fine a small sum, $10, or whatever it may have been, for contempt of court, and it came to be immediately understood that Judge Peck would hear of that hereafter when the delegate got to a place where he was out of reach of the operations of the administration of justice. Judge Peck took up the administration of law there. There was a great accumulation of business on the dockets of the courts of the district to which he was assigned, the present Uintah and Sweetwater Counties. He proceeded to hold his term and to administer the law according to what are called eastern notions, not more eastern than they are southern, not more southern than they are western, in the States; that is, by taking full minutes of the evidence so that he should know

what was taking place in his court, giving written charges to the juries so that parties objecting to his rulings would know exactly what it was that he had instructed the jury. Under that administration of the law, the expenses ran up largely from what they had been before, unquestionably. Under that administration of the law, a larger amount of business was disposed of at the terms than there had been before, and many a rumseller contrary to law, many a gambler, forger, robber, mail-robber and whatever they might be (the committee had full and exact statistics from the records of the court about it) were sentenced to punishment.

Then about that time, as he was appointed in the interim, the territorial Legislature being in session, and the question of his confirmation of course being a matter for consideration here, proceeded to act, and they sent a memorial which the Judiciary Committee waited to receive in order that we might be sure that we should hear all sides, in which their only objection to Judge Peck was by reason of "incompetency and gross extravagance" in the operations of that court. The "incompetency" was that he had taken minutes of the evidence and given written charges, so that if his rulings were erroneous they might be corrected; and that during his administration of the law many people of the kind I have spoken of, men of the rum-shops and the gambling saloons and the robbers and so on, came to grief; and they had not before apparently. That cost a good deal no doubt, because the fee bills of the Territory, as fixed by this same territorial Legislature, are perfectly enormous. I do not know how much the allowance is for travel; I have forgotten; the evidence of it was before us; but it is $3 a day for the attendance of a juror, and so on, and of course it runs up, and I do not know but that it is $3 a day for a witness. I think it is. Of course in a Territory sparsely settled, where people come from a great distance, the expense does run up.

Upon the evidence before the Committee on the Judiciary, it appeared that in those counties where he administered justice a very large majority of the responsible tax-payers who had to bear this burden urged the Judiciary Committee by their memorials and petitions to confirm this gentleman, because they could afford, notwithstanding the extravagance of the fee-bills, to pay for an upright administration of justice that should relieve the community from the crimes and disorders that were present in it. That was the evidence and that was the fact, as we find it upon the evidence.

Mr. TELLER. I should like to ask the Senator a question. I understood him to say some person was fined by him. I want to know whether it was a member of the Legislature and also a member of the bar, a member from Uintah County or Sweetwater County.

Mr. EDMUNDS. I think so.

Mr. TELLER. Can you give the name?

Mr. EDMUNDS. I cannot give you the name at this moment; I will give it to you hereafter, if the rules of the Senate about executive sessions allow me to do so.

The Committee on the Judiciary heard this subject on both sides when the question was proposed of confirming this appointment. We waited until we could hear everything that was to be stated upon both sides, and upon a careful, and so far as we were concerned, I hope and believe, a perfectly impartial and indifferent judgment upon it, we had no hesitation in recommending his confirmation. This memorial of the Legislature to which I referred states those two objections to him.

The paper from which I am about to read is a sworn paper, a memorial which was referred to the Judiciary Committee and upon which, and in connection with the former facts we were advised of, we reported this bill. It is signed by nine gentlemen of those two counties in which he held sway. Upon the authority of the Delegate from the Territory, who has been referred to, (to whom I am not aware, that the Constitution or the law has given the power to select the judge or dismiss him,) I make the statement of who these people are. There was one exception, of a person whose good standing he had doubt about. I will not name that person, because it would not be just to the Delegate or to the persons making the statements before committees in any way. Upon the statement of the Delegate the great body of these nine persons are persons of respectability and honor. They may be wrong; that is another thing. Very likely the Delegate does not sympathize with them; perhaps he sympathizes with the other side; but these persons who brought this sworn statement of the history of the affair appeal to us for the protection, not of Judge Peck, but of their interests and of the interests of the community, and they are entitled to be heard as persons having a standing in court as reputable and responsible people. Now let us see how this matter happened thus stated under oath by these gentlemen. "This memorial," these gentlemen proceed to say, "was passed by both houses of the Legislature by a unanimous vote." The Cheyenne Sun of the 8th of December contained the following:

"On Thursday President Hayes sent the name of William Ware Peck," &c. As our readers are aware, the Legislature has just forwarded a memorial to the President remonstrating against his appointment. Immediately upon hearing of Peck's nomination the indomitable W. E. Wheeler, of the Evanston Age, who don't love Judge Peck to any alarming extent, sent the following dispatch to Delegate CORLETT:

"CHEYENNE, WYOMING, *December* 7, 1877.

"Hon. W. W. CORLETT,
"*Delegate in Congress from Wyoming:*

"SIR: Dispatch just received that William Ware Peck has been renominated. Joint memorial has passed Legislature by unanimous vote praying against his renomination. Stay confirmation, if possible, until you receive memorial."

It was stayed until the memorial was received, and considered.

If confirmed he will be consigned to a new district, composed of Crook and Pease Counties.

Which was not, as the Senator from Nebraska has supposed, the ordinary orderly administration of adjusting districts in that Territory for the convenience of the administration of justice; but it was a predetermined affair that if the Government of the United States, for the protection of all the citizens of the United States who have causes to try in that Territory, appoint a judge that this Legislature does not choose to have appointed, for a good or an ill reason, no matter, he shall be sent among the Sioux where he shall be scalped! This is the signature to the dispatch:

W. E. WHEELER,
Official Reporter Legislature.

The following is Delegate CORLETT's reply, a very proper one for the Delegate to make:

WASHINGTON, *December* 7, 1877.

Send memorial. Laid your dispatch before the President and Judiciary Committee.

Which the Delegate did in the very proper performance of his duty; and I may say here for the Delegate, as I am bound to say, that he has conducted himself in this matter, so far as the committee is concerned and in his conduct about it, in a perfectly impartial and fair manner. Now these gentlemen under oath, knowing what they are talking about, proceed to say:

First, the memorial misrepresents the voice of the community. The facts upon the subject are a part of record, and all so clearly established and well known that no one can intelligently or candidly question them, and we are compelled to regard the memorial as designed to mislead the President.

The following is a summary of the facts:

Then they go on to state about the judge coming there, how he administered the law, with what purity, with what diligence, with what success, although, as I have stated, it did cost a great deal with the fee bills, as they were, to do it in that way, and to the entire acceptance of the great body of the tax-paying community who had to foot the bills in that county. Then they go on to give a history of the terms, which I should be very glad to read clear through but it would take too much time. One of the causes of these great expenses I should now add was that the clerk of the court, according to the custom before, had been in the habit of issuing subpœnas in prosecutions of crimnals, both for the Government and for the respondents on their application, without any supervision of the judge. I know in the State of Vermont, and I presume it is so in most States, that in respect of subpœnas for the defendant's witnessess the judge has to pass upon them in order to see that enormous frauds and injustice are not committed. They say:

It turns out, upon examination in the clerk's office, $1,040.84 were expended by the clerk for the expenses of the territorial subpœna so furnished by him at the July term prior to August 28 to defendants in criminal cases, as above explained, in addition to sheriff charges.

Upon ascertaining this expenditure, also some abuse committed at the same term in the issuance of a certificate to a witness called for the Territory, Judge Peck passed for his district two orders, one forbidding the issuance of the territorial subpœnas for the defendant's use except upon the special written order of the court founded upon motion and affidavit, the subpœna to be countersigned by the judge; the other prohibiting the issuance by the clerk of a juror or witness certificate except countersigned by the judge.

These two rules might be just as they are now by law in the district courts of the United States, subject to the supervision and inspection of the presiding judge in order to protect the tax-payers against improper practices which might arise. Then the next sin this judge committed was that he ordered that the sheriff's bill and the bills of the county clerk, and so forth, which were to be paid by the tax-payers, before they were submitted to the county commissioners to be paid, should be submitted to him for examination. That was objected to, or is now, as if an arbitrary act. I do not think the people who live in civilized communities (and I do not say that Wyoming is not a civilized community) would object to that, and yet the evidence is before the committee, and is here in my possession now, that, after this act of the Legislature passed that we propose to annul, the first thing one of the other judges did, who came there to hold court in one of those two counties, was to set aside and reverse, cancel, both those orders. That will illustrate on which side of this controversy good order, fair dealing, the protection of the tax-payer and of the people of the Territory from injustice, lie.

Before I go on with this memorial which states the facts substantially I ought to state another thing lest I forget it. The laws of the United States require that the fee bills of the district attorney, as he may be called, the territorial attorney, must be approved by the judge. This judge found it to be his duty, incompetent as the Legislature say he is, and you can see these signs of incompetence, to refuse to approve one of the bills of this attorney. That was the third crime he committed, an act which in every court of the United States in the States is thought to be, instead of a crime, a virtue, and one necessary even in perfectly settled and organized communities to the protection of the tax-payer and of the Treasury from improper charges. That made him another enemy, of course. The judge who has the temerity to refuse to certify to the bill of a prosecuting attorney may expect that there will be a rumpus in the Territory straightway! These gentlemen then proceed to state the nature of this northeastern district as it now is, these two wild counties.

Mr. SARGENT. Will the Senator from Vermont give way for a motion to go into executive session.

Mr. EDMUNDS. No, I shall finish this in a few minutes; I shall

not be long. They then proceed to state how this memorial came to be the unanimous memorial of the Legislature. I will not take time to read the whole of it but it is all set out and set out in a way that you cannot fail to believe in its truth. It seems to be a practice, as it is stated, in that Legislature, that in respect of all local matters, the delegations of the counties shall be followed, so that if county A wants a particular thing done or not done, all the others say amen, and when county B wants anything done or not done all the others say amen, and so you get a unanimous vote nearly every time!

In respect to one of these particular counties it appears that there were only two hundred and two voting population. In Sweetwater County, the seat of which is Green River, including the women, there are two hundred and two adult population.

The record shows ten liquor licenses held there, making one liquor saloon to every ten resident men. It is well known that gambling is connected with every liquor saloon, so that the liquor license practically covers two branches of business—the saloon and gambling traffic.

In August two parties were arrested there under the judge's warrant, on a charge of robbery as committed in a gambling saloon there, and, upon representation to him that the local magistrate shrank from investigating the matter, were ordered before him at his chambers, at Evanston, where he was then holding court. After a long examination they were bound over by him in heavy bonds at the October term, and remained a considerable time in jail, before they were bailed out. In the course of his decision in the case he spoke severely of the saloon and gambling traffic in his district, as the principal source of the criminal business in his court.

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

Mr. EDMUNDS. Certainly.

Mr. PADDOCK. I should like to inquire of the Senator from what he reads?

Mr. EDMUNDS. I am reading from the sworn memorial of nine citizens of the counties over which this gentleman presided.

Mr. PADDOCK. Just nine?

Mr. EDMUNDS. I think the number is nine, eight of whom are indorsed by the Delegate of the Territory as being honorable and respectable men; and I will add, while the Senate is on the subject of nine, that this confirmation was made upon the written memorial, among other evidence, of all the lawyers in one of these counties, the whole number of the bar with one single exception. At the October term these parties who had been arrested in Sweetwater County were presented before the grand jury, the grand jury divided, and they say:

And it is well known that the jury stood 11 for and 5 against the bill; that this division continued five successive days. * * * It is also well understood that the jury was packed for the purpose of defeating the bill.

Against these gamblers and robbers in that county. That was the third sin that Judge Peck committed. The people who get their elections by the votes of the liquor saloons and the gambling shops, who run politics sometimes in the Territories, as they do in certain places in the United States here and there, or at least the political affairs of the Territory are considerably influenced by that sort of thing,—these people regarded that as the next sin he committed.

Mr. President, I might go on through the whole of this memorial; it would be very excellent reading; but I will pass over, for I do not wish to prolong this matter, to the next step that was taken to incite this Legislature to pass these acts and to send this memorial. This Mr. Wheeler, the Daily Sun man, put into his paper the following, which I have every reason to believe was entirely an invention, untrue:

William Ware Peck, of Evanston, received tidings from the Wyoming Legislature that a memorial was passed, asking that he be not appointed associate justice of the supreme court of this Territory, and straightway he sent a telegraph dispatch to Washington, as follows:

"EVANSTON, *December* 6.

"Attorney-General DEVENS:

"Unless my confirmation takes place very soon the people will suffer for want of law. The Legislature of this Territory is composed of cut-throats, thieves, and whisky men, and any memorial from them is not worthy of consideration.

"WILLIAM WARE PECK."

This was published in a newspaper you will perceive, and, as I say, the committee have never been able to find in all the papers we have examined—and we have seen them all—any such dispatch; but that is what the newspaper set up on the Legislature in order to stir up their honest hearts of course to a feeling of resentment! The paper goes on to state:

We presume the ex-judge felt greatly relieved after he had thus unloaded himself. His anxiety that "the people" should have an abundance of law is no doubt sincere, but the dear people are not suffering as badly on that account as he imagines.

Our reporter has interviewed several of the representatives in regard to Peck's dispatch, and elicited the following expressions:

Tisdel, of Sweetwater County, says that he thinks the Legislature can furnish all the law that is required, and more too.

Pease of Albany County, says: "Now we know what we are."

Hamma, of Laramie County, says: "I never expected that our fame would extend all the way to Washington."

Pease, of Uintah, wants to "give the old man a chance" to prove he didn't send such a dispatch.

Lowe, of Sweetwater, says: "Now we'll give him a sage-brush district, sure."

Gurney, of the same county, sees "Peck's car-marks in that telegram."

Dyer, of Laramie County, says: "The judge must refer specially to the Uintah County delegation, as he is not acquainted with the other members."

Now, this memorial proceeds to state:

We are creditably informed that the officer whose bill was disallowed, as above stated, is an owner in the Sun. In answer to an inquiry as to where he got said alleged telegram, the editor of the Sun states that he quoted it from a letter written from Evanston to a Uintah County officer then at Cheyenne. All the Uintah County officers reside at Evanston except one, who resides three miles from here. Of these officers, only two were at Cheyenne during the session; those two were the sheriff and judge of probate, who is also a freight agent, and suddenly turned against Judge Peck—

I think the names of this sheriff and judge of probate are on his petition in favor of the confirmation of Judge Peck; and they saw cause, for some reason best known to themselves, apparently, to change their attitude; but I am not sure about that.

We deem it a noticeable fact that a law, confined to this county, was passed, increasing their incomes—

That is, of the sheriff and the judge of probate—

and generally reducing those of the other officers of this county—in most instances one-half—thus indicating that those two officers were in concert with the majority of the Uintah County delegation.

Then come letters from people in Wyoming Territory addressed to members of its Legislature, urging them to resist the passage of this act and of any such memorial. The first is from Mr. J. C. Friend, to whom Mr. Garbanati, of Evanston, had written, urging him not to allow such an act of injustice and of nullification and violation of law to pass. He says:

Your favor of the 1st in regard to the memorial relating to Judge Peck at hand, and noted. I heard but little about it previous to the arrival of the western mail yesterday, since which time it seems to be the unanimous sense of the Sweetwater and Uintah delegations to pass the memorial without further delay—

That "western mail" brought this newspaper with the forged telegram in it—perhaps I ought not to say "forged." I do not know that it did not exist. I only say that I never could find any such paper—

and as it is a matter which only affects the two western counties, and the delegations being unanimous I must beg to be excused from interfering.

Very respectfully,

J. C. FRIEND.

He was a member of the Legislature from one of the other counties, and he states it, as I stated before, that things go according to the wishes of the county delegations. Next is a letter from another member of the Legislature apparently, addressed to this same gentleman at Evanston:

Your favor duly received and contents noted. * * * I regret exceedingly the ill-considered action of the Legislature in reference to Judge Peck, but found myself powerless to prevent it. For some reason or by some means, the entire Uintah and Sweetwater delegations were a unit in opposition. All sorts of stories were circulated in reference to him, as to what he had said about men who sold liquor, &c. Of course there was no truth in them, but the more improbable the stories, the more they were relished. The other delegations said they knew nothing of Judge Peck, but were going to stand by the Uintah and Sweetwater delegations in anything they desired done; a kind of a mutual admiration society, by which they were to do anything each other wanted done. Please tell Mr. Alfred G. Lee the contents of this, as I am very busy. Will write you shortly.

Very truly, yours,

W. R. STEELE.

I think this gentleman, Mr. Steele—it is the same name—was formerly a Delegate from that Territory in the Congress of the United States, and is a highly respectable gentleman.

Mr. TELLER. I should like to ask the honorable Senator from Vermont if he knows how far Mr. Steele lives from this district?

Mr. EDMUNDS. I do not. I do not believe he lives any further from it than the Senator from Colorado does.

Mr. TELLER. He lives almost as far.

Mr. EDMUNDS. But not quite, and therefore must be supposed to know a little more about the Territory than the Senator from Colorado.

Mr. TELLER. Not very much.

Mr. EDMUNDS. I presume not very much. Here is another from a very highly respectable citizen of that Territory, as I learn from Senators not connected with this controversy. This gentleman, Mr. Kingman, the signer of this letter, is stated to me by gentlemen who are members of this body, and not members of the Judiciary Committee, to be a highly respectable and honorable gentleman. This is a letter addressed by him on the 7th of December to Judge Peck himself:

Although I am an entire stranger to you, I cannot help congratulating you on your renomination by the President, as appears in this morning's papers. I have tried what I could to prevent our Legislature from showing the length of their ears and keep them from joining with rascals in the wicked attacks upon you, but without any favorable result. I know too well what kind of cattle are pursuing you, and have myself suffered too much from their rascality not to sympathize fully with any honest man who is compelled to submit to their brutal and selfish attacks.

He is not now speaking of the Legislature, but of the persons who move these influences upon the Legislature.

I know that no man can administer the law in an impartial and intelligent manner in this Territory and not meet with all sorts of abuse from quarters that should be better employed.

We feel, in this part of the Territory, that we need you on our supreme bench, and we desire to aid you if we can in your fight with ignorant and perverse rascals, who cannot endure an honest man or a good lawyer on the bench. I sincerely hope you will be confirmed by the Senate, and will remain with us until the character of our court is elevated vastly above its recent standard.

I am pleased to add that the uniform testimony of the attorneys who have practiced before you is soundly in your praise.

With much respect, I remain, your obedient servant,

J. W. KINGMAN.

I might go on through this long statement, as I have said under oath, reciting facts and circumstances which are corroborated in every respect by the other evidence before the Committee on the Judiciary for an hour or an hour and a half more, but why should I do it? We find and report to you that this attack upon this gentleman is entirely unjust; it moves from wrong sources and by wrong influences, and the honest men of that Legislature—I have no doubt there are a great many of them—have been sadly imposed upon and deluded into this

act, which is destructive of every principle of good government upon which the rights of the community and the progress of society can rest. If the Senate of the United States is to say that under such circumstances a nullifying act—it is nothing else, it purports to be nothing else on the face of it, because it says that the moment this man is gotten rid of the whole thing shall go for nothing—if the Senate of the United States is ready to give its approval to that sort of thing we have done our duty.

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

Mr. EDMUNDS. Let us finish this bill now; it will not take long.

Mr. SARGENT. If we can have a vote, very well.

Mr. WHYTE. I shall not object if we can have a vote.

Mr. EDMUNDS. I shall not say anything more.

Mr. TELLER. If the Senate desires to go into executive session very well.

Mr. WHYTE. If there is to be no more debate, I shall withdraw the motion.

Mr. EDMUNDS. The Senator from Colorado wishes to speak a few moments only.

Mr. WHYTE. I withdraw the motion.

Mr. TELLER. Mr. President, the Judiciary Committee have a little the advantage of having the evidence in this case, which is all *ex parte*, and nobody else has it. Since about the time the Senator from Vermont commenced speaking I have received a dispatch from a gentleman to whom I telegraphed last night. I telegraphed him asking if he personally desired to have this bill passed, understanding that he knew the effect of the bill. He telegraphs me as follows; I will not read his name, but I will present it to any Senator who wishes to have it:

For God's sake, can you delay action until we can reach Washington and are honestly heard from?

I will say that this gentleman is not a whisky-drinker; he is not a gambler; he is not a thief; he is a banker, a man of as much respectability and character as any man on this floor. I have presented here to-day the names of nine other persons who are as competent to judge of this matter as the chairman of the Judiciary Committee or anybody else, and out of the nine at least seven of them are known to me to be men of the very best kind of character; two of them I scarcely know, but I am told they are men of character in the community. I simply want to deny that this is an attack made on Judge Peck's character by whisky-drinking men, an attack made on him by bummers. I say it is not quite fair to the fair fame of the people of that Territory that the *ex parte* statements of a few men, who have certainly no greater claim to respectability than they have, should be taken to charge the whole people of that Territory with being disreputable characters.

Mr. EDMUNDS. I have made no such charge.

Mr. TELLER. I know some allusions to the testimony of two gentlemen that I consider men of character have been made here. I think those gentlemen do not live within three hundred miles of where this man held his terms of court. I do not say they are not entitled to credit; but they do not speak from personal knowledge. When the Senator alludes to the fact that this judge went out there and proceeded to do something, he would lead the Senate to suppose so unusual, so extraordinary as to hold court in one of these Western Territories as courts are held in the East, I would say to him that after nearly twenty years' practice in that country I have scarcely known of a judge on the bench who did not do just what he says this man proceeded to do. As to the fact that he gave his instructions in writing, it is the universal rule in that western country that the instructions shall be given in writing. In the State which I represent oral instructions are unknown and have been since its organization.

Mr. EDMUNDS. Does the Senator know what the practice was in these two counties before Judge Peck went there?

Mr. TELLER. I know the practice in these two counties was that the judge might give oral or he might give written instructions. The statute of Wyoming says he shall give written instructions if the parties so desire; and knowing the lawyers there, I have no doubt that nine-tenths of all the instructions given in the Territory of Wyoming since its organization have been given in writing. There is not such a wonderful difference between the practice of law in Wyoming and the practice of law in Vermont. I do not believe that this man has introduced any new system of practice that is so much better that the tax-payers are particularly anxious that he should be the judge of that district, for I know that the men whose names I have presented are large tax-payers and responsible and reliable men.

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

Mr. EDMUNDS. I think the date in the title wants to be amended to make it the 15th instead of the 13th, as in the body of the bill.

The PRESIDING OFFICER, (Mr. CAMERON, of Wisconsin, in the chair.) The title will be so amended.

BOND FOR SAVINGS INVESTMENTS.

Mr. WALLACE. I move to proceed to the consideration of the bill (S. No. 106) to authorize a long bond for the investment of savings.

The motion was agreed to.

EXECUTIVE SESSION.

Mr. WHYTE. Now will the Senator yield for an executive session?

Mr. WALLACE. Yes, sir.

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

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

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *February* 20, 1878.

The House met at twelve o'clock m. Prayer by Rev. J. G. BUTLER, of Washington, District of Columbia.

The Journal of yesterday was read and approved.

ORDER OF BUSINESS.

Mr. HARRIS, of Virginia. I demand the regular order, which is the consideration of the report of the Committee of Elections on the contested-election case of Acklen *vs.* Darrall from the third congressional district of Louisiana.

Mr. CLYMER. I believe I am entitled to the floor. At the adjournment last night it was the understanding that I had the floor.

Mr. BRIGHT. I ask the gentleman to yield to me for a moment to report a bill for printing.

Mr. CLYMER. If I have a right to the floor I have not the right to yield.

The SPEAKER. The gentleman from Pennsylvania [Mr. CLYMER] was on the floor at the time of the adjournment.

Mr. CLYMER. And yielded for a motion to adjourn.

Mr. HARRIS, of Virginia. I desire to have this understood. The Speaker will recollect on yesterday, after the gentleman from Maine [Mr. HALE] had spoken, unanimous consent was asked that the gentleman from Louisiana [Mr. GIBSON] should be allowed to reply. That was given. Before his hour had expired the gentleman from Pennsylvania [Mr. CLYMER] rose and asked for five minutes. That, by unanimous consent, was given to him, being, as I understand, a part of the time of the gentleman from Louisiana.

Now, sir, I have no objection to the gentleman from Pennsylvania occupying the time unoccupied by the gentleman from Louisiana; but it is not my opinion that he had the floor in his own right for an hour's speech, and I refer to the RECORD on this question.

Mr. CLYMER. The gentleman unwittingly perhaps misstates the state of affairs on yesterday afternoon.

Mr. HARRIS, of Virginia. I think the RECORD will show the gentleman from Pennsylvania that he only asked for five minutes.

Mr. MILLS. The Journal will show that the gentleman from Pennsylvania only rose for a five-minute speech. The gentleman from Maine [Mr. HALE] claimed the floor upon a personal privilege and made a political speech that was political from end to end. The gentleman from Ohio [Mr. GARFIELD] obtained the floor and made a political speech from beginning to end. Now does the gentleman from Virginia [Mr. HARRIS] propose to let his party be attacked by two leading members on the other side of the House without permitting a member upon this side to reply to those attacks?

The SPEAKER. The Chair desires to say that there was awarded to the gentleman from Maine [Mr. HALE] about one and three-quarters of an hour and the gentleman from Ohio [Mr. GARFIELD] occupied about a half hour, so that two hours and a quarter was occupied by the republican side, while there was but a little over one hour occupied by the democratic side of the House. The Chair thinks it due to gentlemen to state these facts.

Mr. HARRIS, of Virginia. I do not understand that any question of the merits of any question is before the House, but that the contested-election case from Louisiana is before the House. The House accorded the gentleman from Maine time to make a personal explanation, and that called up several other gentlemen from Louisiana and Mr. GARFIELD, of Ohio.

The SPEAKER. This is not a matter for the Chair to determine, but it is a matter to be settled by the gentlemen themselves and the House.

Mr. HARRIS, of Virginia. My remark was in reply to the remarks of the Chair.

Mr. SOUTHARD. The gentleman from Pennsylvania is entitled to the floor in his own right. He has not occupied the unexpired time of the gentleman from Louisiana, because that gentleman had concluded an hour before the gentleman from Pennsylvania took the floor.

Mr. MILLS. I hope the gentleman from Virginia will allow this debate to continue.

Mr. BEEBE. I give notice that after the gentleman from Pennsylvania shall have submitted his remarks I shall withhold my personal assent to any continuance of this debate.

Mr. HARRIS, of Virginia. Every one knows that when a personal explanation is made it leads to another and that leads to more discussion. Now, I am willing to yield to the gentleman from Pennsyl-

vania, with the understanding that no more speeches of this character shall be made.

Mr. SOUTHARD. It is not now a question whether the gentleman from Pennsylvania shall be entitled by unanimous consent to the floor; he has already obtained the floor in his own right and is entitled to one hour if he desires it.

The SPEAKER. The Chair desires to state that the gentleman from Pennsylvania obtained the floor by unanimous consent on yesterday evening, and did not gain the floor under the election case, because the gentleman from Iowa [Mr. PRICE] gave notice and claimed his own right to the floor for an hour.

Mr. BEEBE. I desire to give notice that after the gentleman from Pennsylvania shall have concluded I will object to further debate.

Mr. REED. Then I object to the gentleman from Pennsylvania [Mr. CLYMER] proceeding, for it may be that, after the gentleman has made his personal explanation, somebody else on this side will desire to make a personal explanation also.

The SPEAKER. The Chair desires to ask the gentleman from Virginia [Mr. HARRIS] whether he is willing to allow any time at all for discussion outside of the election case in reply to the debate of yesterday.

Mr. HARRIS, of Virginia. While I do not think it right that this discussion should continue, yet as a matter of courtesy I am willing to allow the same length of time to-day that was consumed on the other side yesterday if the Chair will inform me how much time was consumed.

Mr. REED. I desire to make this suggestion, that the gentleman from Louisiana the other day started this discussion and used up something like one hour. I hope that the Chair in arranging this matter will compute the time occupied by the gentleman from Louisiana on that occasion.

The SPEAKER. The Chair would ask the gentleman which gentleman from Louisiana he refers to?

Mr. REED. Mr. GIBSON.

Mr. THOMPSON. It was on last Thursday.

Mr. SPARKS. That was not under the Election Committee.

The SPEAKER. But the proposed debate is not to interfere with the contested-election case at all; it does not come out of the time connected with the election case.

Mr. MILLS. Will the gentleman from Virginia permit that the debate be continued for one hour?

Mr. HARRIS, of Virginia. We could have finished this case yesterday if we had been allowed to proceed with it. I am willing to concede one hour, and after that I must insist on the regular order.

Mr. TOWNSEND, of New York. I hope that the time will be divided if any one on this side of the House wants to speak.

Mr. CLYMER. You have had your time already.

Mr. TOWNSEND, of New York. No; you have talked three hours to our one.

Mr. BLAND. I want to know if it is in order now to move to dispense with all other business in order that we may have a morning hour and then go to the business on the Speaker's table?

The SPEAKER. It is not in order, as the gentleman from Virginia has demanded the regular order; and in fact the gentleman from Iowa [Mr. PRICE] is recognized to speak.

Mr. BLAND. Then I shall object to discussion unless it is in the regular order, because we want to go to the business on the Speaker's table. I intend to move to go there at the earliest opportunity.

Mr. STEPHENS, of Georgia. After the gentleman from Pennsylvania [Mr. CLYMER] has concluded what he has to say I shall move to postpone the election case, for it has not been discussed and we are not prepared to vote upon the question to-day, and proceed to the business on the Speaker's table.

Mr. FOSTER. I suggest to the gentleman from Georgia to make that motion now.

Mr. STEPHENS, of Georgia. No; I want the gentleman from Pennsylvania to have his time; that will end the discussion of yesterday.

Mr. FOSTER. It will be a long way from ending it.

Mr. MILLS. Other gentlemen want to be heard, and if we cannot have some understanding about debate we might as well close it at once.

Mr. HARRIS, of Virginia. I call for the regular order.

The SPEAKER. The regular order is to proceed with the election case.

Mr. HARRIS, of Virginia. I was willing to yield to the gentleman from Pennsylvania for a personal explanation, after which I should insist upon the regular order.

Mr. BLAND. I must object. If I yield to one I shall have to yield to others, and I must insist upon the regular order.

Mr. CLYMER. Then I give notice that at the earliest opportunity I shall respond to the gentleman from Ohio, [Mr. GARFIELD.]

The SPEAKER. The gentleman from Iowa [Mr. PRICE] is entitled to the floor upon the contested-election case.

Mr. BLAND. I will withdraw my objection if only a half hour is to be given for debate.

Mr. COX, of Ohio. I believe I must object myself.

Mr. STEPHENS, of Georgia. I move to postpone the consideration of this question and take up the business on the Speaker's table.

The SPEAKER. That would not follow; a morning hour would have to intervene.

Mr. HARRIS, of Virginia. Can the gentleman from Georgia [Mr. STEPHENS] make that motion now?

The SPEAKER. The Chair has recognized the gentleman from Iowa [Mr. PRICE] as entitled to the floor at this time. At the end of the hour of that gentleman the Chair would entertain the motion of the gentleman from Georgia [Mr. STEPHENS] as one proper to be made under the rule.

Mr. PRICE. Do I understand the Chair to say that I am recognized?

The SPEAKER. The Chair will recognize the gentleman from Georgia [Mr. STEPHENS] if he insists upon his motion at the end of the hour of the gentleman from Iowa, [Mr. PRICE.] The Chair has already recognized the gentleman from Iowa as entitled to the floor; but at the end of the hour the motion of the gentleman from Georgia [Mr. STEPHENS] will be in order.

Mr. STEPHENS, of Georgia. I will not insist upon my motion at this time against the right of the gentleman from Iowa [Mr. PRICE] to proceed.

LOUISIANA CONTESTED ELECTION—ACKLEN VS. DARRALL.

Mr. PRICE. After all this tumult, Mr. Speaker, I suppose we will have a great calm. [Laughter.] I am afraid, however, that I shall disturb the conversation of some gentlemen, and I do not like to disturb any little discussions that gentlemen may be carrying on. And I am not particular about having any applause in the way of clapping of hands while I am talking; I can get along without that. I may not have anything very important to say to this House in reference to this question. I do not claim the right personally to speak as a mere matter of right; but what I want to say to gentlemen upon this floor in reference to this matter is this. I want them to hear me for my cause and for nothing else.

On the 7th day of November, 1876, an election was held in the third congressional district of the State of Louisiana for a member of Congress to represent them upon this floor. There is nothing in all the voluminous evidence that has been taken upon either side of this question, either by the contestant or the contestee, to show that there was any attempt during that election in all the parishes composing that district to hold the election in any other than a peaceable manner. It was stated yesterday, inadvertently I presume, by the chairman of the Committee of Elections, [Mr. HARRIS, of Virginia,] that not until two months after that election was held was the result of it declared. Now I want to say to the members of this House that that is a mistake. The election was held on the 7th day of November, and on the 9th day of December, one month and two days afterward, the result of that election was declared. That point certainly was attempted to be made yesterday with the object of showing that there had been irregularity or want of proper form. That does not appear from the record in the case. The election was held on the 7th day of November and the result was declared on the 9th of December following.

The judges of that election were not all of one political party; they embraced both democrats and republicans, as will appear from the testimony in this case, to be found on pages 204 and 206 of the evidence in the record. I want this point to be noted, because gentlemen, I presume, intend to treat this matter fairly, that the judges of the election were selected in accordance with the laws of Louisiana from the democratic party and the republican party, and that both parties were satisfied with the result of the election. I have before me the testimony of that fact in the evidence of the person who gave the notice of the election. I read from the testimony of Frank B. Deslonde, the supervisor of registration:

Question. Mr. Deslonde, upon whose recommendation did you appoint the commissioners of election?

Answer. Of the chairman of the democratic committee and a member of the republican or the president of the republican committee.

Q. State who was the president of the republican parish committee.

A. I believe it was P. G. Deslonde.

Q. Who was the president of the democratic parish committee?

A. Jacob McWilliams.

Q. Did you request, in writing, the chairman of the republican committee to furnish you names of commissioners?

A. Yes, sir; I did.

Q. Did you make the same request in writing to the chairman of the democratic committee?

A. I did.

Q. Did they furnish you the names of the various commissioners of the polls?

A. They did.

I will not read more of the testimony; it is all to the effect that notice was given to the chairman of the democratic committee of that parish and to the chairman of the republican committee of that parish, and that in accordance with the usages and the laws of the State the selections of judges of elections were made from the two parties, and that the judges so selected held the election.

After that election and after the count had been made according to law—there was no attempt to prove or to show anything to the contrary—after that count had been made and returned, the governor of the State issued to the sitting member a certificate of election in proper form, attested by the secretary of state, and in accordance with the laws of Louisiana. There was no question of it at that time. But since that time and upon this floor and in this contest the administration of the government under which the certificate was issued has been called in question. The chairman of the Committee of Elections spent a part of his time yesterday in endeavoring to show that the government had no power to issue any such certificate.

Now I do not propose to waste any time upon that matter at all. We are not shut up to that conclusion; we are willing, if anything can be made out of showing that the Kellogg government was not a legitimate government, that they shall be welcome to all the benefit to be derived from it. But after the Nicholls government was organized, a democratic government, under democratic auspices—I am not going into this Louisiana fight at all, except so far as this district is concerned; I do not propose to call in question the correctness of the Nicholls government or Nicholls legislature; it is no part of my business to do that at this time, and I will assume that it was all correct—after the Nicholls government and the Nicholls legislature had been organized, the new Legislature—and I want my democratic friends to pay a little attention to this matter—the new Legislature passed a law creating a new returning board. That new returning board, created under that new law, recanvassed all this vote, and in that recanvass they counted several polls that had been thrown out by the Kellogg government; in other words, they counted all the polls of all the precincts in that parish.

Now, after this new count under a democratic administration, they still found the sitting member elected by a majority of 1,094 votes. That would seem as though it should have been conclusive. I presume it did not occur to anybody but what that was the end of this contest, until the March following, when the contestant in this case claimed that he must have a recount of the ballots.

Now a recount of ballots is always to be looked upon with a good deal of suspicion; and in reference to a recount I want to make a declaration; and I will thank any gentleman upon either side of the House who will show that I am in error; not that I like to be in error, but if I am in error I want to get right. I assert here without fear of successful contradiction that never in the history of this Government has a recount of the ballots at any election for a member of Congress been allowed to unseat a member and seat another in his place—never. The whole line of precedents in the history of this Government from the date of its organization to the present hour is conclusive upon this point. Contest after contest, recount after recount in the various election precincts of the various States of this Union has been had, but never has a recount been allowed to unseat a member and seat another in his place in this House. To show that I am not alone in this opinion, I cite the case of Kline *vs.* Myers, reported in 1 Bartlett, 574, where the House refused to order a recount of ballots upon the request of the contestant:

One reason was that the contestant did not offer evidence sufficient to show even presumptively that the original count was erroneous or fraudulent; but another and the principal reason was the great danger of attempting to set aside the official count by a reopening of the ballot-boxes and a recount of ballots months after the election.

I will not read the whole decision. What I have just read is from section 96 of McCrary on Elections; and by reference to sections 97, 277, and 279 it will be found that the authority is all to the same point, and the further you go into it the stronger it becomes. I assert again that in no case has a recount been allowed to unseat a member and seat a contestant in this House.

Now, I wish to call attention to another point, and one which with me goes far to show that the man who occupies the chair of state of Louisiana is not so bad as some men paint him. This recount was made in March. Now, I want to call the attention of fair-minded democrats of this House to the fact that Governor Nicholls was in his seat in March, in April, in May, in June, in July, in August, and in September; yet he never issued a certificate to the contestant in this case. He never yet has issued a certificate to the contestant. After this recount upon which the contestant claims the seat here, the democratic governor, occupying his seat for seven long months, never issues a certificate to the contestant. But during the first week of October Governor Nicholls leaves home on a visit; and then, and not until then, the lieutenant-governor issues a certificate to the contestant. That certificate was issued on the 12th of October, three days before the meeting of this Congress. It was issued by the lieutenant-governor in the absence of the governor, who was in office seven long months without issuing a certificate. I do not say he refused to issue it, for I do not know that fact; but I do know that he did not issue it during the seven months after his installation as governor; but as soon as he goes away, and only three days before the meeting of this Congress, one of those days being Sunday, the lieutenant-governor issues to the contestant in this case a certificate of election, and that certificate is the only paper he brings here as the foundation for his claim to a seat on this floor.

Now I submit to fair-minded gentlemen upon both sides of the House whether it is not likely that, if Governor Nicholls had been satisfied that the contestant in this case was entitled to a certificate, he would not have issued that certificate during some of those seven long months that intervened between the recount on which the seat is claimed here and the time when this Congress met.

This recount is not only against all the precedents of the Government, against all the law and regulations upon this subject, but it was made at a time when it could not legally be made under the laws of Louisiana. I read a few lines from the law of Louisiana on this subject:

A tally-list shall be kept of the count, and after the count the ballots counted shall be put back into the box and preserved until after the next term of the criminal or district court.

Now I submit to any of the lawyers on this floor—and there are a good many of them here, good ones I doubt not—whether when the law says that a thing shall be done within a certain time it does not follow as a necessary consequence under all the rules of law that beyond that time there is no obligation upon anybody to attend to the matter; in other words, when you attempt to specify any particulars the things not specified are not included.

This law of Louisiana is explicit in providing that the ballots shall be kept until after the meeting of the next district court or criminal court. My friend, the chairman of the committee, [Mr. HARRIS, of Virginia,] says that no court was held. Well, he was not there nor was I; but the clerk of the court was there, and here is his certificate:

STATE OF LOUISIANA.
Parish of Iberville—

This is the parish that the contest is about—

CLERK'S OFFICE, FIFTH JUDICIAL DISTRICT COURT.

I, Charles H. Gordon, clerk of the fifth judicial district court of Louisiana, in and for the parish of Iberville, do hereby certify that the first term of said district court for the present year was held in Iberville Parish on Tuesday, the 2d day of January, A. D. 1877, as the first Monday was the 1st, and a *dies non*, his honor James L. Cole presiding.

Witness my hand officially and the impress of the seal of said court, at the parish of Iberville, this 8th day of May, A. D. 1877.

[SEAL.] C. H. GORDON, *Clerk.*

Now if the clerk of the court does not know when the court was held who does know? Who would be likely to know? There is his official certificate that the court was held on the 2d day of January and that this count was not had until March following, two months having elapsed after it was the duty of anybody to take care of these ballots. So, sir, I think I am justified in saying that, even if the recount under other circumstances could have been allowed, two months had elapsed after the time anybody was responsible for the safe-keeing of the boxes in which these ballots were deposited. This recount was made not at the request of the contestee and sitting member here, sir, but it was made against his protest. He had no attorney there to cross-examine witnesses. He had a friend who was not a lawyer, and he did the best he could under the circumstances, I doubt not, but the recount was made against his protest, outside of the law, and with no person to look after his interest except a gentleman who acted as his friend on that occasion, the sitting member himself being a thousand miles away from there.

How have these boxes been kept since that time? I will read just a few extracts from the testimony on that subject. It will be obligatory upon the contestant in this case to show, even if the recount could have been allowed, that the boxes have been kept securely, that there was no chance to tamper with them. But the other side have scarcely made the attempt to do so, and where they have made the attempt they have most signally failed to prove any such thing. On the contrary, the proof is in the opposite direction. As I have said, I will read from the testimony of some of these men. Amadée Roth, a democrat, one of the judges of the election, testifies in these words:

Question. Were you a democratic or a republican commissioner?

Now, sir, I am reading now as to the correctness of the count, because the next thing after an election is a correct count—

Question. Were you a democratic or a republican commissioner?
Answer. For the democratic party.

Yes, sir, he was a democrat on the stand, one of the judges of election.

Question. Did you certify to the returns from that ward as being correct in every particular?
Answer. Yes, sir, as far as I understand about election returns, because I have taken—

What? What did he take?

a great deal of pains to carry everything along straight.

That is the testimony of one of the democratic judges of the election about the correctness of counting the returns after the close of the election.

Again, another judge of that election says this:

Question. Did you carefully scrutinize every ticket and the name on every ticket?
Answer. Yes, sir.

An attempt was made yesterday, and will be again made to-day I have no doubt, to show that these votes were not counted until after they had been put upon a string. Gentlemen will remember, however, there was but one poll in all that parish, where there were eleven polls, but one where the ballots were put upon a string, and in that case they were counted before they were put upon a string, according to the testimony of some of the witnesses.

Question. Do you remember the vote for member of Congress at that poll?
Answer. I can't recollect what it was exactly, because I did not take no memorandum.
Q. You don't remember the vote?
A. Not in special or particular.
Q. Mr. Piernas, in scrutinizing these tickets and examining them did you examine every name on the ticket?
A. Yes, sir; every name.
Q. If there had been any republican tickets with the name of Mr. Acklen—

That is the contestant in this case—

Q. If there had been any republican tickets with the name of Mr. Acklen on for Congress would you have seen them?
A. I would; but I did not see none of them.

Q. If there had been any ticket with no name on for member of Congress would you have noticed it?

For it is alleged that some were blank—

A. All the republican tickets had the name of Darrall on, every one of them.

So says that witness.

Another judge of the election at the same poll testifies:

Question. Did you witness or assist in counting the votes as polled after the election?
Answer. Yes, sir.
Q. Did you carefully examine the tickets?
A. Yes, sir.
Q. Did you examine all the tickets?
A. Yes, sir.
Q. Were you assisted in counting the votes by other officers?
A. Yes, sir.
Q. Who looked over them; what officers looked over the tickets and scrutinized the names on them?
A. The same ones that I just now mentioned.

There was also Mr. Dubuclet, who was a democratic supervisor. There was another gentleman there, but I do not recall his name. Witness after witness, both democratic and republican, at every one of these disputed polls, testified pointedly and particularly that they watched this count after the close of the polls on that day of election and that they examined the tickets, every one of them.

Now, sir, a ticket was exhibited to members yesterday showing that it might have been strung upon a string, and that the person in counting would not be likely to see the name if it was a democratic name put upon a republican ticket. Apply only a little common sense to that. Let any gentleman attempt to string a ticket and he will see at once that his attention will be called first of all to the point where the needle goes through and he could not help observing what was printed there.

If the name was on the center of the ticket as they allege, and the tickets strung in the center as they allege, it follows when the point of the needle came through—and they testified every one that the face of the ticket was up—then it follows the point of the needle came through where the man's name was, and if the man who strung it was looking for the point of the needle he could not help but see the name. Some of the witnesses testify it could not have escaped their notice unless they were blind. That is their language.

At the next poll the testimony of the judges of election is of this character: Smith, a democrat, is examined and testifies (page 54 of the record) as follows:

Question. Did you certify to the returns as being correct after the tally-sheets were made out?

He was one of the judges whose business it was to take the tickets and count them. He says:

Answer. Well, the count, sir, was right as called off.
Q. Did you certify it as being correct?
A. Yes, sir, as commissioner.

Then, at the same poll, Mr. Davidson was examined:

Question. Did you take any part in the counting of the votes?
Answer. I did when the poll was closed. The box was opened, and Mr. Robert O. Hebert took out the tickets and examined them, and we held them up and looked at them; and Mr. Craig, he was another republican, stood right on the other side of him; and Mr. J. D. Hebert, he was a democratic supervisor, he stood on the other side; and Mr. Hebert would take the tickets out, and he would say, "Straight republican ticket," or whatever the ticket might be, and these three men would look over. They would count the tickets to Mr. William A. Smith; he was the democratic supervisor—

I am reading the testimony exactly as it is here—

and Mr. Smith held a needle with thread on it, and I took the tickets from Mr. Smith and put them on the needle, and Mr. Smith would pull the string.

Now this testimony at this poll shows that the democratic supervisor was the man who took the tickets singly and strung them with the needle upon the string. And unless you can believe that that democratic supervisor had not brains enough to string a ticket or was not able to read a name upon a ticket when plainly printed there, then you must believe these tickets with the contestant's name on were not there. One of these things must inevitably follow. I quote further from the evidence of the same witness:

Question. Did you scrutinize and notice what names were on those tickets as you placed them on the needle?
Answer. We did, because we noticed at the time that Mr. Carville was spelled "Clarville," and also that Mr. Wheeler's name was spelled "Weeler" instead of "Wheeler."

Now I submit to gentlemen whether if these men looked at these tickets enough to know that an "h" was out where an "h" ought to be and that an "l" was inserted where there should be no "l," whether they would be likely to count 800 or 900 democratic votes with the contestant's name on them without knowing it, and whether they would not be likely to see some of them at all events. And I want to say to the House that there is not a scintilla of evidence to show more than two of these tickets counted in this box. Two men only could say they voted a ticket with contestant's name. Only two. And yet they must prove eight or nine hundred before they can seat the contestant in this case.

I have more testimony of this kind than I have time to read. I wish to show that these boxes were not returned as the law requires them to have been returned, and that they were not kept as the law requires them to have been kept; and consequently, if for no other reason in the world, this recount ought not to have a feather's weight of force in this matter, because if the recount could be good for anything under any circumstances, it must certainly be proven that the boxes were properly sealed and that they were in proper custody and properly cared for up to the time when the recount was had. Now, in reference to the recount. I have not read half the testimony to show that the official count under which the Nicholls government has issued to the sitting member his certificate was fair both by the testimony of republicans and democrats who were the judges at this election. In reference to the matter of keeping the boxes, I read from the testimony of Crowell, clerk of the court when the election was held, page 59 of the record:

Question. After the election did you receive all the boxes according to law?

The law of Louisiana requires the boxes to be deposited with the clerk of the court, and by him kept, and here is his testimony:

Question. After the election did you receive all the boxes according to law? Were they delivered by the commissioners?
Answer. I received the chief part of them from the commissioners. I received two or three from the clerk of the registrar here, I believe. By mistake they delivered them at his office instead of here.

I believe there were two or three of these boxes that were never deposited with the proper person; and the clerk is so indefinite about it that he does not know whether the number was two or three. Now these boxes certainly could not have been treated with proper care and particularity when the custodian of the boxes does not know whether two or three of them did not come to his hands at the proper time and through the proper channel; but two or three of them were, he says, outside of the law in this matter by mistake delivered at another place instead of at his office.

One of the judges of election, who is called by the contestant, Amadée Roth, a democrat, testifies as follows as to the boxes:

Question. Look at that box at the key-hole. Did you cover that up and sign it as you did on the top?
Answer. Yes, sir; I put "E. Roth"—that is my name—on top.
Q. The key-hole looks like the paper had been torn from it.
A. I could not tell that. Of course it has not that same look as when I signed it.

Now will gentlemen pretend to say that the box is properly kept when a democrat himself comes up and swears that the box had not the same look as when he sealed it? What better kind of evidence do you want? But there is better and stronger.

A member of the same committee testified also that this box did not look as it did when he put his name upon it. This was democratic testimony, which would certainly be in favor of the contestant if it could have been truthfully made so.

The clerk of the court, who was the custodian of the boxes, testifies concerning these boxes, but he swore twice and unfortunately for him he does not swear alike; that is his misfortune. Now, on page 10 of the majority report he swears as follows:

Question. Can you swear positively, to the best of your knowledge, that while those boxes have been in your possession they have not been tampered with?
Answer. Yes, sir; I can swear positively that while those boxes have been in my possession they have never been touched at all. They were handed over to me when the judge vacated the office, and they were in that other room piled up from the floor, one on top of the other; and I moved them from there and put them under this table, which then stood by that window, and after that I cleaned up here a little bit, and I moved this table over here and put the boxes where you find them now, on top of the table. I handled them around, and I might have handled them carefully if I had thought there was going to be a contested-election case, but not knowing anything about it I did not pay much attention. I might have left them where they were.

Now this is an important point and an attempt to prove that these boxes have not been tampered with. That is pretty strong evidence that he swears to at first; but here is another swear. This is the question which was asked in this way:

Question. Now, one of the witnesses noticed that over the key-hole of one box the paper had been fractured. These boxes have been in your possession. How do you account for that?
Answer. Well, from the simple fact that anybody can come to this office and examine these boxes and sit in the office, and all my predecessors will tell you that the office is very damp and you can catch the pneumonia or anything else here. For this reason I say that the dampness has softened the wax in such a way that the papers have become loose.

Now, how much is that testimony worth? Here is the custodian of these boxes, whose duty it was to keep them, and he swears that the boxes have been in his possession, although three of them did not come from the proper officer or through the proper channel or at the proper time; and then he swears that while in his custody they were never touched, and when he is examined again he says that any one can come into his office, &c., and examine these boxes and sit in the office. Now, I submit to the gentlemen whether that testimony is good for anything. I think you will agree with me that it is not.

Now, gentlemen, you can see very plainly that they admit that some of these boxes which had been sealed with wax over the key-hole had been broken; and how do you suppose they account for that? Why, they say the sealing-wax was spoiled by the dampness of the office. Can any gentleman tell how long it takes sealing-wax to become softened in water? Why, you cannot soften sealing-wax in water. If you place it at the bottom of Lake Erie it will not soften until the last horn blows; yet this man swears it was softened through dampness of the office, and this for the purpose of making out a case for the contestant. The testimony of the clerk is to that effect. He was asked if he had the key of the box, and he testified as follows:

Question. Have you the keys of all these boxes?
Answer. Yes, sir; they are in my possession in the office somewhere, but I would have to look for them.

Q. Do you know where they are now?
A. No, sir; but they are in the office.
Q. They are in some of the pigeon-holes?
A. They are inside of the desk, I guess.
Q. You do not carry them with you at all?
A. No, sir.

That was the testimony of the clerk whose duty it was to keep the keys, but he not only swears also to an impossibility in reference to the sealing-wax but he also swears that he has not the keys and does not know where they are.

It is shown in the testimony of democrats and republicans both in all this parish of Iberville that the official count was carefully made, and it is on the recount of the ballots in the parish of Iberville upon which the contestant here relies for his seat in this House. It is shown by the testimony of all the witnesses of both the political parties that this official count was properly made. I have here evidence to prove the standing and character of the men who held these elections. One of the commissioners testifies like this: "Do you know such a man, judge of election there? Yes; I do. What is he? A democratic lawyer. Is he a man of good standing in the community? Yes. Have the people confidence in him? Yes; unlimited confidence in him as a fair man. Do you know such a man, who was one of the judges of that election? Yes, sir. What is his business? Teacher. Is he a white man? Yes, sir. Is he a man of standing in the community? Yes, sir." This is the kind of men who held the election at the different polls in the parish of Iberville.

Now gentlemen are asked to believe that these twenty-five men—at some of the polls there were more democratic than republican officers of election; at others there were three republicans and two democrats; but there must have been at least ten democrats and fifteen republicans at the five different polls, men of standing in that community, lawyers, teachers, &c.—and gentlemen are asked to believe that these twenty-five men who sat at the polls and counted the tickets after the polls were closed failed to discover a single one of about 900 votes cast for the contestant.

But it is said that the contestee in this case was unpopular; that he had some enemies in the republican party. Well, I would like to know of any republican on this floor who has not some enemies in his own party; or even a democrat on this floor who is without foes in his own party. It is alleged that the sitting member had enemies in his own party, and that those enemies sought to defeat him. And it is said democrats voted for him. Well, we are all willing to admit that. I do not suppose there is a republican on this floor who did not get some democratic votes at the last election. I never ran at an election without getting some democratic votes. If I should run and not get some of my democratic friends and neighbors who lived near me to vote for me I should begin to think there was something wrong.

In this parish of Iberville it is said that the contestee ran 213 votes behind his own ticket, and that the contestant ran 113 votes ahead of his ticket; which put together makes 326 votes that the contestee lost on account of enemies in his own party.

I think we have accounted for all that sort of thing. But before I come to that I want to say this, because there is a great deal of the testimony that I am not able to read; I have not time. While the proof is that there was treachery, treason, chicanery, and a great deal harder dictionary names if I dared to use them—while the proof is that all this was used for the purpose of cheating the voters, they have not yet proved that those cheating tickets were voted. It is one thing to go to the printing-office and get a lot of tickets and it is quite another thing to get persons to vote them.

It is alleged that there were several hundreds and thousands of tickets printed as straight republican tickets with the name of the democratic candidate on them. They were printed, we will admit; but we have the evidence here to prove that in one case one of the men to whom they were intrusted did not use them. They thought they had bought him. Now, it is well known that a great many contracts have been made in this world where the party contracting has not been able to deliver the goods. One party whom they thought they had purchased did not use the tickets. How was that? I will not read the whole of the testimony, but I want to read just the part of it that refers to this point. One of the witnesses testifies that one of the enemies of the sitting member, a republican, came to him with twenty-five hundred printed tickets and asked him if he would not work for the democratic candidate for Congress in that district. He said he did not want to do that. Said the man to him, "you propose to vote against the republican candidate." "Yes, I do." Mind you, these are two enemies of the sitting member, both of them republicans. He said to him, "Then why not distribute these republican tickets with the democratic candidate on them?" The man replied, "When I beat a man I want to beat him fair." That you know is good, square fighting. Well, after a great deal of persuasion the man was overpersuaded to take the twenty-five hundred printed tickets. What did he do with them? He testifies that he and a friend of his who was with him at the time he got the tickets went to his room, and, to use his own language, "we scrutinized them." They examined and found among them a thousand tickets printed as straight republican tickets but with the name of the contestant on as a candidate for Congress. He was asked what he did with them. I will give you his own language. "I took them out, me and Mr. Whittaker, and put them aside." I wish gentlemen would give me their attention to this, for I am going to account for a thousand of these tickets. "He put the balance of the tickets into his pocket and took them down to his room, about a couple of acres away from where I reside."

The question was asked him: "What kind of tickets did you put in the box? The fifteen hundred democratic tickets?" He replied, "No, sir; the straight republican ticket." "When did you begin distributing them?" He answered: "In the morning just after the polls were opened." "Did you distribute any of the tickets with Mr. Acklen's name?" That is the name of the contestant here. "No, sir; I had them in my room." "Were they taken out of your room?" "No, sir." "What finally became of those tickets?" "I burned them."

Now there are a thousand tickets gone into the fire. As a matter of course they were burned, because they were not printed on asbestus. Yet they want to count them just as though they were voted. Now we give them the benefit of two tickets that were voted and of two hundred and eleven besides that they cannot prove were voted. And after all, counting all that, the sitting member gets a certificate from both the governors, of both the Legislatures, of both the governments of the State of Louisiana; and the contestant gets no certificate from any governor, but only one from the lieutenant-governor, long after the time when he should have had one from the governor if it was proper for one to be issued to him.

Now, I want to call attention to another fact. Here are five boxes in the parish of Iberville, upon the recount of which the contestant claims the seat. Now, at the official count 1,307 votes were counted for the sitting member by republicans and democrats jointly. At the recount they find that 808 of these 1,307 were not cast for him at all. Now, can gentlemen believe for a moment that twenty-five intelligent men, under oath, sitting and counting out thirteen hundred and seven tickets, would fail to have found some bogus tickets when there were eight hundred and eight of such tickets—nearly two-thirds of the whole number? If gentlemen can believe that, then the tales of the Arabian Nights or anything else can be believed. But I want it noticed particularly that the majority report in this case concedes that one of these boxes had been tampered with. The boxes were all kept together, all kept in the same place; and if one of the boxes was tampered with, is it not very likely that the rest of them could have been and were tampered with? They admit that the boxes were all piled together in one place, were all in the hands of one custodian; and they admit that one of the boxes was tampered with, and therefore did not count it. Now if they admit that one was tampered with, what evidence have they that others were not tampered with, particularly when the testimony of the witnesses is to the effect that many of them were not sealed with anything but mucilage, that many of them were not sealed over the key-hole at all, even with mucilage. Is there not the strongest presumption that these boxes were really tampered with, or how could there have been such a discrepancy between the official count and the recount?

Another point: how do these gentlemen make the discovery that the sitting member ran behind his own ticket in that parish 213 votes and the contestant ran 113 votes ahead of his ticket, if they did not scrutinize the tickets? It is simply impossible. The conscience of every man will rise up against such a conclusion. Such a fact could not by possibility have been ascertained without an examination of the tickets one by one, as some of the witnesses here testify they did examine them in this way. This point alone, without any other evidence, ought to be conclusive in this case.

If you take the same figures upon which the lieutenant-governor issues his certificate to the contestant and add to them the vote of Saint Martin's, which the sitting member and the contestant have both by written agreement agreed shall stand, thereby giving 86 majority to the sitting member, even then the sitting member is elected and the contestant has no shadow of claim to the seat.

Now, if it is claimed that fraud was practiced with reference to these ballot-boxes—if it is claimed that men who came to the polls intending to vote for the sitting member were defrauded of their votes by voting for a man they did not intend to vote for—if that is the claim, I want to know whether members upon either side of this House are prepared to put themselves upon record as seating a member in this high council chamber of the nation upon a fraud. That is what it comes to. There is no possibility of seating the contestant here unless you admit that a fraud was perpetrated upon the voters to the extent of about 900 votes in the Parish of Iberville, and that upon a recount thus fraudulently obtained the contestant is to be seated.

Is this the kind of an example that we want to set to the young men of this nation to teach them that instead of fair dealing and upright conduct they shall resort to treachery and deceit and chicanery to defraud their neighbors out of their just rights? Why, sir, I remember (and it is one of the earliest recollections of my life) reading in the history of Greece that a man who was sought to be banished from his native city was approached by an illiterate man who said, "I want you to write the name of Aristides upon this ticket for me." "What have you against him?" said the other. "I am tired of hearing him called Aristides the Just." What did he do? Did he write somebody else's name and let the poor ignorant man vote it? No, sir; he wrote the name that the man asked him to write, though it voted himself out of the city—ostracised him from his native land. That has been to me in all the years of my past life a grand instance of disinterested justice on the part of a man who rises above small tricksters and trimmers as a giant among pigmies.

Yes, sir; if you will allow me to use the language of another, this man by this act stands out among ordinary men—

> As some tall cliff, that lifts its awful form,
> Swells from the vale, and midway leaves the storm,
> Though round its breast the rolling clouds are spread,
> Eternal sunshine settles on its head.

I do not want this nation in this high council-chamber to put itself upon record as indorsing fraud and seating a man whose only claim is, if he has any at all, that he cheated some six or nine hundred citizens of his own congressional district. I do not want any one to be seated in this Hall, which ought to be an honorable place, upon any such grounds. If it be prostituted to such a purpose as this, it will be no longer an honor for a man to occupy a seat upon this floor; no longer an honor to be called a member of the Congress of the United States of America, but it will be a byword and reproach, because the more you can deceive the voter, the more you can defraud him of his right, the better your chance is, if this be a precedent for a seat upon this floor, to become one of the law-makers of the nation. I hope this Congress, I hope the members of this House on this floor to-day as they approach the conclusion of this case, will not allow themselves to be biased by party predilections or prejudices, not allow themselves to mar the bright page of American history, but that the right may prevail and triumph.

Mr. HARRIS, of Virginia. I desire to give notice, Mr. Speaker, that at a quarter to four o'clock I shall call the previous question, and if that demand be sustained the vote will then be taken, or at the farthest at four o'clock.

Mr. CANDLER. Mr. Speaker, I will only occupy a few minutes in the discussion of this case. This contest may be determined alone by a consideration of the vote in the parish of Iberville. No matter what the count may be in all the other parishes, or any of them, it may be determined according to the result in this parish of Iberville. If that parish is entirely thrown out, if it is not counted for either of these candidates, then in the remaining parishes Acklen is elected, having a majority of the votes. If this parish is counted according to the recount made in pursuance of an order of the judge who had these ballots produced before him and the result is taken as corrected by this recount, Acklen is elected.

If that recount is only taken as to five of the polling-places out of the eleven in the parish of Iberville, Acklen is elected. If only four polling-places in the parish of Iberville, where the count by the managing officers of the election and the count made in pursuance of the order of the court substantially agree, are taken, and the remaining seven are rejected, giving a majority in the parish of Iberville of about 73 votes to Darrall, and excluding the poll in the parish of La Fourche of 86 given for Darrall, which is excluded by the unanimous voice of this committee, then again is Acklen elected by a small majority.

The only complaint made as to any of the votes in the parish of Iberville by the friends of Darrall is that certain voters were cheated out of their votes. The complaint is that a large number of voters in the parish intended to vote for Darrall but were cheated out of their votes. I affirm in all this case there is not a particle of evidence which shows there was any voter in the parish of Iberville who desired to vote for Mr. Darrall who did not vote for him. The evidence does not establish the fact, and it is an assumption that these persons desired to vote the entire republican ticket because they were republicans.

The republicans had a large majority in the parish of Iberville, where the colored voters were largely in the majority, and being republicans and being colored voters the presumption is they intended to vote for Mr. Darrall, but there is no evidence in fact that one single voter whose vote was counted in the recount for Acklen ever intended to vote for Darrall. In order that there may be a cheat, in order that there may be fraud, there must be some person who intended to vote for Darrall and was deceived and voted for Acklen thinking at the time he was voting for Darrall. They were not cheated out of one vote unless it is shown they intended to vote for Darrall. The assumption is that they were cheated because they being republicans they would vote the whole ticket for President, congressman, and State officer. The evidence, however, shows that there were colored men of the republican party in the parish of Iberville who were not for Darrall. It is admitted there were a hundred and odd votes at the polling-place No. 9, admitted by the gentleman from Iowa, among the republican voters who were not for Dr. Darrall and who voted for Acklen.

These republican voters who were known to be in opposition to Darrall were headed by W. W. Wharton, a republican candidate for the senate in the parish of Iberville. Of the 2,200 republican votes in this parish he received more than 1,800—the exact number I do not state. This man Wharton was not alone a republican candidate for the senate in the parish of Iberville; but he was the person who had charge, by official appointment in the party, of printing the tickets and the distribution of them at the several polling-places in the parish. He had twelve thousand tickets printed for use in the parish; six thousand of these tickets had the name of Acklen upon them; four thousand had no name for Congress; and only two thousand had upon them the name of Darrall. So that in this parish, by the person directed to distribute tickets and have them printed, there were only two thousand tickets printed upon which was the name of the republican candidate for Congress. There were others distributed in some of the wards; but this person who had special charge of it only had two thousand. The official count shows over two thousand ballots that were counted for Darrall; so that the probability is from this testimony that there were actually more votes counted for Darrall than there were ballots in the parish that had the name of Darrall upon them.

There are eleven polling-places in the parish of Iberville. In four of the polling-places substantially the same result was arrived at in the recount as was arrived at in the count made by the commissioners of election. At these four polling-places it appears there was an actual count, not of the ballots, but of the votes expressed upon the ballots; and only in these four polling-places in the parish was there any count of the votes for a member of Congress. In the other seven there was a count of ballots, there was a count of paper tickets, there was a count of this number, but no count of the votes for a member of Congress at all. They count by colors, they count by headings, and put down to Darrall "straight republican tickets," that is, the republican tickets on which Darrall's name was or on which it was presumed it was, and republican tickets on which Wharton's name was, and for Acklen only the straight democratic tickets. As suggested by the gentleman from Georgia, [Mr. BLOUNT,] these tickets were distinguished not by the names upon them but by the color of the paper; black tickets, white tickets, and tickets I believe of some other color; there were three different colors. This [holding up a black ticket] is the ticket called a "straight republican ticket." It is so called because it has got a black back to it, not straight in regard to the names of the persons upon it but straight because of its color; and a large majority of the voters of Iberville Parish had a color like this as black men and therefore it was supposed they would vote this.

Without any examination of it by the sworn officers of election they say that every ticket which has a black back to it is a republican ticket and was cast for Dr. Darrall, the contestee in this case.

Therefore I say, Mr. Speaker, that there is no evidence that any voter in this parish was ever cheated out of the vote for Darrall. It has been stated here as a remarkable fact that there was only to be found in this parish two or three voters who would testify that he voted one of these tickets on which was the name of Acklen or no name for member of Congress. It is equally remarkable that in all this parish, containing more than three thousand persons who voted, not one is found who would swear that he intended to vote for Darrall. The proposition is here that more than a thousand persons had been cheated out of their votes for Darrall, they intending to vote for him but in fact voting for Acklen or failing to vote for any person. And yet of these 3,000 voters not one single witness is produced to say, "I am one of those cheated voters." Not only that; but the facts show they were not cheated; because voters were produced who said their only desire was to vote the ticket which Wharton, their friend, and the independent republican candidate for the Senate, desired them to vote. They said, "We vote the ballot which Wharton desired us to vote; if Acklen is his friend we will vote for Acklen; if a rattlesnake is his friend and the name of the rattlesnake is on the ticket we vote that." What these voters intended to do was to put themselves on the side of Wharton and vote as he desired them. Wharton said he was against Darrall and that he meant to beat him and he voted against him. This is in evidence, and therefore it is untrue that anybody has been cheated.

Mr. Speaker, it is untrue that there has ever been except in four of the polling-places in the parish of Iberville any count of the votes for a member of Congress. These four polling-places to which I have referred are polling-places 8, 9, 10, and 11. There the evidence shows they took up tickets, calling off name by name, more than forty names; that these tickets were taken out and counted, calling out the names from the beginning to the bottom. In those four polling-places there was a count of the votes and not a count only of the tickets. There were three sorts of tickets: upon one ticket there was no name for member of Congress; on another there was the name of Acklen; on another there was the name of Darrall. They were all the same sort of tickets; that is, black tickets. The white tickets had the name Acklen and the regularly nominated democratic candidate for senate, a man named Wailes.

At the eighth polling-place the original count was: for Darrall, 54; Acklen, 58. The recount was: Acklen, 59; Darrall, 55. In the ninth polling-place Acklen, by the official return, had 251 and by the recount 250, while by the original count Darrall had 121 and by the recount 122. And it is plain to demonstration what was done in that polling-place. The vote of Acklen, both by the officers of the election and by the experts under the order of the court, was made up of the straight democratic ticket and of the Wharton tickets. By the original count Wharton had there 127 votes and Wailes 129 votes. The white democratic tickets and the black republican tickets upon which was the name of Wharton made up the Acklen vote of 251.

In the tenth poll the count by the officers and the recount were the same. In the eleventh poll also they were the same. And in all these four polling-places the evidence shows there was a count of votes. But in the seven wards where there was a change made by the recount there was exactly the same number of ballots, and there the recount showed Acklen got the votes or a large number on which was the name of Wharton and that Darrall did not get them. In the official count

there was counted for Darrall all the Wakefield ballots and all the Wharton ballots in which his name was not found.

It being thus true that only in the four polling-places where the recount agrees substantially with the official count was there by the election officers a count of the votes as actually cast, and in the remaining seven polling-places there was only a count of tickets and not of votes. The recount gives the truth of the case. Acklen is elected, with other claims of the sitting member admitted.

There is but one way by which Darrall can be held to have been elected, and that is found in the line of argument and statement of fact presented by the gentleman from Iowa, [Mr. PRICE,] that the vote of the parish of Iberville be counted according to the official return of all the polling-places, in seven of which there was only a count by tickets and not a count of the votes cast for Congressman, and not as shown by the recount when the votes were counted as in fact given.

[Here the hammer fell.]

Mr. LEONARD obtained the floor.

SILVER BILL.

Mr. STEPHENS, of Georgia. With the permission of the gentleman from Louisiana [Mr. LEONARD] I wish to state that as the chairman of the Committee of Elections desires to go on with the pending business I will not make the motion to-day to proceed to business on the Speaker's table, but the motion will be made to-morrow by the gentleman from Missouri [Mr. BLAND] immediately after the morning hour in order that the bill known as the silver bill may be taken up.

CONTESTED ELECTION—ACKLEN VS. DARRALL.

Mr. LEONARD. Mr. Speaker, I have thought it but fair that I should take some part in this case because it comes from the State which I have the honor in part to represent, and with whose laws and customs I am to some extent familiar. But I promise the House, I promise the judges of this grave and dignified court that if they will but listen to me for a few moments, say half an hour at the very most, it shall be a long, long time before I shall trouble them in another case of contested election. It seems to me, gentlemen, that the inducement which I thus hold out to you is sufficiently powerful to compensate you even for the pain of listening. I might have some slight hesitation in taking the floor at this time on the ground that this side of the House had done most of the talking since this case was called; but I know that gentlemen on the other side entertain no such feeling. I know that the speech of the gentleman from Maine [Mr. HALE] which was made on yesterday was credited to the contestant, since it served to fire the democratic heart. I know it was considered a most powerful effort in favor of the contestant. During the discussion of yesterday a gentleman who has a very bad case of contest on his hands was addressed somewhat in this fashion: "Old fellow you have a desperate case, but if you can but get the gentleman from Maine to make a speech when it comes up, he will put you through. He seated Patterson, he will seat Acklen, and he will seat even you if he takes part in the case." [Laughter.]

Now, gentlemen, although my confidence has been somewhat shaken, I am not yet thoroughly convinced that there is no such thing as American fair play in an American Congress. It is not necessary in considering this case to go beyond the single parish of Iberville. The case is a plain one, so plain that if the members of this House will take the trouble to consider it for a few moments they can easily understand it. If the parish of Iberville is counted for the contestee as it was counted for him at the polls, and as the vote was afterwards canvassed by both the Wells and the Nicholls returning boards, I say that if the vote as canvassed by both political parties is allowed to stand, then Mr. Darrall is entitled to his seat, even conceding to the contestant all that the majority of the committee claims for him.

At the last election the total vote of the parish of Iberville was about 3,000. It was as it has always been a republican stronghold. The regular republican majority was about 1,300 votes. Mr. Darrall ran somewhat behind his ticket, but his majority as returned was about 1,000 votes. The idea that there had been a miscount was never entertained in Iberville parish. The people settled down to the belief that the vote had been fairly counted. Scarcely a witness could say that he even so much as heard, after the election was over, that there had been a miscount in the parish of Iberville. And yet four months after the election the ballot-boxes were taken from a room of the court-house by order of a commissioner to take testimony. The ballots were counted by so-called "experts" appointed by the commissioner styling himself a court, and instead of finding that Mr. Darrall had received a thousand majority in the parish, it was found that he did not have any majority at all, but that there was a majority of some hundreds the other way.

Now, gentlemen, this thing may have been possible—nearly all things under the sun are possible—but I ask you as fair-minded men, is it probable? Is it reasonable? Is it creditable?

Now, there was no wide-spread opposition to Mr. Darrall. The Wharton candidate for State senator was his enemy but his opposition was secret. He dared not let his opposition be known in the parish of Iberville. Yet if Mr. Darrall was so unpopular there, what cause was there for secret opposition? Would not the defections on the part of the republicans have been notorious? Would it not have been just as unpopular for a republican to have supported Mr. Darrall as to have opposed him? But we hear nothing of that unpopularity until this contestant set up his claim to a seat in this House. The contestant claims that he has been elected by honest votes. I do not understand that he, an educated and accomplished gentleman, comes into this House and claims his seat by virtue of any trick. I acquit him of any such pretension. I understand his position as an honorable gentleman to be that he received the support of these republican voters fairly and honestly; that they cast their ballots for him because he was the candidate of their choice. I do not think it possible that he would stand in the face of the American Congress on any other assumption.

Now, sir, if that position be true, that Mr. Acklen received about one-half of all the republican votes cast in the parish of Iberville, I ask if this circumstance would not have been in the mouth of every republican in the parish? Would it not have been in the mouth of every voter in the parish on the day of election. And yet, when witness after witness was called to the stand, they testified that they never so much as heard after the election that the name of Mr. Acklen was on any republican tickets.

Just three republicans in the parish of Iberville testified that they had voted a republican ticket with the name of Acklen on it; and yet, if others had voted that ticket, would not those voters have taken the stand and so testified? The contestant has utterly failed to produce such testimony; and, although I have gone through the testimony most laboriously, I have only been able to discover that just these three republicans voted that peculiar ticket with the name of Acklen substituted for Darrall.

Let us take poll No. 2, for example. It is claimed that at poll No. 2, by the official count certified and sworn to by the democratic officers of election, Mr. Darrall received 394 votes, while, according to the so-called recount made by the pretended court, Mr. Darrall received but 86 votes; that is to say, that Acklen's name had been upon three hundred and eight of the tickets supposed to have been cast for Darrall, and that Darrall only received about one-fourth of his party vote.

Now if these were the facts, would not the commissioner who made such a statement as that have been at once arraigned at the bar of public opinion? Yet the democratic commissioner at poll No. 2, when called to the stand to testify, was asked this question:

Did you hear, after the election, anything about J. H. Acklen having received any votes on the republican tickets?
Answer. No, sir; I did not.

Now I ask the House to bear with me while I go through in detail the testimony of the witnesses called to testify concerning a single poll. I will take poll No. 5 as an example, because it is one of the polls in regard to which the majority of the Committee of Elections think that there is a clear case for the contestant.

Every officer of election who was at that poll on election day was sworn in the case. Mr. Gourrièr, the democratic officer, whose testimony will be found on pages 88 and 89 of the record, testified that he "did not pay much attention to the counting of the votes; that he thought the returning board would fix it up to suit themselves, and that it was no use to vote at all."

Now turn to the testimony of James H. Parker, on page 258 of the record:

Question. Were you about the polls on election day?
Answer. Only poll 5; I was there.
Q. Did you see any voters having the republican ticket with Mr. Acklen's name on for Congress?
A. No, sir; I did not.
Q. Did you assist in counting the votes as polled, after the election?
A. Yes, sir.
Q. Did you examine and scrutinize each ticket and the name on each ticket carefully?
A. Yes, sir; I did, carefully.
Q. Who assisted you in making this scrutiny of the tickets?
A. There was Mr. Coleman, Mr. Talbert, and myself.
Q. Would it not be utterly impossible for three commissioners of election and two United States supervisors of election, all acting under oath, to have made any material mistake in counting and compiling the vote?
A. Yes, sir; it would.
Q. Were there three commissioners and two United States supervisors at your poll, including yourself?
A. Yes, sir.

That is the testimony of an officer of election.

Now let us take the testimony, on pages 255–257, of J. C. Coleman, another commissioner of election:

Question. Now, Mr. Coleman, will you please describe exactly how this count was made, as you did not previously describe it carefully—the count of the tickets?
Answer. The way them tickets was counted, I unlocked the box; then I taken—myself and Parker—taken the tickets out, and laying them all out straight on the barrel, the straight republican tickets all to themselves, and the straight democratic tickets all to themselves, and the scratched tickets all to themselves, in separate piles; then we taken the straight republican tickets, wrote each name down on the ticket carefully as we could, and each name was given his complement of votes, his number of votes; the names was taken down as they were on the ticket, and were written down; and the democratic tickets the same way; and the scratched tickets was counted, and those that were not scratched; the name was taken down straight on the ticket, the names written, and the complement of votes written down.

Mr. CANDLER. What poll is the gentleman speaking of?

Mr. LEONARD. I am speaking of poll 5, and reading from the testimony of Mr. Coleman, on page 257 of the record in this case. This is one of the polls, gentlemen, that you are counting for the contestant; it is one of the polls upon which you propose to seat him; it is

a poll without which you cannot seat him, because if he loses this one poll his meager majority is gone. The witness further says:

When the tickets was all taken out and laid out straight in that manner [illustrates] Mr. Buttricks and Mr. Guerrière, all was there looking at how they were laid out on the barrel straight. There were myself, Parker, and Mr. Talbert was assorting the tickets, and Mr. Guerrière and Mr. Buttericks, they was standing around looking on. Then after we got them all straight I read each name down on the tickets, each one carefully, and Mr. Buttrick and Mr. Guerrière taken them down; then after I read them, Mr. Talbert, he takes them and reads them to them again.

Now, take the testimony of another officer, Mr. Talbot, a democratic commissioner at poll 5. I know who this gentleman is. There is not a brighter man in this House to-day than Edward A. Talbot, who acted as democratic commissioner at poll 5 of the parish of Iberville. This is his testimony:

Question. Will you please state where you were at the election of November 7, 1876?

Answer. Poll 5, ward 3, Deblieux's school-house.

Q. Were you a commissioner of election there?

A. Yes, sir.

Q. Did you count or assist in counting the votes at that poll?

A. Yes, sir; I did. I counted them.

Q. Describe the manner in which the votes at that poll were counted.

A. Well, the straight republican tickets and the straight democratic tickets and the scratched tickets were each placed separately in piles, and the aggregate number of each was put down on the tally-sheet.

Q. What was the color of the straight republican tickets issued to the voters in this parish?

A. I think it was a dark color, sir.

Q. Did you after the election ascertain or hear the fact that some of those republican tickets bore the name of J. H. Acklen for Congress instead of that of C. B. Darrall?

A. I could not say that I did.

Q. In the way that you counted those tickets could the name of J. H. Acklen have been on some of them without your seeing it?

A. Well, yes, sir; that might possibly have occurred.

This is the strongest testimony there is in favor of this so-called blunder and mistake: that one intelligent, modest gentleman testifies that *some* error might *possibly* have occurred. Yet will any gentleman here undertake to make me believe that this educated and accomplished lawyer counted 207 votes for Mr. Darrall when there were only 79 votes for him in the ballot-box, and that he counted for his own candidate only 63 votes when he had 158 votes in the box?

Now, gentlemen, if any of you in your own districts, at your own election precincts, knew that the officer of election who represented the opposite political party was an intelligent, accomplished, and educated gentleman, would it be possible to make you believe that he could have made any such glaring and preposterous mistake, that he could have committed a blunder so great as to give one candidate a large majority when in fact the other candidate had a large majority? I say it is an insult to Mr. Talbot to insinuate that he could have made such a blunder. He says he might have made *some* mistakes, but he does not say he might have made a mistake of this scandalous character.

Now, here is the testimony of two officers of the election who declare on their oaths that they took these tickets and counted them one by one and name by name. In the face of such evidence, judges, do you propose now to declare that this count made by intelligent men was utterly and completely erroneous? Yet, as I said before, if you fail to give the contestant this one poll, with regard to which I say in the presence of this House that there is not one jot or tittle of evidence to justify you in changing the vote—if you fail to give him this one poll his case is gone, and the meager majority which the Committee of Elections have figured out for him melts away and he is left in a hopeless minority.

All this is on the theory that this box could not have been tampered with and that it never was tampered with. Why could it not have been tampered with? The majority of the Committee of Elections conclude to throw out poll No. 1 because they say the seals were broken. Then I would like to know upon what rule of law or justice they count poll No. 5, where there was no seal to break. I say now, in the presence of the contestant himself and in the presence of gentlemen who represent him here, that there was nothing in God's world to prevent the unlocking of that box and the changing of the ballots. The ballot-hole was sealed, but not the key-hole. Nor is there any evidence that the lid of the box was sealed down to the body of the box.

It was just as if a man should bar his windows with triple bars of iron and then lock his door with a ten-cent lock and think himself secure. Gentlemen of the majority of the committee, I see no reason, I see no grounds why you should refuse to count a box because the seals appear to have been tampered with and yet count a box which was not sealed at all. I do not know the nature of the lock, but I know the kind of cheap and worthless locks that are generally put on these boxes. I say there was nothing to prevent the box being opened at any time. It was left unguarded in an old county court-house, yet four months after the election they bring forth this box and in the face of testimony like this which I have read the majority of the committee pretend to unseat a gentleman on this floor and to give his place to another. I will not review the evidence concerning all these polls. It is all as weak as the evidence which I have reviewed.

Now, gentlemen, I would like to know whether our seats upon this floor depend upon so frail a tenure that a ballot-box which has been kept for four months in an old county court-house can be raked out and a totally different result exhibited, for bear in mind here is no mere mistake; it is a complete reversal of the whole result.

It is as though the State of Ohio, for instance, had gone for the republican party by a majority of 200,000 and yet it should appear by a recount after the election that the State had really given a majority of 100,000 the other way.

In this case we are asked to suppose the possibility of a mistake of 1,300 votes out of 3,000! Gentlemen, such a thing is unknown in the history of American politics; it is unknown in the history of the world. Such a mistake never has occurred, and it will never again be claimed that it could occur. A mistake of 1,300 votes in a total of 3,000! It is preposterous. It is the most absurd and ridiculous claim that was ever made in any court of justice. It exceeds in its audacity anything that was ever set up, either in Congress or out of it.

Sir, it is not worth while for us who have seats in this House to entertain the notion that we were elected, nobody here can say that he was elected, if four months after the election the ballot-boxes can be raked out and it can be shown that there was a mistake in more than one vote out of every three. You who are so fortunate or so unfortunate as to have seats hereafter in the American Congress had best bring your ballots with you, stamped, sealed, and filed, else you will not know at what moment some parish judge in his majesty may order a recount and show that so far from your having been elected there was a large majority the other way. Why, sir, I care not what majority a man may have; I care not though his majority may be as large as that of the distinguished gentleman from New York, [Mr. COX,] who came out of the land of the setting sun and captured the votes of the gallant cavaliers of the thirteenth ward of New York. I make this allusion in no spirit of disrespect to the gentleman, for I have a great regard for him; I have done what perhaps few other gentlemen here have done. I have read his books. [Laughter.] But I say, though the vote of a member holding a seat on this floor were four hundred times that of his opponent, it would be as nothing compared with the slow but certain growth of time and the powers of a county judge.

Sir, we are poor mistaken mortals who think we can hold our seats here by virtue of official counts on election nights. What are such advantages compared with the fortunes of the favored few whose ballots grow in the boxes like potatoes in a hill, while ours dry up and fade away into dim and airy nothingness.

Sir, it is not worth while, it seems to me, to dwell longer upon this branch of the case. It is not worth while to attempt further to show the utter preposterousness, the utter ridiculousness, of this so-called second count.

But there is another proposition to which I ask your attention. If the judges of this court who are soon to pass under their oaths upon a case of private right between man and man, if the judges who are to perform this highest and most sacred of all functions will give their attention for a moment, I should like to ask them how they reconcile this count of the parish judge with any principle of law known to American jurisprudence? The assumption before this House is that the parish judge acted as a court, and that he counted these votes by virtue of some judicial power. What was this parish judge of the parish of Iberville? He did not proceed in this matter by virtue of the laws of Louisiana. Oh, no; by the constitution of that State his jurisdiction in contested-election cases attaches only where the yearly salary of the office does not exceed $500. Therefore it is not under the State law that he claims to have performed this function. Then it must be under the law of the United States.

The Revised Statutes declare that—

When any contestant or returned member is desirous of obtaining testimony respecting a contested election, he may apply for a subpœna to either of the following officers who may reside within the congressional district in which the election to be contested was held:

First. Any judge of any court of the United States

Second. Any chancellor, judge, or justice of a court of record of any State.

Third. Any mayor, recorder, or intendant of any town or city.

Fourth. Any register in bankruptcy or notary public.—*Revised Statutes*, section 110.

Therefore this parish judge of the parish of Iberville, who assumes to have counted these votes as a court, was nothing more than a commissioner to take testimony—nothing more in that particular sphere than a mayor of a town, or a register in bankruptcy, or a notary public. He says that he acted by virtue of the statutes of the United States, section 123. Now, what are the powers of this officer under that provision. Listen to this, because the whole case turns upon it:

The officer shall have power to require the production of papers; and on the refusal or neglect of any person to produce and deliver up any paper or papers in his possession pertaining to the election, or to produce and deliver up certified or sworn copies of the same in case they may be official papers, such persons shall be liable to all the penalties prescribed in section 116.

But here is the clause to which I ask particular attention:

All papers thus produced, and all certified or sworn copies of official papers, shall be transmitted by the officer, with the testimony of the witnesses, to the Clerk of the House of Representatives.—*Revised Statutes*, section 123.

This parish judge in the parish of Iberville had the right to call for the production of papers; but for what purpose? To send the papers, or certified copies of those papers to this court, in order that we might judge of the evidence. He had the right to swear experts upon the motion of either party; but for what purpose? In order that we might see and examine the testimony of those experts and pass upon it

ourselves. But what has he done? He has not sent us the evidence; he has sent us his own conclusions and judgment upon the evidence. He has not sent us the testimony of the experts; he has sent us the finding of the experts, promulgated and approved by him.

Gentlemen of the House of Representatives, are you going to give sanction to such a proceeding? Are you going to unsettle an official count here upon the so-called judgment of one who styles himself a judge and a court, but who is in reality nothing more than a commissioner to take testimony, a register in bankruptcy, or a notary public? There is absolutely no law for that proceeding—none whatever. We have not the evidence so that we can pass upon it; we have the conclusions of this man—this man of high-sounding title, who talks as though he was the Chief-Justice of the Supreme Court of the United States, but who is really only a petty country magistrate.

I trust that the members of this House will not forget the name of this celebrated judge. I would like to grasp him by the hair and rescue him from that oblivion to which he seems likely to be consigned.

Louisiana has been very rich in the matter of returning boards. She has been celebrated in that connection. She has produced perhaps more illustrious characters in that department than any other State in this Union, but I assert that the most distinguished and, if justice were done, the most illustrious returning officer who was ever known in the history of the world is "James Crowell, parish judge of the parish of Iberville." Why, in the old returning-board days in Louisiana there used to be a mistake sometimes or a dispute about one vote in ten. John Lynch returned Louisiana for Grant, though he had only a few scattering returns in his hands. The late democratic returning board went several better than that and returned the State for Tilden without having in their possession any of the legal returns whatever. But after all there was only a dispute about a few votes, there was only a question about one vote in ten. Besides, those gentlemen acted by virtue of the petty laws of the State; but here comes a returning officer, clothed with the majesty of the Federal Government. Listen to the order "of James Crowell, parish judge of the parish of Iberville:"

I, James Crowell, parish judge, empowered and authorized under the Revised Statutes of the United States, as evidenced by section 123, do hereby, in the name of the President of the United States of America and as parish judge, command you, C. H. Gordon, clerk of said court of the parish of Iberville, to produce the ballot-boxes now in your keeping and possession containing the ballots cast at the late election in the said parish, and in open court to deliver them one at a time to the sworn experts whom I shall appoint, for a recounting of the said ballots, and to remain in their presence; and, after the said count has been finished, to again take in your possession the said boxes, seal the same, and retain them, as provided by law.

Done under my official character and as provided by the United States statutes, and as parish judge of this parish, this 6th day of March, 1877.

JAMES CROWELL,
Parish Judge.

Then follow other orders:

In the name of the President of the United States, I, James Crowell, parish judge, and acting under the Revised Statutes of the United States as the officer before whom the taking of testimony in the case of J. H. Acklen *vs.* C. B. Darrall is done, command you to appear in open court and, under oath by me to be administered, to act as experts in the recounting of the ballots cast at the last election, of November 7, 1876, for Congressman from the third congressional district, said boxes now being in possession of the clerk of this court, and of said recount to make a true return.

March 6, 1877.

JAMES CROWELL,
Parish Judge.

"Do you, C. W. Colton, George A. Harrison, James R. Jolley, and J. H. Shanks, appointed as experts to recount the votes for Congressman in the case of J. H. Acklen *vs.* C. B. Darrall, solemnly swear, in the presence of Almighty God, to carefully count said votes now in the ballot-boxes and to make a true return thereof; so help you God?"

The above oath was duly administered by me to the experts therein named, who are to recount the votes in this case.

JAMES CROWELL.
Parish Judge.

That is the way he goes on and renders what gentlemen here seriously pretend to call a judgment!

Mr. ELLIS. What party is responsible for his position?

Mr. LEONARD. He was an ardent supporter of the contestant at the late election, and I suppose he belongs, therefore, to that gentleman's party.

I was glad to hear my colleague ask me the question he did, because it indicates that he would be ashamed to acknowledge that he belonged to the same party as this parish judge. I know he would be ashamed to sanction any such proceedings as these as coming from any decent officer in the United States of America.

Why, sir, this all is the most absurd and ridiculous proceeding ever printed in the annals of Congress; a petty officer, acting as commissioner to take testimony, coming forward and saying: "I command you to count these votes, you whom I name as experts, by the authority of the Revised Statutes and in the name of the President of the United States." Well, it seems that the "experts" appointed by this officer, who acted by the authority of the Revised Statutes and in the name of the President of the United States, discharged their duty. It seems the votes were recounted under his order by his experts while he sat there and looked on in his majesty, and after they had counted the votes they certified to the count and he certified to their finding, and that is all there is to this case. We have the pretended judgment of this petty official, who styles himself a court, acting in the name and by the authority of the Federal Union.

Sir, as I have said before, the history of Louisiana is rich in the department of returning boards, rich in extraordinary history recording elections. From the day when John Slidell returned more votes in the parish of Plaquemine than there were people in that parish, from the time when John Lynch counted affidavits for votes down to the most recent period, we have interesting history on the subject of Louisiana returning boards. But I say there is nothing in all that history to compare in its audacity and preposterousnes with this wonderful canvass in which Judge James Crowell acted by authority of the Revised Statutes and in the name of the President of the United States. Sir, justice will one day be rendered back to him who rendered justice, and although ungrateful man may forget Mr. Crowell, yet when the trump of judgment sounds and John Lynch and John Slidell press forward to claim their reward, they will hear a voice coming out of the darkness and saying unto them, "Stand back, make way for James Crowell, parish judge, who returned Iberville democratic by the authority of the Revised Statutes and in the name of the President of the United States." [Laughter.]

Mr. POTTER. In this case three certificates from the executive of the State of Louisiana have been submitted to this House. The first and second of these certificates declare that Mr. Darrall is entitled to the seat in question, but the third, the latest certificate, declares that upon a corrected statement Mr. Acklen is entitled to the seat. When this House was about to organize I was asked by the Louisiana delegation whether I thought Mr. Acklen was entitled upon these certificates to be put upon the Clerk's roll of members instead of Mr. Darrall, and I decided that he was not and that Mr. Darrall was entitled *prima facie* on the certificates to be seated. Mr. Darrall having then and rightly I think received his seat, his right to retain it upon the merits is now presented to us.

The result of the election in this district depends upon the true result of the election in the parish of Iberville. In the rest of the district outside of Iberville, and excepting this parish, it is substantially agreed on all hands that Acklen has a majority of 63 votes. The parish of Iberville as originally counted gave Mr. Darrall a majority of about 900 votes, whereas as recounted it gives Mr. Acklen a majority of about 400 votes.

So the right of Mr. Acklen to his seat depends upon this recount. If this recount is valid and should be accepted, then beyond peradventure Mr. Acklen should have the seat; and, on the other hand, if this recount is invalid or for any reason ought not to be accepted, then Mr. Darrall should retain the seat.

In regard to this recount it is to be remembered that the laws of the State of Louisiana provide for a recount at any time before the next term of the court. Now, the next term of the court was to be held in January, and this recount did not take place until March or April; but in fact, as the committee tell us, no court was held in January. The person who undertook to hold the court then was not the proper judge and transacted no business, and nothing was then done or acted upon. The State government in Louisiana at that time was in dispute and the general situation such as naturally delayed the transaction of any business of a judicial nature.

Mr. PRICE. Have you seen the certificate of the clerk of Portland that there was an election held on the 2d of January?

Mr. POTTER. Yes, I have; but I do not regard that as conclusive or overriding the other evidence in the case.

Mr. PRICE. Was he not an official of the court who had authority to issue the certificate?

Mr. POTTER. Undoubtedly, but you cannot treat that certificate as controlling upon this point.

Mr. PRICE. Was not such a certificate bound to be recognized?

Mr. POTTER. At that time there was a dispute in Louisiana as to the legality of the judge.

Mr. PRICE. Do you deny that this is not only a question of law, but a fact, that a clerk of a court is more likely to know it than any man living, the judge himself excepted?

Mr. POTTER. The clerk could not have known the fact of whether the court was held any better than any other man who was present. Could he have known when it rained better than the men who stood out doors and got wet, because he was a clerk?

Mr. PRICE. We do not know when it rains down there.

Mr. POTTER. I will proceed with my remarks. The gentleman has the benefit of his certificate. But behind that there remains the fact that there was a recount before there was any actual session of the court held, and that the session of the court was held as soon as was practicable. There remains also the further fact that the Revised Statutes of the United States authorize in contested-election cases the taking of certain evidence, and that this recount was part of the evidence so taken. This recount was made upon the authority of the parish judge, about whom the learned gentleman [Mr. LEONARD] declaimed so fervently. This recount was made upon the order of that judge, and, as he declared, in pursuance of the authority given him by the Revised Statutes of the United States.

Now I quite agree that recounts are dangerous things and ought not to be accepted unless upon conclusive evidence.

Mr. CANNON, of Illinois. I desire to ask the gentleman a question in reference to the law of the State of Louisiana.

Mr. POTTER. As I may not be sufficiently acquainted with the

laws of Louisiana to answer the gentleman's question properly I prefer leaving it with some gentleman who is better acquainted with those laws than I am to answer the gentleman from Illinois.

Mr. ELLIS. I may be able to answer the gentleman's question.

Mr. POTTER. Then I will yield to the gentleman from Illinois [Mr. CANNON] to repeat his question, and then afterward to the gentleman from Louisiana [Mr. ELLIS] to answer it.

Mr. CANNON, of Illinois. The gentleman from New York [Mr. POTTER] stated that under the statute of Louisiana there can be a recount at any time before the next term of court in the county. The law fixes the time of holding the court to be on the first Monday in January. He states from the evidence that he was satisfied that no term was held in January. Now I ask him, as I ask the gentleman from Louisiana, what is the object of that provision, whether or not it was a limitation of the time of the court, pure and simple, or whether the statute of Louisiana was to enable somebody to take some proceedings in the matter before the next ensuing session of the court.

Mr. ELLIS. Section 13 of the law provides simply that the clerk shall take into his custody and safely keep the ballot-boxes until after the next term of the district or criminal court for that parish. I imagine that the objects of the law are twofold: in the first place, for the purpose of supplying testimony as to illegal or fraudulent voting, and in the second place to subserve the purpose of contest of a right to a seat here and as to the title of parish officers. But I hardly suppose that the gentleman doubts the right of this House to go behind a State statute and pursue as far as possible every fact it can bring to bear; or will he concede to a State the power to abridge the power of Congress to investigate the right of any gentleman to his seat here?

Mr. HARRIS, of Virginia. I will read that part of the statutes of the State of Louisiana touching on this matter:

Section 13, act 98, 1872, says: "Tally-lists shall be kept of the count, and after the count the ballots counted shall be put back into the box and preserved until after the next term of the criminal or district court, as the case may be; and in the parishes, except Orleans, the commissioners of election, or any one of them selected for that purpose, shall carry the box and deliver it to the clerk of the district court, who shall preserve the same as above required."

Mr. EDEN. I desire to know who is entitled to the floor.

The SPEAKER *pro tempore*, (Mr. YEATES.) The gentleman from New York, [Mr. POTTER.]

Mr. PRICE. In that connection I want to ask the chairman of the committee a question.

Mr. EDEN. I rise to a parliamentary inquiry.

The SPEAKER *pro tempore*. The gentleman will state it.

Mr. EDEN. Who is entitled to the floor?

The SPEAKER *pro tempore*. The gentleman from New York, [Mr. POTTER,] for a limited time.

Mr. PRICE. May I ask the question?

The SPEAKER *pro tempore*. Does the gentleman from New York [Mr. POTTER] yield?

Mr. POTTER. I will yield to the gentleman from Iowa [Mr. PRICE] to ask a question.

Mr. PRICE. I want to ask a question in connection with what the chairman of the Committee of Elections has just stated. He says that the law of Louisiana requires that the ballot-boxes, and the ballots as a matter of course, shall be kept until the next term of the district or criminal court. That is admitted on all hands. They are to be kept for the purpose of using the ballots at that time legally for some purpose. The clerk of the court is the custodian of these ballots, and he certifies that the court was held on the second day of January. Now the conclusion is that the clerk did not consider himself bound any longer for the safe-keeping of these ballots, and consequently the ballots were not in the keeping of anybody after that time. That is the conclusion from the evidence.

Mr. POTTER. The gentleman has asked a question and has answered it to his own satisfaction. I should not myself draw that conclusion. I should suppose it was an idle law that directed the ballots to be kept until a fixed and certain day only. What must be meant is that they shall be kept until there is a court that can act upon them. The purpose of the law was to keep these ballots until the court could act upon them; not that they should be kept until a certain day, which day happened to pass in this case, as it might in others, without any session of the court being held. Now, whether the proceeding denoted by this parish judge was under the State statute or the Federal statute——

Mr. THORNBURGH. I would like to ask the gentleman a question, though I do not like to interrupt him.

The SPEAKER *pro tempore*. Does the gentleman yield?

Mr. POTTER. I will hear the question.

Mr. THORNBURGH. The question is this: the gentleman makes the statement that a term of the court was not in fact held; I want to know where that testimony is. I have been unable to find any such testimony in the record. So far as I have been able to find anything in the record the only testimony in regard to the term of that court having been held is the certificate of the clerk of the court that it was held.

Mr. POTTER. As to that I will answer the gentleman later. I am not familiar enough with the papers to find the evidence on the moment. This recount was directed by this officer upon probable cause. That is to say, application was made to him for a recount upon the statement that there were ballots in the boxes which had not been counted. The other side, that is Mr. Darrall's side, was cited upon notice of that fact to be heard before him. Not only was there evidence before him to show that there were ballots in the boxes that had not been counted, but there was also evidence in regard to the condition of the boxes. When he had satisfied himself, first, that there were ballots that had not been counted, and second, that the boxes were in perfect order and in an untampered condition, he ordered a recount. As I am reminded, this officer was a republican judge.

Mr. HISCOCK. Will the gentleman yield to me for a question?

The SPEAKER *pro tempore*. Does the gentleman yield to his colleague?

Mr. POTTER. I always yield to my colleagues.

Mr. HISCOCK. Does the gentleman find in this record anywhere that that question was passed upon judicially?

Mr. POTTER. Why, I find that the very order of the court directing the recount had all that in it; and I should say that was passing upon it judicially, if the officer had any jurisdiction of the matter at all.

Mr. HISCOCK. I fail to find any evidence that that was passed upon judicially.

Mr. LEONARD. I do not want to bother the gentleman.

Mr. POTTER. The gentleman does not bother me.

The SPEAKER *pro tempore*. The time of the gentleman from New York [Mr. POTTER] is nearly out.

Mr. LEONARD. The gentleman from New York is a distinguished lawyer. I ask him if the order made to take testimony was by a notary public or some other officer of the kind, was he a court? The fact that he was a court in some other function does not make him a court in this function.

Mr. POTTER. No, sir; if he was not a court for this proceeding, it is immaterial whether he could hold a court for other proceedings or not; that, of course, I admit.

Mr. LEONARD. He was not a court.

Mr. POTTER. Perhaps he was not. At any rate I quite agree that his action or proceeding in this matter is not binding upon this House. But whether he was authorized to direct a recount or not his action is equally important as going to show what the fact as to the ballots cast at this election was, for that is what we are after. In this proceeding judicial or quasi-judicial, it was alleged that there were ballots in the boxes which should have been and had not been counted for Acklen, and that the ballot-boxes had been preserved intact. Now when the ballot-boxes were opened and the ballots alleged to be there and to have been overlooked were found there, this application and the recount furnished convincing evidence as to the error of the original count and whether the parish judge had jurisdiction or not equally goes to show the true condition of the vote at the close of the election.

Then let me say that the evidence shows the boxes to have been carefully preserved and intact except in four instances when the papers sealed over the key-hole and the hole for ballots had been broken—accidentally I think the evidence clearly shows—but in two of these cases the recount agreed with the original count (polls 8 and 10) and in the other two cases (polls 1 and 7) the committee reject the recount; so that, as I understand, it is only when the condition of the boxes was beyond controversy the recount has been considered at all.

The manner in which the recount was conducted I understand to be unquestioned. It was conducted by the representatives of both parties, and openly, with every one who was interested about, and no exception whatever is taken to it. Therefore we are reduced in this case just to this: were the ballots found in the boxes when they came to be reopened there when the election was closed? If they were, then the original count was erroneous.

I quite agree that that is a point upon which we must be fully satisfied before we give effect to the recount. In considering this it is in the first place to be observed there is evidence outside of the boxes themselves confirming the result of the ballots as they appeared on the recount and going to show that they were the ballots which were in the boxes when the election was closed, for we have the testimony of certain of the republican managers who declare that they were opposed to Mr. Darrall, that they caused certain republican ballots to be printed exactly like the regular ballots, from which Mr. Darrall's name was omitted, and certain other republican ballots otherwise exactly like the regular ballots with Mr. Acklen's name in place of Mr. Darrall's name; that they distributed those ballots and caused them to be voted. One of each of those ballots is now here before me.

They are evidently from the same press with the regular republican ballots, and in their heading, backs, and general appearance are exactly alike; and nobody without scrutinizing them very closely and for a considerable time could find out who is the member of Congress voted for, because on each ticket there are forty-nine names; and there was no scratch of a pen upon any of them to invite attention to a change; the type of all the tickets was exactly alike; and it was necessary to hunt down the list and find the name of the member of Congress, with one's attention specially called to that point, before one could tell whether the ballot was for Darrall or for Acklen.

Now, it is beyond question that these Acklen ballots were distrib-

nted and put in the boxes. It is equally beyond question that on the first return only one republican ballot was returned on which Acklen's name was inserted, and that no republican ballots, blank as to the member of Congress, were returned at all. That is, the first return gave Darrall the regular republican vote. Thus we have the fact established that this operation was arranged, the ballots were distributed and went into the boxes, and the persons who made the first count did not return them as they must then have been. Indeed there is every reason why they should not then have noticed or returned them. Take poll 5, of which the gentleman from Louisiana [Mr. LEONARD] spoke just now and in regard to which he read the evidence of the supervisor as to his having scrutinized the ballots. Why, sir, at that poll there were 300 ballots cast and on each of them there were forty-nine names, making nearly fifteen thousand names in all; yet it is in evidence that the boxes from that poll were returned to the proper authorities after the votes had been counted within one hour after the closing of the polls. Now, it is absolutely a physical impossibility that those fifteen thousand names should have been read over in that hour or in many times more than that period.

[Here the hammer fell.]

Mr. HARRIS, of Virginia. I have fifteen minutes of my hour remaining. I yield five minutes to the gentleman from New York [Mr. POTTER] that he may continue his remarks.

Mr. POTTER. Of course it is obvious that the election officers going over these ballots hastily would first count them by their backs or by their headings, as they testify they did. As there had been no intimation that it was intended to scratch the republican ticket they would not look for such a scratch. If the scratching of Darrall's name had been in ink they would naturally have seen it. If they had been told that there was an intention to drop the regular candidate for Congress they would have looked particularly for the name of the candidate for that office. But the men who put up this scheme, if I may so call it, kept it secret for two reasons: First, because it was not necessary to tell the negroes; the negroes, as one of them himself expressed it, would have voted for a rattlesnake if Mr. Wharton, the man who directed this business, had told them to do so. And second——

Mr. REED. Why, then, keep it secret?

Mr. POTTER. Because, as Wharton says, if it had been known that it was intended to carry through such an operation and to strike Darrall, the white managers on the republican side and Darrall's friends would have put a stop to it, would have interfered with and prevented it. To make it successful it was necessary to keep it secret and vote the negroes, so to speak, blind, as Wharton says was done.

Mr. REED. Then the gentleman thinks this was a cheat, does he?

The SPEAKER *pro tempore*. Does the gentleman from New York yield for a question?

Mr. POTTER. I yield for the question and I will answer it later.

Mr. REED. Then answer another in connection with it. Do you intend to sustain the cheat?

Mr. POTTER. I will answer both.

Mr. REED. Then I think your time will have to be extended.

Mr. POTTER. There is besides this further confirmatory evidence that this difference in the ballots was not observed and that they remained unchanged until the recount. The aggregate of the votes upon the recount is found to be the same as on the first count; that is to say, on the recount you find there are so many more votes for Acklen because there are republican tickets with Acklen's name substituted for Darrall's, and so many more blanks because there were republican tickets with Darrall's name omitted; but the aggregate of votes for Congress corresponds exactly with the original return, thus showing there could have been no addition to the number of tickets in the boxes originally; and the fact that a portion of these votes are blank for Congress, and not all republican votes with Acklen's name upon them, corresponds with the original plan and is further confirmatory evidence that those boxes had not been stuffed, but that the canvassers, not observing the substitution of Acklen's name or the omission of Darrall's, had counted all the republican tickets for Darrall; for if any one was going to stuff these boxes of course he would have stuffed them with republican tickets with Acklen's name upon them for Congress, and not stuff them with tickets on which there was a blank for the name of the Congressman.

In all these regards the facts correspond with the job Wharton put up, and taking what he proves he did and the recount together everything becomes perfectly clear when you have once seen the tickets and seen how naturally and easily in hastily calling them off the substitution of Acklen's printed name for Darrall's or the omission of Darrall's name might be overlooked.

Now the gentleman from Maine [Mr. REED] asks me whether I am in favor of countenancing a "put-up job" like this. I answer him frankly, I am not; but that is not the question here. I will state the real question, which I agree is important; and I do not intend to avoid it in the least. Here it is proved that certain republican managers, out of a feeling of dislike toward the regular republican candidate, entered into a secret arrangement to deprive him of the regular party vote and that by reason of a mistake on the part of the canvassers at the first count, this intended trick, (if you call it a trick,) this purpose did not become operative. The question then recurs whether when persons have undertaken to deceive voters in that respect, (if it was a deception in this case,) and the intended deception has failed to become operative, Congress ought to give it effect. Now I do not intend to avoid that question in the least; I mean to look it straight in the face; and I answer that I think we are bound by the true count of the votes cast, even if one of the candidates was thus wronged or cheated.

Mr. REED. Which count?

Mr. POTTER. In this case that is by the recount. Here I think it likely that as regards this vote nobody was cheated, for I assume that these negroes would have voted exactly as Mr. Wharton told them, for he is the man who ran them; so that in voting for Acklen instead of Darrall as he wished, they did ignorantly what they would have done intentionally, and therefore are not hurt in the least. But I want to answer the gentleman's question fully and frankly by saying what we ought to do in this case.

[Here the hammer fell.]

Mr. ELLIS obtained the floor and said: I yield to the gentleman from New York [Mr. POTTER] five minutes of my time.

Mr. POTTER. If we venture to go behind the votes that were really cast—and I assume now that the recount gives us the true result of the votes cast, and that these votes were procured by the trick mentioned—if we say that we will not give effect to this count because persons intended to vote differently from the way they did vote, we open a door which we never can close. Upon such an inquiry as that we never could determine an election case within the sitting of a Congress. Of course it is a very great misfortune, a very great evil, where fraud of any kind is intended, that it should become effective.

But I think we are bound to ascertain and then to give effect to the votes as cast, and that we cannot safely inquire into the intention of persons casting them, for that would be to open the door for an inquiry Congress would never be able to determine; an inquiry which, as it might involve the intentions of each one of many thousand voters, could never be carried out so as to afford practical results.

Beyond this, the experience of the returning board of this very State of Louisiana has shown that when once you set about inquiry into the purpose of voters, into whether they voted as they meant to vote or were coerced or defrauded, you open the way for far greater evils and frauds than by adhering to the votes cast. Some other remedy for these wrongs must be found than disregarding the votes cast and assuming they do not represent the voters' wish. To do that would be, has proved where attempted, to be far more dangerous than any of such election tricks as Wharton's. Indeed, where is the line to be drawn by which the voter's ballot is to be taken as representing or not representing his wishes? So long as it is lawful to solicit votes; to urge the voter who to vote for and who to scratch; to tell him which is the right and which is the wrong ticket, just so long such election tricks as this of Wharton's will continue. And however else they should be punished or prevented, and however odious they are, experience has shown that it will not do because of them to refuse to count the ballots as and for whom they were cast.

Mr. REED. But I suggest you are opening the official count for the purpose of giving effect to this fraud.

Mr. POTTER. No; we are opening the first official count only to determine the true number of votes actually cast and for whom, and it does happen incidentally we find that a fraud, if you call it a fraud, of this sort was perpetrated; but we cannot reach or allow for that without going into the intention of the voters, and that it is neither safe nor practicable to do.

MESSAGE FROM THE SENATE.

A message was received from the Senate by Mr. SYMPSON, one of its clerks, announcing the passage by that body of a bill (H. R. No. 1891) for the relief of the Eagle and Phœnix Manufacturing Company, of Columbia, Georgia, with amendments in which concurrence was requested.

It further announced the passage of the following bills; in which concurrence was requested:

An act (S. No. 17) amending the laws granting pensions to the soldiers and sailors of the war of 1812 and their widows, and for other purposes;

An act (S. No. 285) granting a pension to Elizabeth B. Stone;

An act (S. No. 596) to regulate the compensation of postmasters, and for other purposes;

An act (S. No. 686) granting a pension to Mary Emma Baptist, and Daisy Baptist, minor child;

An act (S. No. 697) granting a pension to Annie L. Robbins; and

An act (S. No. 704) granting a pension to Grace Aikens.

LOUISIANA CONTESTED ELECTION—ACKLEN VS. DARRALL.

Mr. ELLIS. Mr. Speaker, I ask the attention of the House while, as well as lungs oppressed with a very bad cold will permit me, I tediously examine this case; and I desire to state now in the outset that my purpose will be to convince this House that the contestant was fairly elected and is entitled to a seat here. After careful and thorough investigation of the law and of the testimony in this case, I have arrived at that conclusion, and now for the contestant, whose personal as well as political friend I am, I desire to state boldly that if any Representative here, be he democrat or republican, after according to me a patient hearing, be not convinced that Joseph H. Acklen, the contestant, was legally and fairly elected to a seat here in this body, it is my earnest desire and request that you vote against him. Let us, then, approach the investigation of the case.

Omitting poll 17 of the parish of La Fourche and the entire parish of Iberville, the contestee approaches the disputed points of this election and the contested polling-places with 23 majority. Again I say and desire to impress that, omitting poll 17 of La Fourche Parish and omitting Iberville entirely, the contestee, the sitting member, has 23 majority. This statement is in accordance with the count of the Nicholls or present State board of canvassers, for I presume that no one here will dispute that the canvass of the Wells-Anderson returning board is entitled to no respect whatever. Under the testimony adduced in this case, as well as by the evidence of the public history of the country, fraud, crime, forgery, the carrying out of every devilish machination that ever was conceived by the most devilish ingenuity to defraud the will of a people and strangle the popular voice were carried out and executed by that now immortally infamous returning board.

Here is the testimony of republicans themselves, of Ledet, of Veazie, and others, showing the frauds committed by themselves; while that board exercised judicial powers which under the constitution of State of Louisiana it had no right to do, rejected what it pleased, the counted what it pleased, stifled a voice here, a poll there, the will of the people all the time, and counted the vote simply to subserve their own purposes and to carry out not the will of the whole people but only their own will or that of their party. Under the constitution of Louisiana, the judicial power is conferred upon supreme, upon district, and parish courts, and justices of the peace by one article, and another article of that constitution limits the power and confines it expressly to the courts named.

Now, the Legislature, in violation of the constitution, did confer judicial power upon this returning board. The law was unconstitutional; it was illegal, and it is null and void; and its execution in this regard by the members of that board was unconstitutional, illegal, and void. After the accession of the legal State government the Legislature passed a new law with provisions for a new board of canvassers, and the executive of the State appointed a new board of canvassers; and by the order of the Legislature the returns of the election as forwarded by the commissioners from the polls were taken by this board of canvassers—one of whom was a strong partisan friend of the contestee, the sitting member—a board composed of republicans and democrats, fair-minded men, and they recanvassed the vote of the State and cut down the sitting member's majority from the estimate of the Wells-Anderson board over 1,000 votes. I take that canvass in which there was no exercise of judicial power; in which the vote was recanvassed as it was cast, as the true and legal count, and under that count, as I stated before, omitting poll No. 17 of the parish of La Fourche and the entire vote of the parish of Iberville, the sitting member has 23 majority.

Seven democratic members of the Committee of Elections and three republican members of the Committee of Elections are agreed that poll 17 of the parish of La Fourche should not be counted. Why? Because the testimony of the republican supervisor himself, the testimony of other respectable and responsible witnesses, shows conclusively that the place of holding the election was changed from the usual and legal place just on the eve of the election more than a mile away, to a strange and unusual place, for the purpose of concealing from the democratic voters the whereabouts of the poll, and thereby men who were entitled to vote and men who would have voted, not being able to find a place of voting, were deprived of their votes. There is no dispute as to this fact, and it was but a single instance of the practice of one of those dark ways and vain tricks of which the republican party in Louisiana become masters and adepts and for the successful practice of which to defeat the popular will the late election laws of that State and returning boards were instituted and organized.

But to the point. The place of holding the election at poll 17 was changed and no notice given. Now, all laws in regard to the place of election are mandatory, and their violation vitiates and renders null the election. This principle is elementary and will not be disputed. The supreme court of Louisiana passed upon poll 17 of La Fourche Parish, and they excluded it by the decree which was rendered, case of Welre rs. Wilton. The language of Associate Justice Egan, who delivered the opinion of the court in that case, was very pointed, and he held that no election had been held at poll 17 in La Fourche Parish. Therefore the committee excluded it righteously and justly from the count in this contest. At that poll the sitting member received 86 votes and the contestant received no vote. Now, 86 votes taken from the 23 majority with which the sitting member approaches this contest leaves him just 63 in the minority; in other words, the contestant approaches the parish of Iberville with 63 majority. That parish alone remains to be considered, and upon the result there depends the decision of this cause.

Contestant's claim is based upon a recount of the votes in that parish for both boards. The Wells-Anderson as well as the present board gave the sitting member nearly one thousand majority. The issue, then, is between the original count and the recount.

I know, Mr. Speaker, with what jealousy the law regards these recounts. I know that the very word "recount" is open to suspicion and is fraught with grave doubt. The law has jealously guarded these recounts. It has provided for them, but it has jealously guarded them, and it is made obligatory upon him who wishes to take advantage of a recount to show that the boxes were the indentical boxes; that they were in the same condition as when delivered to their legal custodians; that they have not been tampered with, creating the presumption that the ballots contained in them are the identical ballots cast at the election. When it is shown that they are the identical ballots they take rank in the legal and judicial mind as the very highest evidence of the result of an election. In a leading case in California, reported in 2 Brightly, the doctrine of recounts of ballots is most thoroughly discussed, and the principles I have cited are laid down. Further authority for these principles are laid down by McCrary, and also by that great jurist Judge Cooley in his work on Constitutional Limitations. But around ballot-boxes, legally in charge of a legal custodian, the law casts the general presumption that the officer has done his duty and has safely kept the ballots. Nor will the law presume that ballot-boxes have been tampered with. The commission of a crime is never presumed.

It will not be presumed in the absence of testimony that a crime was committed. So that these two presumptions of law are thrown around the boxes and argue to the legal and judicial mind that they were the identical boxes containing the identical ballots that were cast at the election. There is from the beginning to the end of this voluminous record no single line, syllable, or scintilla of testimony which shows that they were ever interfered with the one way or the other. On the contrary the evidence is overwhelming and complete that they were carefully preserved and were the identical boxes containing the identical ballots which were cast on the day of election. As such they constitute the best and most conclusive evidence of the result of the election.

But some gentlemen—my colleague on the committee [Mr. PRICE] says and contestee's counsel argue that the legal time for preserving these boxes under the Louisiana statute having elapsed before the recount was had the result of that recount cannot be received to do away with the original count and canvass.

Now, Mr. Speaker, the election law of Louisiana, section 13, provides that the clerk shall take and safely keep the ballot-boxes until after the next term of the district or criminal court for that parish. Under the law the term of that court should have been held on the first Monday of January. But it is a matter of history, it is proven in the testimony of W. W. Wharton—which I cite, as some gentleman asks for the name of the witness—that no term of the court was held at the day fixed by law. What was the object of preserving these ballots? Was it not that the grand jury might act in any case of alleged fraud in the election; or was it not to subserve the purpose of any contest brought into the court for State or parish officers? And does the language of the statute providing for the custody of the ballots refer to a mere day? It fixes the day on which a court can act. But does it mean that the votes shall be preserved until a term of court can be held which can act upon any case in which these ballots might be of service as testimony? Clearly there can be no misconception of the true spirit and true meaning of that section of the statute under consideration.

No court was held. The clerk of the court says that a term was held, a term lasting one day, at which some gentleman named Cole—some "jolly old soul"—came and went through the form of opening and closing the court. There is no such judge in the State as Judge Cole. There is no man named Cole who was judge then. There is no man named Cole who is judge now. There was a pretender named Cole. There was a man named Cole who was counted in by the infamous edict of the infamous Wells and Anderson returning board, and who pretended to act as judge for a single day. Lawyers refused to recognize him, litigants refused to recognize him. He was tabooed. He was refused recognition by everybody, and in consequence he went through the form of adjourning court, went home and never came back again. Such was the term of court which my colleague on the committee, the gentleman from Iowa, [Mr. PRICE,] says was a "term of court" within the intendment of the statute, at which these ballots might have been serviceable in the manner in which the law contemplated they might be. Judge Charles McVea is the judge of that district court, and Judge Charles McVea held the first term of that court after the November election, in April, 1877, after the recount.

Mr. THORNBURGH. Is the gentleman speaking from the record in this case, or outside of it?

Mr. ELLIS. My friend well knows that Congress will take cognizance of the courts, seals, judges, decrees, judgments, orders and sessions of the State courts. W. W. Wharton testifies in his evidence that there was no truth in the certificate of the clerk and that no court was held and he is corroborated by the public history of the country. But granting for a moment that the State statute does limit the day for the preservation of these ballots; grant that the law of Louisiana has declared that the ballots shall be kept to a certain day and thereafter shall be of no account whatever and that the legal custody ends thereafter, Mr. Speaker, is there a lawyer on the floor, a man who has ever read the Constitution, a man who comprehends the full right of Congress in the investigation of the title of a member to sit here, who believes that a State by statute can curtail the power of Congress to pursue and grasp material truth wherever they find it, and utilize it as evidence in deciding a case of contest here? No lawyer will set up such doctrine. The ballots were good and valid testimony on the day after they were cast; a month after they were cast; ten years after they were cast if it could be shown that they had never been tampered with and were the iden-

tical ballots cast at the election—ay, they are valid testimony as long as the names upon them remain to be read and to evidence the will of those who cast them.

Now, Mr. Speaker, let me go briefly into the history of the election of this parish. Why is it that the republican candidate for governor received a majority of nearly thirteen hundred while the sitting member who was the republican nominee for Congress failed to receive the same majority? But, some gentleman says, the poor, ignorant negro republicans were duped and deceived! Does that gentleman complain of this ignorance? Who is responsible for making them voters? Is not the party of which the sitting member is a member responsible for it? And you think now that it was their ignorance which defeated your party friend? Sir, they are not so ignorant as all this, and I am here to vindicate them from that charge. The colored voter knows generally the way he votes. But, you claim that it is a matter of course that all the negroes vote for your party and party candidates. Your theory is that where there are a thousand negroes and a thousand white men in the South there must of necessity be a thousand democrats and a thousand republicans. That very assertion is made by your public men and in your republican newspapers. You deny to the negroes the right and capacity to vote as they please; to exercise that moral and mental liberty which is the dearest right of the American citizen. You claim the vote of the colored citizen as your particular and indefeasible property, and deny without hesitation that he can vote other than your party ticket. And thus far you have refused to believe that a colored man could or would vote otherwise than as his radical task-masters dictated. Is it not so? Do you men on the other side deny what I say? I challenge denial.

Mr. Speaker, I remember that a few days ago this Hall was hushed in solemn silence while in presence of both Houses of Congress a painting was presented to the people representing that historic scene and moment when Abraham Lincoln signed the charter of the black man's freedom.

Sir, if the spirit of Lincoln could return to earth and suggest to the republicans a great truth, would it not say, "Let these colored citizens be free in mind and soul as well as in body. I strove to make them free, but as yet their bodies only are free. So far nobody has struck off the chains from their souls. You refuse to unshackle the mind; you fiercely assert the right to dominate it. I intended they should be wholly free, and they are not so long as you claim the right to herd them at the polls to do your partisan behests." Yes, Lincoln would agree with me that under the republican-party theory the negro is yet a slave. For do you not say that the poor miserable body which must crumble to dust is free, while the immortal part, that which must move and live and act forever in all the annals of God is a slave to you and a slave to your party. Now I deny that. I say that light is breaking on that people. I declare to you that the great frowning god of radicalism to which they have in the past bowed with more than Eastern devotion no longer sways their minds in superstitious obedience, and the steps that lead to his shrines are no longer worn by their too patient and faithful feet. They are rising in their manhood to a true realization of real liberty and to a full conception of their interests and the day of their perfect liberty draws nigh. They are asserting their rights to feel and to act as they please, and at the next election and in 1880, untrammeled, uncontrolled they will be found coming up to vote as they please, controlled by no superstitious regard for a ballot of a particular color or designated by talismanic devices, but controlled like other citizens by a due regard for their interests and welfare, and these will lead them in great part to swell the columns of that grand democratic army whose thunderous yet measured tread is at the very gates of every department of this Republic. Of this fact my republican friends need have no shadow of doubt.

Mr. REED. We do not doubt it; we saw it achieved at the muzzle of the musket and shot-gun a short time ago.

Mr. ELLIS. I can understand how the gentleman would tempt me to leave the argument of this case to engage in the old strife of sectionalism; but he cannot tempt me now. When I shall have finished my argument, if there be any time left me, I will pay my respects to the taunt of the gentleman, and will give it such response as will hurl it back and vindicate my slandered and patient people and section.

Now, Mr. Speaker, as to the testimony in regard to the safe custody of these ballots. In the first place, this parish judge, whose name and position, and whose peculiar title and style of addressing himself, has attracted the attention of my poetic and eloquent colleague, [Mr. LEONARD.] He was formerly clerk of the district court and is now parish judge. He testifies—and he is and ever has been a republican—in the most positive and emphatic manner that he received the ballot-boxes of Iberville Parish from the commissioners, with the exception of one box, and that box was not one of those the recount of which is estimated in declaring the election of contestant.

This republican official testified that he received these boxes and that he had kept them safely as long as he was in office as clerk, and when he surrendered the office to his successor they were exactly in the same condition as when he received them from the commissioner. He testified that from the time he entered the office up to the time he took the boxes they were safely kept, and that no one tampered with them. And he is positively corroborated by his deputy, who also swears as to the safe custody of the boxes and to such circumstances as demonstrate that it was almost impossible for any one to have had access to them. C. H. Gordon, the present clerk, who succeeded Judge Crowell, also testifies most positively that he received the boxes from his predecessor and safely kept them up to the time when he obeyed the "*subpœna duces tecum*" and surrendered the votes for the purposes of the recount. The commissioners who sealed the boxes also testified that they were in the same condition as when sealed, and recognized and swore to their undisturbed and unbroken signatures which they had written over the seals, over the key-holes as well as over the apertures used for the deposit of ballots, and which would necessarily have been broken had the boxes been opened or tampered with.

There can be no reasonable doubt that the boxes were safely kept from the time of the election and their deposit with the clerk until they were opened for the recount. The committee, out of caution, thought it right and proper to reject the recount of one of the votes, because the paper used in sealing it appeared to have been torn and the commissioners were unable to identify their signatures. I say this in vindication of the great care and caution exercised by the committee in the examination of this case.

And now I desire to go back a little to discuss a point which in my hurry I neglected to notice, and which has a most important and material bearing in this case. The evidence lets a full flood of light upon the history of the election in Iberville, and gives a clear and cogent explanation of the causes which led to the defeat of the republican nominee for Congress while the republican candidates for governor and President received over one thousand undisputed majority. There was in Iberville Parish two republican candidates for State senator, Mr. Wharton, of Iberville, and Mr. Wakefield, of Saint Martin. They both belonged to the party of Mr. Darrall, the sitting member, and instead of running his own race and letting local matters alone he interfered with very bad taste and very poor judgment in favor of Mr. Wakefield. The keen, shrewd politicians who listen to me are well aware that in cases of this kind the true and only sensible plan is to run one's own race, get all the votes one can, conciliate both sides if possible, and interfere, if at all, only as mediator to endeavor to heal dissensions. The evidence of Hon. W. W. Wharton, page 33 of the record, shows what was Dr. Darrall's course. He says:

Question. What is your age and residence?
Answer. I am thirty years of age. I reside in Plaquemines, Louisiana.
Q. What is your vocation?
A. I am connected with A. S. Barnes & Company now.
Q. Did you vote in the parish of Iberville in the late election?
A. Yes, sir.
Q. Did you take an active part in the election and travel throughout the parish and deliver republican speeches?
A. Yes, sir. I was a candidate myself.
Q. Did you advocate Dr. Darrall's election?
A. No, sir. I was opposed to Dr. Darrall's election.
Q. Are you a member of the republican parish committee?
A. Yes, sir.
Q. Were there two candidates for senator in the district?
A. Yes, sir; two republican candidates and one democratic candidate.
Q. What candidate for the senatorial honors did Dr. Darrall support?
A. Well, he really supported Wakefield, but professed at the same time to be doing nothing or to be supporting me.
Q. Will you state, Mr. Wharton, all you know in reference to the votes cast for Dr. Darrall and J. H. Acklen for Congress in the parish of Iberville?
A. It was understood among the republicans there that on account of the position Darrall had taken in regard to the senatorial contest, and other objections they had against him—he never was popular there and never well liked—they would beat him if it were possible. At the same time it was thought advisable, so as not to jeopardize my interests as a candidate, to do it as quietly as possible without giving the opposition candidate any ground for action from a republican standpoint. The matter was discussed and talked over often. I myself warned Dr. Darrall through his friends, and told him myself, and told the leaders of the republican party, Kellogg, Morey, and others, that I proposed to beat Darrall, and of course I went to work to do it.

Then I call the attention of the gentleman to the testimony of an important witness. I refer now to Richard Weightman, a brilliant young journalist, and at present one of the editors of the New Orleans Times. He had just before been editing the New Orleans Bulletin. He was living away from the contested district, but he testifies as follows:

Question. Were you the editor of the New Orleans Bulletin previous to and during the late election?
Answer. Yes, sir; a short time previous to and during the whole campaign.
Q. Do you know of an opposition that existed toward Dr. Darrall among the prominent republicans in the city of New Orleans and elsewhere?
A. Yes, sir; it was mentioned to me by some parties. I only knew of it from what they said. Judge Dibble was one of them.

Judge Dibble was my opponent in the second district, and was president of the campaign committee of the republican party in the State, and one of its ablest leaders and finest organizers. Mr. Weightman testifies that Judge Dibble was one of those opposed to Mr. Darrall:

Question. Give me a few other names also.
Answer. Well, he mentioned the others. I know of General Sypher's opposition to him.

Sypher used to be here. He never was elected, but he was here for six or eight years without being elected once. But he is a very able leader and a bold, daring organizer, and lives in the contested district. But Mr. Weightman continues:

Question. Give me a few other names also.
Answer. Well, he mentioned the others. I know of course of General Sypher's opposition to him. Judge Dibble mentioned Mr. Deslonde, late secretary of state, and told me early in the campaign that he intended, if he could, to defeat Mr. Darrall. I believe I mentioned that to you last summer.

Q. You also knew of Mr. Wharton's opposition to Mr. Darrall?
A. Yes; but not personally. That was notorious. It was so notorious that I knew it without anybody's having told me distinctly.

Here is another witness, William H. Roberts, at present the correspondent of the New Orleans Times, and now in this city. He is another unprejudiced witness. He says:

I am one of the editors of the New Orleans Times.
Question. Are you acquainted with Chester B. Darrall?
Answer. Yes, sir.
Q. Do you know of an opposition that existed towards Mr. Darrall in the last election among prominent members of the republican party?
A. It came to me as a matter of news that there was a bad split in the parish of Iberville; that the more influential republicans were opposed to Mr. Darrall. I had occasion to make some inquiry about the matter and found it to be true.
Q. Was he opposed in the city of New Orleans by prominent members of the republican party also?
A. Yes, sir.
Q. Could you give some of the names?
A. Well, yes, sir. Judge Dibble and General Sypher were opposed to him. I believe General Sheldon was opposed to him. I know that in speaking to Sheldon about it he talked as though he did not favor him.

I have gone over this testimony in order to account for the great discrepancy which existed in that parish between the vote for the sitting member and the vote for Mr. Packard for governor and Mr. Hayes for President.

Mr. PRICE. Will the gentleman now permit me?

Mr. ELLIS. I will.

Mr. PRICE. My friend and I differ about a question of fact. The testimony will settle it.

Mr. ELLIS. Well, ask your question.

Mr. PRICE. I will. We are talking about poll No. 5 now, which I say was not sealed. Talbot, the democratic commissioner of elections, was examined and this is his testimony:

Question. After you finished the count what did you do with the tickets?
Answer. We placed them in the box and sealed it. I do not think that the opening of the lock was sealed.

Coleman, another commissioner, testifies as follows:

Question. Did you seal the box before bringing it to the court-house?
Answer. Yes, sir.
Q. In what manner?
A. I sealed it over the hole where the ballots was shoved in. The key-hole, I did not seal it. I sealed the ballot-hole and delivered the box to the constable. I kept the key until the box was delivered to the clerk of the court; then I delivered him the key.
Q. Were you assisted in sealing the box by the other commissioners?
A. Yes, sir; I was.
Q. Did you place any seal or any paper over the key-hole?
A. No, sir; none at all.

Now if you want anything stronger than that you will have to write it yourself.

Mr. ELLIS. Now will the gentleman hold on a minute?

Mr. PRICE. Certainly; all day if necessary.

Mr. ELLIS. Even granting that the key-hole ballot-box was unsealed, how was it possible to get into the box without tearing the paper which was sealed on top of the box and drawn down and sealed on the same side of the box that contained the key-hole?

Mr. PRICE. The testimony is that there was no paper pasted over the key-hole.

Mr. ELLIS. My friend and colleague on the committee has failed to notice anything but the most partisan testimony on his own side. If, however, it will ease him at all, I will admit that the key-hole was not sealed over.

Here is the testimony of Mr. Talbot found on page 46 of the testimony in this case.

Mr. PRICE. Will the gentleman allow me a moment?

Mr. ELLIS. I decline to be interrupted until I get through with this point. If the gentleman will turn to page 47 of the testimony he will find that Mr. Talbot testifies as follows:

Question. What did you do with the box?
Answer. We gave it in charge of one of the commissioners, who brought it to the court-house. I subsequently examined the box and found it in the condition that I had sent it over in.

The box was then produced and the witness continued his testimony as follows:

Question. Please examine that box and see if it is in the same condition in which you delivered it to the clerk.
Answer. Yes, sir; I believe it is.

Mr. PRICE. Now, will you allow me to read a little? The point I make is that there was no paper even pasted over the key-hole; not only was the ballot-box not sealed, but there was no paper placed over it.

Mr. ELLIS. I admit again that there was no paper over the key-hole.

Mr. PRICE. Here is the testimony of Mr. Coleman, one of the commissioners:

Question. Did you place any seal or paper over the key-hole?
Answer. No, sir; none at all.

The next question and answer of that same witness is this:

Question. From the manner in which those boxes were sealed and delivered to the clerk's office, could the box have been unlocked and the tickets changed at any time?
Answer. Of course.

There was a seal over the ballot hole, but not over the key-hole; not even a piece of paper.

Mr. ELLIS. If it will keep the gentleman quiet I will admit again that the key-hole was unsealed. The point I had just finished when interrupted was to account for the great discrepancy between the vote of the sitting member and the vote of the republican candidates for governor and President. The reasons are plain, simple, natural. He had the bad judgment to interfere in a local election. He encountered thereby the opposition of the most powerful and popular republican in Iberville and three of the most powerful and popular republican leaders in the State; and these were Judge Dibble, General Sheldon, and Mr. Sypher. It is neither strange nor surprising therefore, that Dr. Darrall was badly beaten in Iberville Parish, as he most undoubtedly was.

But again, the evidence shows that Mr. Wharton supervised the printing of the tickets for that parish, and that for the use of the republican party in Iberville he caused twelve thousand tickets to be printed. That is not disputed. Six thousand of them—regular republican tickets—bore the name of Joseph H. Acklen for Congress, two thousand of them bore the name of the sitting member, and four thousand of them had no name for member of Congress and no blank place for the candidate; it was omitted entirely, as if no such officer was to be voted for at the election. The evidence is plain, pointed, and positive that these tickets were distributed at polls 1, 2, 3, 4, 5, 6, and 7, in the parish of Iberville. They were placed in the hands of republicans and were distributed among the voters very freely and were in the hands of people about the polls on election day. The evidence is positive; it is almost undisputed in regard to this point. Now it is said that no voter has been found to testify that he voted one of them. But, sir, men have testified that they voted these tickets. Wharton, for one, voted such a ticket; George B. Loud voted such a ticket; C. H. Gordon voted such a ticket, and there are other republicans who have testified, from whose language there can be no manner of doubt that they voted these tickets.

But it is not important whether people come up and testify that they voted this ticket or that ticket. The very object of the law in ordaining a sealed ballot is to enable the voter to vote as he pleases without anybody anywhere knowing how he votes. Suffice it to say that the boxes being found in the same condition that they were when first sealed and delivered to the clerk, the presumption is irresistible that the ballots were the same; and the recount shows that a tremendous mistake had been made by the commissioners, and that near one thousand of these Acklen or blank tickets were voted and failed to be counted through the carelessness or neglect of the election officers.

Now, it is said that it is very improbable, almost impossible, that such an error could have occurred. Mr. Speaker, the polls closed at six o'clock in the evening, and at six o'clock on a November evening in Louisiana the sun has gone down and darkness gathered about. There is no gas in that country, except in the mouths of certain politicians. [Laughter.] At the court-house or in the store or out-of-the-way place where these ballots were counted it was necessary to use candles; it is shown in the testimony that candles were used. Now, here is a ticket about ten inches long having upon it forty-nine names. It is the straight republican ticket, except that it bears Acklen's name for Congress, and was recognized as such. The mistake could only be discovered by the greatest care and closest scrutiny, and the evidence fully reveals how the mistake occurred.

Mr. McKINLEY. Will the gentleman state how many republican witnesses swear that they voted the republican ticket with the contestant's name on it?

Mr. ELLIS. I cannot remember the precise number. The record shows. It is immaterial, for no rule of law is better settled than that courts will not hear a voter to tell how he voted unless there be some ambiguity on the face of the ticket; where no such ambiguity appears the ballot is taken as the evidence of the voter's intention and action at the moment he cast the ballot. The gentleman will hardly controvert the principle.

Mr. McKINLEY. Can you approximate to the number of republicans who testified that they voted the republican Acklen ticket?

Mr. ELLIS. From three to five testified in that way.

Mr. McKINLEY. Testified that they voted the republican ticket with the contestant's name on it?

Mr. ELLIS. Yes, sir.

Mr. McKINLEY. Will the gentleman inform us also how many of such tickets were found with the contestant's name on them after the recount?

Mr. ELLIS. I cannot now answer the gentleman's question without sitting down and making a computation on paper, but I will send to the gentleman a tabulated statement——

Mr. McKINLEY. Well, there is a very considerable discrepancy, as I understand, between the number who testified that they thus voted and the number of tickets that were afterward found.

Mr. ELLIS. Oh, yes; there is a very wide difference between the number who testified in that way and the number who actually did so vote. But I again invoke the gentleman's attention to that provision of law which does not permit a voter to explain his ballot unless there be some ambiguity. The ballot itself is the evidence of the voter's intention, and the well-settled rule of law does not permit a voter to be heard in explanation of his ballot. Such testimony is immaterial here. The ballots show for themselves. Their identification is perfect, and they are better evidence than the testimony of those who cast them. I repeat again that it is enough that the con-

testant has shown that these ballot-boxes were the identical ballot-boxes and the ballots were the identical ballots, and that the recount disclosed his election, without summoning Tom, Dick, and Harry and everybody else to testify how they voted and for whom. The law imposes no such obligation upon contestant.

Coming back to the point which I was endeavoring to elaborate, it will be seen how very easily, in the mode in which these ballots were counted, the mistake might have been made. The testimony is almost uniform that the ballots were counted in this way: the officers took all the ballots out of the box and separated them; then taking what appeared to be straight republican tickets—that is, unscratched tickets—they placed them in one lot; taking the straight democratic tickets they placed them in another lot; and then taking the scratched tickets (by which I mean tickets on which there were pencil or pen marks, the scratching out one name and substituting another) they separated them in another lot. That was the mode pursued at the various polls except, I believe, poll 9, where the tickets were carefully read before being counted. And here and now I call the especial attention of this House to the fact that at poll 9 the evidence shows that every ballot was read and at that poll the contestee (Mr. Acklen) received 121 republican votes, and that the recount disclosed exactly the result as ascertained by the first count. This fact is very important and must be borne in mind.

Thus having separated these tickets the commissioners merely tallied, finding out how many "straights" there were, say, one hundred and fifty straight republican tickets; they then tallied the Hayes electors with that number of votes, contestee that number of votes, and so on through the entire republican ticket. Then counting straight democratic tickets they tallied each candidate on that ticket so many votes, concluding merely from cursory examination that the name of every democratic candidate must of necessity be on the ticket that appeared straight or bore no evidence of having been scratched. Here, then, is a reasonable, easy, and natural explanation of the mistake originally made in counting and which has deprived contestant of his seat for nearly one year.

Need I refer to the testimony? Will any gentleman dispute that such was the mode of counting pursued? Will my friend from Iowa even dispute the fact that it was the method pursued at nearly every one of these polls except one?

Mr. PRICE. Does the gentleman ask me a question? If he did I did not get it.

Mr. ELLIS. I did not.

Mr. PRICE. I hoped you had. [Laughter.]

Mr. ELLIS. Now, Mr. Speaker, my friend and colleague [Mr. LEONARD] has very gravely settled upon poll 5 and cited the evidence of Mr. Talbot, to whom he has given the high reputation which that gentleman so richly deserves. I cheerfully join my colleague in certifying to the high character for perfect truthfulness and reliability of E. B. Talbot, who is my personal friend. He relies on his testimony to show that these ballots were counted. He relies on the fact that he was a lawyer, a "sharp fellow," and that, if these actual ballots had been given, Edward B. Talbot would have found them. I fail to find any evidence given by Mr. Talbot which shows that he scrutinized the tickets closely or read each name off. He testifies that he did not know that Acklen's name was to be on any republican ticket. Had he known that, he would have looked for it and found it. He supposed that Acklen and Darrall were running on party lines and tickets merely.

But another fact: at this same poll 5, to which my colleague [Mr. LEONARD] alluded, there were upward of three hundred tickets cast, with over forty names on each ticket, making twelve thousand names to be called off, as well as the title of the offices for which they were running, equal to twenty-four thousand names to be called off in counting the votes at that poll, and yet according to the testimony, undisputed and undisputable, within less than an hour from the time the polls were closed the ballots had been counted and the boxes brought to the court-house for delivery to the clerk for safe-keeping, a feat which is physically impossible. Here is the testimony:

Just about that time the box from the third ward came in, sealed and delivered, and I asked Mr. Talbot, "How did you get through so quick as this?" He said, "We just counted the votes straight in bulk." Then I knew that the votes in that box had all been counted straight. I said, "You counted all the black tickets straight republican?" He said, "Yes, and all the others the same way." Then I knew that all the republican tickets that had your name on them and all the blanks had been credited to Darrall. Whilst I was considering in my mind whether I should insist upon a recount, the box from the Wharton school-house came in, and I asked Mr. Bruce, "How did you count the votes there?" He said, "We took all the black tickets and tallied them straight, and then read the scratched tickets." He said, "Why?" "Why," I said, "I thought you would read them out one by one." A little while afterwards he came back to me and said, "Noland tells me that you had some tickets printed with Acklen's name on them." I said, "Yes." Said he, "Do you think there was any in our box?" I said, "I know there was one in there, for I voted one myself." He said, "We counted it for the doctor, then." He said, "What are we going to do about it now?" I said, "I do not know; you had better let it alone." I had come to the conclusion that it was better to let it alone until I saw what was the next best thing to do.

This testimony is corroborated by the commissioners themselves in the main as to the mode of the counting of the votes.

How much time have I left, Mr. Speaker?

The SPEAKER. Eleven minutes.

Mr. ELLIS. To sum up, then, for I have no time to do aught else, it is shown by this testimony, it is shown incontrovertibly that there was strong republican opposition to Dr. Darrall in the disputed district, and it was strongest among the republican leaders in the parish of Iberville. It was in the heart of the greatest republican leaders of the State. It was in the mind and heart of Judge H. C. Dibble, perhaps the most active, sharpest, shrewdest republican manager in the entire State. It was so with Sypher, it was so with Sheldon, two Ex-Representatives in the Federal Congress. This strong opposition to Dr. Darrall accounts for the disparity in the votes. It is incontrovertibly proved that five-sixths of the republican tickets for Iberville did not bear Darrall's name, and that half of them did bear Acklen's name, and that they were generally distributed. Then the evidence is clear and incontrovertible that the ballot-boxes had not been tampered with from the time of the election to the time of the recount. It is proven beyond all doubt that they had been safely kept, and the presumption of law that the custodians did their duty and that other legal presumption against the commission of a crime strengthen the testimony of the witnesses as to the safe custody of the boxes and ballots. The presumption is irresistible, therefore, that the ballots found in them at the time of the recount were the identical ballots which were cast at the election. Then the evidence shows how perfectly easy and how perfectly natural it was that a great mistake should have been made in the counting of these ballots. The result follows that, counting polls 1, 7, 8, 9, 10, and 11 of the parish of Iberville as originally counted by the commissioners and taking the recount at polls 2, 3, 4, 5, and 6 as showing the vote of Iberville Parish, the contestant has 45 majority in that parish, and makes his majority in the entire district 108 votes, and elects him beyond the shadow of a doubt to that seat in this House which your voice, Representatives, will soon award him.

Let me say, sir, that had the committee—and I utter this after having examined this case with great and patient care—had the committee thought it worth while to go into the enormities of that election, had they thought it worth while to examine the action of the Wells-Anderson returning board, with regard to Saint Mary, with regard to La Fourche Parish, and with regard to other parishes, they could have returned the contestant elected by a report, the legality of which could not have been doubted, by a majority of nearly 1,500 votes.

I have no time to pay my respects to-day to that returning board. I had intended to do so in reply to the gentlemen from Maine and Ohio, [Mr. HALE and Mr. GARFIELD,] but I have no time now. The members of that board are being punished now. The grasp of justice has overtaken one of them and her shining sword is above his guilty head and just trembling to its swift descent. The other member, the chief, the inspirer of all its crimes, also feels the grasp of law and justice about him, and soon will he realize how terrible a thing it is to steal and rob and falsely swear away the rights of freemen. Ay, "Truth crushed to earth" so long rises now in appalling majesty and asserts her sway; and in her new lease of life in Louisiana, I trust, will live through all God's eternal years. And who and what are these guilty men that their trial and punishment for crime should excite such sympathy and evoke letters of condolence from distinguished Senators and Representatives and even from Cabinet officers? But yesterday the distinguished gentleman from Ohio cited the brutal and infamous letter of Madison Wells in support of certain allegations which he made in the course of his speech.

Mr. Speaker, I should want no better or more truthful photograph of J. Madison Wells than he gives of himself there. It is a well-drawn portrait of himself, drawn in colors exuding and oozing from a heart and nature as black and besotted as ever beat in mortal bosom. Is it necessary for me to tell this House who he is? Shall I summon the living? Shall I quote the reports of committee after committee of this Congress who have condemned him and his crimes? Shall I summons General Phil. Sheridan, who testified in regard to Madison Wells that there was not one honest man whom Wells could call his friend? Or shall I summon the dead from the shadowy land and call up the manes of a man in whose innocent blood Madison Wells imbrued his hand twenty-five years ago without shadow of excuse or justification? Yes, from his long-neglected and forgotten grave he arises to-day and appears in the train of justice that confronts his murderer; and the ghastly hand, to the branded infamies of forgery and perjury and treason to his State and people, is raised to affix the red mark of Cain upon the old man's brow. Shall I cite the public records of my plundered State to show the defalcation of Wells or hold up his hand here—a hand not like that of some old men, that has grown soft and holy and beautiful with the doing of kindly deeds—to show it all foul with clinging spoils, filched from the State that trusted him? Shall I tell how Anderson more than twenty-five years ago gave a foreshadowing of the spirit that was inborn in him, and being detected in cheating at cards acquired the *sobriquet* of "Keno Anderson?" Or shall I rehearse how in spurious claims and jobs he aided the cormorants and thieves that were plundering his stricken State, and stole her substance with remorseless greed even while she fainted and staggered beneath her poverty and her accumulated wrongs?

But I will draw these portraits no further. The hideous outline is enough. And still I am not of those who clamor for their punishment. Were the power mine I would not give them the benefit of that *rôle* which detected scoundrels so easily and naturally assume: the *rôle* of martyrdom. In this day of general peace and reconciliation I would say to these trembling culprits, "Go, drag out the balance of your phys-

ical existence in that contempt, disgrace, and scorn with which you have covered yourselves." The great and generous State they have so foully wronged could let them go in mercy, but the railings and cavilings of statesmen and Cabinet officers will not hasten that event or tend to promote it. It is better for them and better for you that you bow in respectful silence to the decrees and judgments of that State now sovereign and independent forever. And now in conclusion let me say to the revilers and calumniators of Louisiana, "Oh, let her alone." I have so often sat here in this Congress and in the last with heart all aflame and yet with sealed lips while Louisiana's name—a name as dear to me as my mother's, for is she not my mother?—was bandied about upon partisan lips even as the name of a shameless bawd upon the lips of profligates. I was silent because I thought I could pardon much to partisan rancor, to zealous rage, and fanatical ignorance. I was patient and hoped that it would cease after awhile and I was averse to uttering bitter words or such speech as would keep alive the dying embers of hate. I feel the same aversion to-day and would by far prefer to utter the breathings of gentle charity and kindness to all. But you must let Louisiana alone; your puny spite and impotent rage will avail you nothing. Thank God, she is free again. Thank God, she has resumed the shining robes of constitutional liberty.

[Here the hammer fell.]

The SPEAKER. The gentleman's time has expired.

Many MEMBERS. Go on! Go on!

Mr. ELLIS. The scepter of home rule is held firmly in her fearless hand and it will never depart from her more. Oh! let Louisiana alone. You cannot make her your slave again. You seized her statehouse; you garrisoned it with troops; you installed above her an infamous usurpation; but she never ceased to resist, and after eight weary years of struggle for self-government—a struggle which, when partisan prejudice shall die and the vapors and fogs of misrepresentation disappear and its annals are illumined by the impartial and splendid light of history, will appear immortal through all the ages. She is free. True, she trod the wine-press of affliction almost alone; true, she suffered political death that the other States might live. For I do believe that it was the developments of her grand struggle that at last aroused the American people to the swift downward course they were pursuing and called that halt, that change of men and measures, which to-day gives new heart and new hope to the friends of constitutional government. You may revile, you may calumniate, but the peerless State will not be your slave. Then let her alone! All the signs and symbols which magnificent nature breathes and sighs over and around Louisiana talk to her children and tell them of liberty, and they listen and learn. Her traditions are all of liberty. Long ere the patriot sons of Carolina had gathered at old Mecklenburgh to proclaim the first voice of colonial liberty; longer still before the soft light of that April day had been hazed by the smoke of hostile muskets and the first drop of patriot blood had saddened the green at Lexington, Villere and his companions had surrendered their lives at New Orleans, martyrs to the cause of self-government.

Then let Louisiana alone! She will deal justice to the line and judgment to the plummet and yet her great warm heart will not throb irresponsive to mercy's voice or magnanimity's demand. She will solve the dangerous and difficult problems, which have been thrust upon her by no choice of her own, with full and solemn responsibility to God and to her sister States, as becomes a great enlightened and Christian State. Let her alone! The radiant smile of peace mantles all the State's noble expanse and sweetly rests like a saint's benison upon the bosom of her softly sobbing southern sea, and Louisiana's great life-giving heart, no longer wounded and torn by the cruel beak of the vulture governments who found perpetual feast from its ever growing richness throbs on so calmly now, and ere long its mighty strength shall send a life-reviving thrill of gladness and prosperity through all your social and industrial structure. Yes, let her alone. Her breast longs for perfect repose; her hand is stretched out for your grasp in forgiveness. Clasp that hand, cease your revilings, meet her in the same spirit which animates her breast, and in that hour shall reunited hearts realize that perfect union which was the inspiring dream of our patient fathers, when they contended for this Government in war and when they laid its foundations in peace. [Applause.]

Mr. THORNBURGH. So far as I am individually concerned I am willing to let Louisiana alone, but Louisiana is here to-day demanding to be represented by a democrat in place of a republican, a republican who has been declared elected by the State authorities, both the republican authorities and the democratic authorities; a man who comes here with a majority of over 2,000 votes, according to the republican returning board, and over 1,000 votes according to the democratic returning board. But the Committee of Elections of this House, and this House also, is now making of itself a returning board to fairly ascertain and count the votes that were polled in that district.

I care not so far as the decision of this question goes whether the canvass of the Wells returning board was fraudulent or whether the canvass of the Nicholls returning board was fraudulent. This is the only returning board, the Congress of the United States, that can fully and fairly investigate all the questions, and has original jurisdiction over them and decides them if differences of opinion arise. Differences did arise and now exist only in regard to seven polls in the parish of Iberville, polls numbered one to seven inclusive. It is asserted and an attempt has been made to prove that fraudulent republican tickets were printed and circulated with the intention of defrauding the voters, and that this fraud was successful; and further that because it was secretly done and unknown to the officers who held the election and counted the ballots, they did not discover that fraudulent tickets were put in the boxes, and that thereby Mr. Darrall received the votes that should have been given to Mr. Acklen.

Mr. Speaker, the first thing necessary to be done is to ascertain the distribution of those fraudulent tickets at the polls. I find that the evidence of this case does not show that at poll No. 1 a single republican ticket, or purporting to be a republican ticket, had the name of Mr. Acklen on it at all; on the contrary the tickets were brought to the parish by W. W. Wharton and sent to poll No. 1 (Adamson's plantation) through Mr. Davidson, and Mr. Davidson swears that he did receive a thousand tickets, purporting to be republican tickets, from Mr. Wharton for distribution; that these tickets had Acklen's name on them; also a number of tickets that purported to be republican tickets that had no name on them for Congress. Mr. Davidson says that he did send tickets to poll No. 1; but before he did so he took out every ticket that had Mr. Acklen's name on them, and he gave them to Mr. Verrett who took the tickets to that poll. He had tickets that were blank for Congress, but none with Acklen's name on them. There is no evidence to trace these fraudulent tickets with Acklen's name on them to poll No. 1, and yet upon the recount the ballot-box was found, by examining the outside, to show that it had been tampered with; yet, when it is opened, the proof becomes more conclusive still that there was found at a poll where these tickets had not been distributed at all one hundred and six of the tickets in the ballot-box had Mr. Acklen's name on them.

Mr. Speaker, the officers of election at that poll, poll No. 1, did know of the existence of these tickets, which were blank as to member of Congress. They were therefore put upon their guard and closely scrutinized the tickets, especially as to member of Congress. The count was accurate; the officers at that poll were examined and they proved that every name on the tickets, ballot by ballot was carefully scrutinized and examined, and their return shows Mr. Darrall ran far behind his own party ticket, receiving some 70 votes less than Mr. Packard, candidate for governor. Now, no ticket with Mr. Acklen's name on it was traced to that poll; but those intended to be sent there were burned. Upon examination of the ballot-box when the recount was made it was found in such condition and bearing such evidences of having been tampered with that the majority of the Committee of Elections did not take the recount, but took the original and official count. Take the fact that the inspectors of that election, five in number, had been warned of the existence of these fraudulent tickets, and for that reason counted the ballots so carefully, that they found 70 votes more for the republican candidate for governor than the republican candidate for member of Congress, showing clearly the ballots were carefully canvassed. But when the box was reopened one hundred and six tickets purporting to be republican tickets were found with Mr. Acklen's name on them.

Does any man want more evidence to show that these ballot-boxes were stuffed and prepared before the recount? If not, why did not the majority of the committee count them? Why is it that they passed over poll No. 1 and thereby change Mr. Acklen's vote from 155 down to 44? The only reason given, and that can be given, was that there was fraud in the changing of ballots in the boxes, therefore no recount of the ballots in the box can be relied upon as giving the true vote at this poll.

Mr. Speaker, it is insisted that at polls Nos. 2, 3, 4, 5, and 6, the ballots, when taken out of the box at first by the officers of election, were not carefully counted. I concur with the views of the majority of the committee in the opinion that these fraudulent ballots were circulated at those polls and also at poll No. 7. I have no doubt they were circulated. One of the witnesses, who had these tickets and distributed them there during the day, never discovered until late in the day that some of the tickets had Mr. Acklen's name on them, but took them to be the straight ticket. It is now claimed that at polls Nos. 2, 3, 4, 5, 6, and 7 these tickets were not correctly counted.

The minority of this committee have said that they were unwilling to rely upon the original and official count at these polls; but when we came to examine those polls and found the condition the ballot-boxes were in, with their seals loosened, the key-holes uncovered, some of them sealed only with mucilage, which, instead of holding the paper over the openings to the box, was loose and useless, we were unwilling to adopt any recount made from the contents of these boxes, and felt we had no proof from which we could ascertain the true vote of these polls, and therefore we rejected both counts and threw out these polls. We believe the true rule on this subject of recount is laid down by Mr. McCrary, in his work on elections, as follows:

> Where, as is the case in several of the States, the statute provides a mode of preserving the identical ballot cast at an election for the purpose of being used as evidence in case of contest, such statute, and particularly those provisions which provide for the safe-keeping of such ballots, must be followed with great care. The danger that after the count is made (especially if the vote is very close) the ballots may be tampered with is so great that no opportunity for such tampering can be permitted. Such ballots, in order to be received in evidence, must have remained in the custody of the proper officer of the law from the time of the original count until they are produced before the proper court or officer, and if it appear they have been handled by unauthorized persons or that they have been left in an exposed and improper place, they cannot be offered to overcome the official count.

There is one fact in the evidence that so far has not been mentioned by any gentleman discussing this question. The proof shows that some of these ballot-boxes were out of the possession of the officers who are required by law to keep them in their custody. The evidence in the case shows that a part of these boxes were not taken to the clerk of the court as the law provides, but they were taken by mistake to a register of the county, and remained there until the next day, out of the possession of any person who was entitled by law to their care and custody. If the principle of law laid down by McCrary is to be followed, then you cannot count the ballots in these boxes. Then, again, many of the ballot-boxes were not found, at the time of the recount, in the condition in which they had been left at the time they were first sealed and delivered to the clerk.

However, before I cite the testimony upon that point, I desire to discuss for a moment the law of the State of Louisiana concerning the preservation and care of these ballot-boxes. It has been stated that the law requires them to be turned over to the clerk of the court. This was not done in regard to all the boxes. Some two or three of them were left in unauthorized hands.

The law of Louisiana, as has been heretofore quoted, requires that these ballot-boxes shall be retained in the hands of the clerk of the court until the first term of the next district or criminal court. Now, I desire to take issue with the gentleman from New York [Mr. POTTER] upon the meaning and construction to be given to that clause in the statute. The terms of the court in Louisiana are prescribed by law. The term arrives and passes whether a session of the court is held or not. It is a technical term, used for the purpose of stating when the session of the court may be held. The law prescribes when a term of the court shall commence; and whether a session of the court is held there at that time or not, that is the time mentioned in the law, and at that time there is a term of the court, held or unheld. When the first Monday in January, 1877, arrived, the time arrived when the ballots in the boxes were no longer required to be kept by any officer of the State; they might legally have been destroyed, and it was no offense under the law to change the ballots in the boxes.

Now, I asked the gentleman from New York [Mr. POTTER] for his authority for saying that no term of this court was held. He failed to answer the question. The gentleman from Louisiana [Mr. ELLIS] proposed to give an answer to that question, and he cited the testimony of W. W. Wharton. I have carefully examined the testimony of Wharton, and so far as I can find there is no evidence either in his testimony or anywhere else in the record to show that that term of the court was not held. It may be a fact outside of the record that such a term was not held; of that I know nothing. But there is no testimony in the record that I have been able to find to show that a term of the court was not regularly held. The only testimony in the record is a certificate of the clerk that the term was held, commencing on the 2d day of January, 1877.

Now, if we apply the principle of law just announced in regard to the safety of the ballot-box up to the time when they are examined for a recount, you will find that there was no officer of Louisiana who was responsible for the care and custody of these ballot-boxes for more than two months before the recount.

The SPEAKER *pro tempore*. The time of the gentleman has expired.

Mr. THORNBURGH. By what rule is my time limited?

The SPEAKER *pro tempore*. The Chair was informed that the gentleman from Tennessee [Mr. THORNBURGH] had forty-two minutes, and that he proposed to yield twenty minutes of that time to the gentleman from Wisconsin, [Mr. WILLIAMS.] The gentleman from Tennessee has spoken twenty-two minutes.

Mr. THORNBURGH. I have agreed to yield a part of my time to the gentleman from Wisconsin. Before taking my seat, however, I desire to move as a substitute for the resolutions reported by the majority of the Committee of Elections the resolutions which I send to the Clerk's desk.

The Clerk read as follows:

Resolved, That Chester B. Darrall was duly elected and is entitled to a seat in this House as a Representative in the Forty-fifth Congress from the third congressional district of the State of Louisiana.

Resolved, That Joseph H. Acklen is not entitled to a seat in this House as a Representative in the Forty-fifth Congress from the third congressional district of the State of Louisiana.

Mr. THORNBURGH. I now yield twenty minutes to the gentleman from Wisconsin, [Mr. WILLIAMS.]

Mr. POTTER. Will the gentleman from Tennessee allow me to ask him a question?

Mr. THORNBURGH. If it does not come out of the time which I have agreed to yield to the gentleman from Wisconsin.

Mr. POTTER. The gentleman asked me by what authority I said that the term of this court in Louisiana was not held. I failed to answer him at the time, and I will answer him now. I understand that the gentleman from Tennessee [Mr. THORNBURGH] is correct in saying that there is no evidence on this subject in the record in this case. It is in evidence only from the general knowledge of the condition of affairs in Louisiana.

Mr. THORNBURGH. The only evidence is that of the clerk of the court who certifies that a term of the court was held two months before this recount.

Mr. WILLIAMS, of Wisconsin. This case in its peculiarities, in its assumptions, and in its claims, is perhaps one of the most remarkable that ever came before the American Congress. If I understand it aright the very gist and gravamen of the contestant's claim is that a fraud was not only attempted but actually perpetrated upon the voters of Iberville Parish in behalf of the contestant, and the logic of the claim is this: that if there was a fraud consummated, so that when the electors intended to vote for Darrall they voted for Acklen, the contestant, then the contestant is entitled to a seat on this floor; but if they intended to vote for Darrall and did vote for him, then he is entitled to his seat, so if the fraud failed in its purpose, then the contestee is entitled to retain his seat; but if it succeeded and the electors elected a man whom they did not want to elect and did not mean to elect, then the contestant must be admitted. In other words, one claimant rests his case upon the free choice of the electors, the other upon pure and unadulterated fraud. That is the issue, as I will endeavor to show, which this House is called upon to try.

Mr. HARRIS, of Virginia. As there is some misapprehension about the time when the vote is to be taken on this question, the gentleman will allow me to state that after he has occupied the twenty-three minutes to which he is entitled, it is my intention to call the previous question and then to ask for a vote, unless I should think proper to occupy the ten minutes remaining of my hour.

Mr. WILLIAMS, of Wisconsin. Mr. Speaker, this election was held on the 7th of November, 1876. The returning board established by law, whose function it was to canvass and certify the result, complied with its legal and constitutional duty. That board returned for Mr. Darrall 15,626 votes, for Mr. Acklen 13,533 votes; electing Mr. Darrall by 2,093 majority. It was the clear legal right of the voter when he cast his ballot to have that ballot canvassed and reported by the legally-constituted authority ordained for that purpose, which both parties accepted and voluntarily went into the election. In defiance of such rights, when the Nicholls government came into power, a Legislature depending for its own validity upon the certificates of this self-same returning board passed a law organizing a new returning board, and ordering a recanvass of these returns. In compliance with such order the Nicholls returning board recanvassed the returns and reported 15,786 votes for Mr. Darrall and 14,692 for Mr. Acklen, still electing Mr. Darrall by a majority of 1,094 votes. Upon all the principles which constitute the security and safeguard thrown around the ballot-box in this country, there the right was established, and on that right the seat in this body was accorded to the contestee.

By a statute of Louisiana, after the commissioners at each poll have counted the vote, they are required to replace the ballots in the ballot-boxes, carefully sealed, and deliver them to the clerk of the district court, who is to retain them "until the next term of the district or criminal court." The certificate of such clerk contained in the papers in this case certifies that such term was held on the "2d day of January, 1877." On the 6th of March, 1877, four months after the election and ten months after all responsibility on the part of the clerk had ceased, by the order of this same clerk, who in the mean time had been promoted to a parish judge, a commission of experts appointed by said judge proceeded to open the boxes and recount the ballots, by virtue of which recount contestant claims the seat.

Now, taking all the parishes about which there is no dispute, except the parish of Saint Martin's, and taking the stipulation in regard to Saint Martin's, signed by both parties, and the undisputed count stands as follows: Mr. Darrall, in undisputed parishes, 12,621; in Saint Martin's, 1,095; in the undisputed polls of Iberville, 941; and the aggregate vote for Mr. Darrall is 14,657. Mr. Acklen on the same basis has in undisputed, 12,666; in Saint Martin's, 1,028; in the undisputed polls of Iberville, 798, an aggregate of 14,049 votes; still electing Mr. Darrall by 165 majority.

Now we come to the recount, and the challenge can be successfully made that no case can be found on record where a regular official canvass has been overturned by a recount of the ballots. So if in this case the contestant shall be seated it must stand as a new departure and a precedent by itself. The law of the case admitted on all sides is that before any recount can be allowed to have any force or effect whatever, the ballot-boxes must be shown conclusively, even beyond a reasonable doubt, to be the identical boxes and the ballots they contain the identical ballots canvassed and deposited therein by the commissioners of elections or officials by whom the boxes were sealed and delivered. If these conditions were complied with and the recount was valid then Acklen's majority over Darrall is 342.

Here a Mr. Wharton appears on the scene. He was a candidate for the State senate of Louisiana on the republican ticket at this election. He says he had some doubt whether Mr. Darrall would support him or not; and for his own security he concocted the scheme of placing Acklen's name upon straight republican tickets in the parish of Iberville, in the hope that it would not be discovered and that thereby Acklen would be elected over Darrall. In pursuance of that purpose he went to New Orleans and procured several thousand ballots to be printed in the form of the regular republican ticket with Acklen's name in place of Darrall's. And he claims that he got these tickets into the hands of the voters; that they were voted; that the officials of the election did not discover the cheat in canvassing the ballots, and that these ballots found in the boxes in March elect Acklen over Darrall.

Now, in this parish of Iberville there were three commissioners of election and two supervisors, making five election officers at each poll, of whom I believe two were democrats and three republicans. The

parish or county committees had come together and agreed on the men for commissioners and supervisors, men who were recommended for their known character, integrity, and intelligence. This was the character of the boards who were to examine these ballots when they should be cast. And it is somewhat remarkable that all these officials testify to the intelligence and integrity of each other regardless of partisan bias or political results. At the five disputed polls there were ten democrats and fifteen republicans of this class of officials who canvassed the votes, and they all testify that they did it as carefully as they could, opening the ballots, straightening them out, placing them in separate piles, and carefully counting them. The entries show that about one thousand of these spurious ballots were delivered to a Mr. Davidson among some four thousand others. Davidson objected to taking them, and said if he wanted to beat a man, he preferred to do it openly. Wharton forced them on to him.

He finally took them, but he and his companion carefully started them out; left them in their room and burned them the next day. So none of these were found in the boxes on the following March. Wharton testifies to giving some to another person, but that person testifies that Wharton, becoming alarmed for some cause, rode up to the polling-place on the day of election and directed that they be not distributed. So ended that. Now, if Wharton did get these ballots into the hands of friends, he and they knew whether they were voted. Yet when the votes were counted no man in all the parish took interest enough in the matter to see whether these votes had gone into the ballot-box or not. Does anybody acquainted with the proceedings at elections believe this? There were at each poll five election officers, two of them democrats; and the testimony shows that there were at least ten outside democrats watching every one of these polls; they were Acklen's friends and supporters; yet not a single republican vote with Acklen's name on it was discovered by any one of them. Any man who had undertaken to do this mean thing of getting republican voters to take these ballots with the intent to deceive them would have certainly watched for the result and ascertained whether the ballots went into the boxes or not. It is claimed that there was from 600 to 900 of these ballots in the boxes in March; and yet, through all the testimony, there is no evidence that but 2 were voted.

If there had been 600 would not somebody have known it? Certainly these ballots did not get into circulation and deposit themselves in the boxes. Somebody was interested in it. Somebody would have reported progress to Wharton. He and his friends would have known they were in the boxes and would have been on the alert to have had them counted when the polls were closed.

And especially when the recount was had by the democratic board, when they had the whole matter in possession of their friends, why did they not raise the point then? Surely if they distributed these ballots and saw them voted they knew they were in the boxes. Why wait, then, nearly three months until the clerk, now a judge, who was a republican, but voted for Acklen, ordered a recount. Was it known more certainly then than ever before that those ballots were in the boxes. The boxes were found in the clerk's office; some with the seals broken. Some were never sealed except with mucilage; one, the key-hole was not sealed at all. The keys were lying about the clerk's office.

I have not time in the few moments to which I am limited to read the law permitting a recount. Nor am I discussing the question as I intended because I am hurried whip and spur over the ground. I only desire to touch the salient points as well as I can.

Now finding these seals were broken and the law being that you must first determine before having a recount that the ballot-boxes are the identical boxes and the ballots they contain the identical ballots put into the boxes when they left the hands of the commissioners, the condition of the boxes must be accounted for in some way. There must be some explanation. How does this clerk explain it? Mr. Speaker, if I may be allowed the expression, this portion of the testimony is "mighty rich reading." He says that the office is damp. He says, "You can catch pneumonia or anything else there." [Laughter.]

A MEMBER. It seems they caught 900 votes.

Mr. WILLIAMS, of Wisconsin. Yes, good clean votes not even soiled or crumpled by the handling! Reading of this infectious feeling in that office I was reminded of an ironical remark which I heard Mr. Frederick Douglass make some years ago. He said he could never account for it: but somehow, whenever he got in sight of the Dome of the Capitol in Washington, he always felt as though he wanted to steal something. [Laughter.] There might have been the same sort of contagious feeling about the dampness in this office. [Laughter.] There must have been something acting upon somebody who wanted to steal into or steal out of those boxes. The way the dampness acted upon the boxes was most peculiar. It was the most discriminating mildew I ever heard of.

Now, just note, Mr. Speaker—and I am speaking strictly by the evidence—whenever it resolved, in the very intensity of its dampness, to break the seal of one of these boxes, it only broke the seal of those where Darrall had a majority. [Laughter.] It is an undisputed and indisputable fact in this case that when the mildew determined to smash a seal it was upon a box that showed a majority for Darrall, while it did not leave so much as a breath of dew on the seals where Acklen had a majority. [Laughter.] Such was the condition of these damp boxes, left in possession of this damp clerk, in this damp office, that if there be no other explanation, one would naturally conclude that this humid testimony makes a "demnition damp unpleasant body" of the contestant's case. [Laughter.]

It had to be accounted for in some way. The clerk said that he had an old feather duster, the feathers being knocked off of it, and that a sort of bald-headed concern. [Laughter.] With that duster he used to dust these boxes. But that was strange, that duster, too! Although ever so carefully handled, when it struck one of the Darrall seals it knocked it into flinders, but when it touched one of the Acklen seals it glided over it lightly and softly as the down on a lady's fan. [Laughter.] This is the explanation or reason for the condition in which the boxes were found. My time is running, however, and even in the time allowed me I cannot discuss the question as I should like. I will now show the House some rare curiosities if they will bear with me a moment. It is claimed that these ballots were counted in such a way that though from six to nine hundred of these fraudulent ballots were there no one discovered them. Although fifteen or twenty democrats, Acklen's friends and Wharton's cronies, were watching that count, yet no one discovered a republican ticket with Acklen's name on it. They say there were many mistakes. I should think so. Let us go through hastily.

Take poll No. 1 in Iberville Parish. I call the attention of the chairman of the committee [Mr. HARRIS, of Virginia] to this case, as he says he did not intend to be influenced by partisan feeling. Let us see what awful mistakes were made. In the first count the canvassers gave Darrall 218 votes at poll 1. In the recount they gave him 139. There was a mistake at that poll of 79 votes. They gave Acklen 44 votes in the first count and in the recount 150. There was a mistake of 106 votes in his case.

Now, how many ballots were counted? Two hundred and sixty-two ballots, and five men of both parties doing their best, made one hundred and eighty-five mistakes. Now, you have got to find that fact in order to vote this man in on a case of fraud against justice and against equity.

Mr. COBB. Will the gentleman allow me to state that that poll is not in controversy at all?

Mr. WILLIAMS, of Wisconsin. Ah! Well, then, let us look at poll 2. The first count gave Mr. Darrall 394 votes; the recount gave him 86. There was a mistake in his case of 308 votes. What does the gentleman say to that? Was that poll in dispute? The key-hole of the box at that poll was sealed over with mucilage. For Acklen, at the same poll, the first count gave 115; the second count gave him 340; there was a mistake of 225. There were 509 ballots counted by the commissioners, and according to gentlemen's calculation they made a mistake of 533—more mistakes than they counted ballots! What does the gentleman from Indiana [Mr. COBB] say to that? The gentleman, for whom I have the profoundest respect, simply responds with a sort of grim smile. [Laughter.]

At poll No. 5 the first count gave Darrall 207 votes; the recount gave him 79 votes; a mistake of 128 votes at that poll. The first count gave Acklen 63 votes, the second count gave him 158 votes; a mistake of 95. There were there 270 ballots counted in all, and two hundred and twenty-three errors committed! Why these are mistakes, Mr. Speaker, which it would require an effort of genius to commit, and yet you are going to let this fraud succeed. You are going to establish it as a precedent. You are going to seat this man in the presence of such facts as these, and then you will talk about freedom from party predilection and partisan bias. At poll No. 6, the first count gave Mr. Darrall 301 votes; the second gave him 156 votes, a mistake of 145 votes; with these democrats looking right on to see that all was fair and true. And the republican commissioners and republican supervisors and the democratic commissioners and supervisors all testify under oath to the intelligence, integrity, and standing of the members of the various canvassing boards. And yet they could not count 301 votes without making a mistake of one hundred and forty-five. At the same poll the first count gave Mr. Acklen 99 votes; the second gave him 228; a mistake again of 129 ballots. There were 400 ballots at that poll counted in all, and there was a mistake of two hundred and seventy-four in counting them.

At poll 7 the first count gave Darrall 187 votes, the second gave him 96, a mistake of 91. At that poll the first count gave Mr. Acklen 58 votes and the second gave him 79, a mistake of 21. The total number of ballots counted was 246, and there were seventy-two mistakes in all. Now somebody must explain how this was or how it could be. If this man Wharton knew these ballots went into the boxes, and if they went in there, I repeat somebody about the polls must have known it also. And why when he had the whole machinery of the election in democratic hands, in the hands of Acklen's friends, why did he not present the case then and there and have it examined into and adjusted? This is a question a satisfactory or even plausible answer to which there is nothing in all this case to furnish.

He waits four months, waits two months after all responsibility for the safe-keeping of the boxes has ceased, waits till these boxes have been knocked about the office, waits until the seals are broken, waits until the keys can be left anywhere, then having something to inspire and move him he institutes an investigation and calls for a recount, and ballots are found simply folded, not having the appearance of having been handled or voted; waits until somebody knows that the ballots are in the boxes sure and then insists on a recount.

[Here the hammer fell.]

Mr. WILLIAMS, of Wisconsin. I had intended to pay my humble compliments to the peroration of the gentleman from Louisiana, [Mr. ELLIS.] If gentlemen from the South will constantly drag the events of the last ten years before the country it is about time that we of the North replied without hesitation, but of course I am cut off from doing so now.

Mr. HARRIS, of Virginia. I rise to call the previous question.

The previous question was seconded and the main question ordered.

The SPEAKER. The gentleman from Virginia [Mr. HARRIS] has ten minutes of his hour remaining.

Mr. HARRIS, of Virginia. I do not know that I will occupy the whole of my ten minutes.

The gentleman from Louisiana [Mr. LEONARD] put the democratic party upon its guard and warned it about the course it should take lest ere long retributive justice would come home to it. It may be that retributive justice has come now, that it has come sooner than my friend expected; for in the Forty-first Congress this same Mr. Darrall came here as a contestant. The contestee had 7,497 majority. But by a republican Congress 8,500 votes were stricken off, and Mr. Darrall took his seat. Now this may be retributive justice coming a little sooner than it was expected. The vote in that case was 16,065 for Bailey and 8,568 for Darrall as certified by a republican returning board and the certificate given by a republican governor. And yet you went behind the returning board then and you went behind the republican governor and overturned a majority of 8,000, putting Darrall into the seat and turning the democrat out.

Mr. BUTLER. Will the gentleman yield to me for a question?

Mr. HARRIS, of Virginia. I have only ten minutes, but I will hear the gentleman's question.

Mr. BUTLER. Did you think that was right?

Mr. HARRIS, of Virginia. I was not here then and do not know anything about it. You thought it was right, I have no doubt.

Mr. BUTLER. Perhaps I did.

Mr. HARRIS, of Virginia. I am satisfied, therefore, you will go with us on this occasion.

I cannot reply to what has been said with regard to these ballot-boxes. I state on my responsibility, as a member of the Committee of Elections, that it appears from the testimony, not only of democrats, but of republican commissioners who were present when the votes were taken, when the ballot-boxes were sealed, and who were present in court when the ballot-boxes were opened, that those ballot-boxes were intact and in the same condition they had been when they sealed them; thereby excluding the possibility that there had been any tampering with the ballots. They were counted in the presence of a number of republican judges and republican deputies, skilled men chosen by the contestant and contestee, and every single witness, both democratic and republican, swears that the ballot-boxes had not been tampered with, but were in their original condition.

Mr. SPARKS. Were these ballot-boxes kept in the custody of the republican clerk?

Mr. HARRIS, of Virginia. They were in the custody of the republican clerk who was afterward made judge, and he kept them all the time, and he swore that they never were accessible to outside parties and these republican clerks swear that the keys of the ballot-boxes were hidden away where no human being could find them, and they further swear that those boxes were never opened. I have no doubt in my mind that every member of the committee is satisfied in his own mind that those votes were cast for Mr. Acklen. Three of the minority of the committee do not deny that these votes were cast for Mr. Acklen. I believe that Mr. HISCOCK and Mr. WAIT admit this fact, but take the ground that the boxes were not securely kept. So that it will be seen that ten out of the eleven members of the committee admit that these votes were cast for Mr. Acklen, but these three republican members say they ought not to be counted because they were not found intact, while the republican managers of the election swear that they were intact.

Mr. THORNBURGH. I would like to state to the gentleman from Virginia [Mr. HARRIS] that he has not stated properly the position which the minority of the committee has taken.

Mr. HARRIS, of Virginia. The gentleman's position seems to be this——

Mr. THORNBURGH. I will state it. The gentleman says that we admit that the ballots at this contested poll were cast for Mr. Acklen. We explicitly denied that the votes at poll No. 1 were cast for Mr. Acklen. Nearly the whole of my argument was made to show that there was no single Acklen ticket cast at that poll at all, but that the one hundred and six were found upon a recount.

Mr. HARRIS, of Virginia. I do not know the number of votes cast, but we let it stand as it stood before.

Mr. THORNBURGH. Well, while we did not count them, yet we found 106 votes for Acklen when there was none on the original count.

Mr. CONGER. If the resolutions will not destroy the effect of the speeches I should like to hear them.

The SPEAKER. That is not a parliamentary question.

The Clerk read Mr. THORNBURGH's resolution.

Mr. THORNBURGH. I ask for the yeas and nays upon that resolution.

The SPEAKER. The Chair desires to know if these are not the same resolutions which have been reported by the minority of the Committee of Elections?

Mr. THORNBURGH. They are substantially the same.

Mr. PRICE. They are so in words.

Mr. THORNBURGH. If a vote can be taken upon the substitute reported by the minority of the Committee of Elections I will withdraw my resolution.

The SPEAKER. The gentleman from Iowa [Mr. PRICE] states that the resolutions are in the same words.

Mr. PRICE. Exactly so.

The question was upon the resolutions as reported by the minority of the Committee of Elections; which were read as follows:

Resolved, That Chester B. Darrall was duly elected and is entitled to a seat in this House as a Representative in the Forty-fifth Congress from the third congressional district of the State of Louisiana.

Resolved, That Joseph H. Acklen is not entitled to a seat in this House as a Representative in the Forty-fifth Congress from the third congressional district of the State of Louisiana.

Mr. PRICE and Mr. THORNBURGH called for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 115, nays 139, not voting 38; as follows:

YEAS—115.

Aldrich,	Deering,	Jorgensen,	Rice, William W.
Bacon,	Denison,	Joyce,	Robinson, George D.
Bagley,	Dunnell,	Keifer,	Robinson, Milton S.
Baker, John H.	Dwight,	Kelley,	Ryan,
Baker, William H.	Eames,	Ketcham,	Sampson,
Ballou,	Ellsworth,	Killinger,	Sexton,
Bayne,	Errett,	Lapham,	Shallenberger,
Bisbee,	Evans, I. Newton	Lathrop,	Smalls,
Boyd,	Evans, James L.	Lindsey,	Starin,
Brentano,	Fort,	Marsh,	Stone, John W.
Brewer,	Foster,	McCook,	Stone, Joseph C.
Briggs,	Freeman,	McGowan,	Strait,
Brogden,	Frye,	McKinley,	Thompson,
Browne,	Garfield,	Metcalfe,	Thornburgh,
Bundy,	Hale,	Mitchell,	Townsend, Amos
Burchard,	Hanna,	Norcross,	Townsend, M. I.
Burdick,	Harmer,	Oliver,	Van Vorhes,
Butler,	Haskell,	O'Neill,	Wait,
Campbell,	Hayes,	Overton,	Ward,
Cannon,	Hazelton,	Patterson, G. W.	Watson,
Caswell,	Hendee,	Peddie,	Welch,
Claflin,	Henderson,	Phillips,	White, Harry
Clark, Rush	Hubbell,	Pollard,	White, Michael D.
Cole,	Humphrey,	Powers,	Williams, Andrew
Conger,	Hungerford,	Price,	Williams, C. G.
Crapo,	Hunter,	Pugh,	Williams, Richard
Cummings,	Ittner,	Rainey,	Willits,
Danford,	James,	Randolph,	Wren.
Davis, Horace	Jones, John S.	Reed,	

NAYS—139.

Aiken,	Davis, Joseph J.	Hunton,	Ross,
Atkins,	Dibrell,	Jones, Frank	Sayler,
Banning,	Dickey,	Jones, James T.	Scales,
Beebe,	Douglas,	Kenna,	Schleicher,
Bell,	Eden,	Kimmel,	Shelley,
Bicknell,	Eickhoff,	Knapp,	Singleton,
Blackburn,	Elam,	Knott,	Slemons,
Bland,	Ellis,	Ligon,	Southard,
Bliss,	Evins, John H.	Lockwood,	Sparks,
Blount,	Ewing,	Luttrell,	Springer,
Boone,	Finley,	Lynde,	Steele,
Bouck,	Forney,	Mackey,	Stenger,
Bragg,	Franklin,	Martin,	Swann,
Bright,	Garth,	Mayham,	Throckmorton,
Buckner,	Gause,	McKenzie,	Townshend, R. W.
Cabell,	Gibson,	McMahon,	Tucker,
Caldwell, John W.	Giddings,	Mills,	Turner,
Caldwell, W. P.	Glover,	Money,	Turney,
Candler,	Goode,	Morgan,	Vance,
Carlisle,	Gunter,	Morrison,	Veeder,
Chalmers,	Hamilton,	Morse,	Waddell,
Clark, Alvah A.	Hardenbergh,	Muldrow,	Walker,
Clark of Missouri,	Harris, Henry R.	Muller,	Walsh,
Clarke of Kentucky,	Harris, John T.	Patterson, T. M.	Warner,
Clymer,	Harrison,	Phelps,	Whitthorne,
Cobb,	Hart,	Potter,	Wigginton,
Collins,	Hartridge,	Pridemore,	Williams, James
Cook,	Hartzell,	Quinn,	Williams, Jere N.
Covert,	Hatcher,	Rea,	Willis, Albert S.
Cox, Jacob D.	Henry,	Reagan,	Willis, Benjamin A.
Cravens,	Herbert,	Reilly,	Wilson,
Crittenden,	Hewitt, Abram S.	Riddle,	Wood,
Culberson,	Hewitt, G. W.	Robbins,	Wright,
Cutler,	Hooker,	Roberts,	Yeates.
Davidson,	House,	Robertson,	

NOT VOTING—38.

Banks,	Durham,	Leonard,	Sinnickson,
Benedict,	Felton,	Loring,	Smith, A. Herr
Blair,	Field,	Maish,	Smith, William E.
Bridges,	Fuller,	Manning,	Stephens,
Cain,	Gardner,	Monroe,	Stewart,
Calkins,	Harris, Benj. W.	Neal,	Tipton,
Camp,	Henkle,	Page,	Williams, A. S.
Chittenden,	Hiscock,	Pound,	Young.
Cox, Samuel S.	Keightley,	Rice, Americus V.	
Darrall,	Landers,	Sapp,	

During the roll-call the following announcements were made:

Mr. BRAGG. I desire to state that Mr. POUND and Mr. MAISH are absent from the city. If present, Mr. POUND would vote "ay" and Mr. MAISH "no."

Mr. McMAHON. I am authorized to state that my colleague, Mr.

RICE, is paired with Mr. SINNICKSON. If present, Mr. RICE would vote "no" and Mr. SINNICKSON "ay." Mr. RICE is absent by leave of the House.

Mr. MANNING. I am paired upon this question with Mr. KEIGHTLEY. If present, he would vote "ay" and I would vote "no."

Mr. MAYHAM. I am requested to state that my colleague, Mr. BENEDICT, is paired with my other colleague, Mr. CAMP. If they were here, Mr. CAMP would vote "ay" and Mr. BENEDICT "no."

Mr. MCKENZIE. I desire to state that Mr. DURHAM is confined to his room by sickness.

Mr. WILLIAMS, of Michigan. I am paired upon this question with Mr. BANKS. If he were present, he would vote "ay" and I would vote "no."

Mr. CLYMER. I desire to announce that upon this question my colleague, Mr. BRIDGES, is paired with my other colleague, Mr. SMITH. If they were present, Mr. SMITH would vote "ay" and Mr. BRIDGES would vote "no."

Mr. EDEN. I desire to announce that Mr. COX, of New York, is paired upon this question with Mr. TIPTON. If present, Mr. COX would vote "no" and Mr. TIPTON "ay."

Mr. HISCOCK. On this question I am paired with Mr. FELTON. If he were present, I should vote "ay" and he would vote "no."

Mr. LANDERS. On this question I am paired with Mr. BLAIR, of New Hampshire. If he were present, he would vote "ay" and I would vote "no."

Mr. CAMP. On this question I am paired with my colleague, Mr. BENEDICT, who, if present, would vote "no" and I would vote "ay."

Mr. PAGE. On this question I am paired with Mr. DURHAM, of Kentucky. If he were present, he would vote "no" and I would vote "ay."

Mr. SINNICKSON. I am paired with Mr. RICE, of Ohio, who, if present, would vote "no" and I would vote "ay."

Mr. SAPP. Upon all political questions, and this is one specially included, I am paired with Mr. SMITH, of Georgia. If he were present, I would vote "ay" and he would vote "no."

Mr. HARRIS, of Massachusetts. On this question I am paired with Mr. YOUNG, of Tennessee, who is confined to his room by illness. If he were present, he would vote "no" and I would vote "ay."

Mr. LEONARD. On this question I am paired with the gentleman from Georgia, Mr. STEPHENS. If he were here, I would vote "ay" and I presume he would vote "no."

Mr. STEWART. I am paired with Mr. HENKLE, of Maryland, who, if present, would vote "no" and I would vote "ay."

Mr. FULLER. I am paired with Mr. LORING, of Massachusetts, who, if present, would vote "ay" and I would vote "no."

The result of the vote was then announced as above stated.

Mr. HARRIS, of Virginia, moved to reconsider the vote just taken, and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

The question then recurred upon the following resolutions reported by the majority of the Committee of Elections:

Resolved, That Chester B. Darrall was not elected and is not entitled to a seat in the House of Representatives from the third congressional district of Louisiana.

Resolved, That Joseph H. Acklen was elected and is entitled to a seat in the House of Representatives from the third congressional district of Louisiana.

The resolutions were adopted.

Mr. HARRIS, of Virginia, moved to reconsider the vote just taken; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

Mr. PRICE. The gentleman from Vermont [Mr. JOYCE] and the gentleman from Minnesota [Mr. DUNNELL] had some remarks prepared upon this question, but they were crowded out. I ask consent that they be allowed to have their remarks printed in the RECORD as a portion of the debate.

No objection was made, and leave was granted accordingly. [See Appendix.]

Mr. HARRIS, of Virgina. I ask that the gentleman from Louisiana be now sworn in.

Mr. JOSEPH H. ACKLEN then came forward and was sworn in, taking the oath prescribed by the act of July 2, 1862.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, informed the House that the Senate had passed and requested the concurrence of the House in a bill of the following title:

A bill (S. No. 732) to annul an act of the Legislative Assembly of the Territory of Wyoming entitled "An act to provide for the organization of Crook and Pease Counties and to provide for holding court therein," approved by the governor of said Territory on the 15th day of December, 1877.

Mr. BREWER. I move that the House now adjourn.

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

PETITIONS, ETC.

The following petitions, &c., were presented at the Clerk's desk, under the rule, and referred as stated:

By Mr. BACON: The petition of Daniel Crouse & Sons and 8 others, for a drawback in case the tax on tobacco is reduced—to the Committee of Ways and Means.

By Mr. BAKER, of New York: The petition of Myron Pardu, Charles Pardu, of Oswego, New York, and others, dealers in barley, that a specific duty of thirty-five or forty cents per bushel be levied on malt—to the same committee.

By Mr. BAKER, of Indiana: The petition of the Mennonite Publishing Company, of Elkhart, Indiana, for the abolition of the tariff on type—to the same committee.

By Mr. BRENTANO: The petition of 56 farmers, of Cook County, Illinois, against the reduction of duty on flaxseed and linseed-oil—to the same committee.

Also, the petitions of the Chicago Handelszeitung and of Moritz Langelath, of Chicago, Illinois, publisher of the Eulenspiegel, for the reduction or abolition of the duty on type—to the same committee.

By Mr. BROWNE: The petitions of 200 citizens of Randolph County, Indiana, and of 25 citizens of Indiana, that the duty on linseed and linseed-oil remain unchanged—to the same committee.

By Mr. CALKINS: A paper relating to the petition of James W. Timmons—to the Committee on Military Affairs.

By Mr. CLARK, of New Jersey: Resolutions of the Legislature of New Jersey, favoring the granting of aid to American shipping—to the Committee on Commerce.

By Mr. CRAVENS: The petition of citizens of Arkansas, for the relief of D. M. Frost and the heirs of William M. McPherson, of Saint Louis, Missouri, and Spear Fitsworth—to the Committee on Military Affairs.

By Mr. CUTLER: Resolutions of the Legislature of New Jersey, favoring the granting of aid to American shipping—to the Committee on Commerce.

By Mr. DAVIS, of California: Resolutions of the San Francisco Chamber of Commerce, opposing the remonetization of silver—to the Committee on Banking and Currency.

By Mr. EDEN: Papers relating to the claim of George R. Herrick—to the Committee on War Claims.

By Mr. ELLSWORTH: The petition of James Paddock, James Bell, and others, of Gratiot County, Michigan, for the relief of Leversett H. Town—to the Committee on Invalid Pensions.

By Mr. GARFIELD: The petition of 50 citizens of Ashtabula County, Ohio, for an appropriation of $50,000 to extend the east pier of Ashtabula Harbor—to the Committee on Commerce.

By Mr. GAUSE: A paper relating to the establishing of a post-route from Powhatan, via Dent, Higginbottom's, and Opposition, to Ash Flat, in the State of Arkansas—to the Committee on the Post-Office and Post-Roads.

By Mr. GOODE: The petition of Bernard Lynch, for compensation for services rendered to the United States Government—to the Committee of Claims.

By Mr. HAMILTON: The petition of J. D. Sarnighausen, publisher of the Indiana Staats-Zeitung, for the abolition of the duty on type—to the Committee of Ways and Means.

By Mr. HANNA: The petition of Howard Briggs, publisher of The Press, at Greencastle, Indiana, for the abolition of the duty on type—to the same committee.

By Mr. HARDENBERGH: Resolutions of the New Jersey Legislature, favoring the granting of aid to American shipping—to the Committee on Commerce.

By Mr. HARMER: The petition of workingmen of Frankford, Philadelphia, Pennsylvania, against any change in the tariff laws which protect labor, and against the reimposition of the war tax on tea and coffee—to the Committee of Ways and Means.

By Mr. HART: The petition of B. T. Roberts, publisher of The Earnest Christian and Golden Rule, at Rochester, New York, for the abolition of the tariff duty on type—to the same committee.

By Mr. HEWITT, of New York: The petition of the New York Board of Trade and Transportation, for an appropriation for the improvement of the navigation of Harlem River—to the Committee on Commerce.

By Mr. JONES, of Alabama: The petition of citizens of Clark County, Alabama, for the passage of the bill to aid the Texas Pacific Railroad—to the Committee on the Pacific Railroad.

By Mr. LUTTRELL: The petition of George W. Gift, publisher of Napa County Reporter, California, for the abolition of the tariff on type—to the Committee of Ways and Means.

By Mr. MACKEY: The petition of citizens of Clinton County, Pennsylvania, for a post-route from Lock Haven to Hayneville, Pennsylvania—to the Committee on the Post-Office and Post-Roads.

Also, the petition of citizens of Potter's Mills, Center County, Pennsylvania, against any reduction of the present tariff duties and against the reimposition of the tax on tea and coffee—to the Committee of Ways and Means.

By Mr. MCKINLEY: The petition of 700 workingmen of Youngstown, Ohio, against any change in the tariff—to the same committee.

By Mr. MONROE: The petition of President James H. Fairchild and other citizens of Oberlin, Ohio, for a commission of inquiry concerning the alcoholic liquor traffic—to the Committee on the Judiciary.

By Mr. MORGAN: The petition of G. A. Weems, J. B. Blankership, and others, composing the Harmony Greenback and Reform Club, of Franklin Township, Newton County, Missouri, for the repeal of the resumption act and the remonetization of silver—to the Committee on Banking and Currency.

By Mr. MORRISON: Two petitions of Ernest Hilgard, Charles L. Bechtold, and others, of Belleville, Illinois, for the encouragement of rifle practice—to the Committee on Military Affairs.

By Mr. PAGE: The petitions of the publishers of the North San Juan Times, the Union Democrat, the Weekly Mirror and Rescue, the Daily Union, and the Pacific Press book and job printing office of California, for the repeal of the duty on type—to the Committee of Ways and Means.

By Mr. RAINEY: Papers relating to the claim of Emanuel Mason—to the Committee of Claims.

By Mr. RICE, of Massachusetts: The petition of Mary Jane Devine and others, of Cherry Valley, Massachusetts, against a change in the tariff—to the Committee of Ways and Means.

By Mr. SCALES: The petitions of A. J. Boyd, J. W. Reid, P. B. Johnston, Hugh R. Scott, Thomas S. Reid, David S. Reid, W. N. Meham, S. F. Watkins, John T. Pannill, Glenn & Glenn, members of the bar of Rockingham County, North Carolina; of O. R. Cox, J. W. Bean, B. F. Steed, J. N. Owens, H. T. Maffett, and 50 other citizens of Randolph County, North Carolina; of citizens of Wentworth, North Carolina; and of 75 citizens of Reidsville, North Carolina, and vicinity, against the abolition of the western judicial district of North Carolina—to the Committee on the Judiciary.

By Mr. SOUTHARD: The petition of John Coad and 150 other citizens of Licking County, Ohio, against the reduction of the duty on wool—to the Committee of Ways and Means.

Also, the petition of C. M. Patton and 100 other citizens of Licking County, Ohio, of similar import—to the same committee.

By Mr. TURNER: The petition of Emeline Church, for a pension—to the Committee on Invalid Pensions.

By Mr. WILLIAMS, of Alabama: A paper relating to the establishment of a post-route from Glenville to Harris, Alabama—to the Committee on the Post-Office and Post-Roads.

By Mr. WILLIS, of Kentucky: The petition of H. Krippenstapel, publisher of the Louisville Volksblatt and Omnibus, for the abolition of the duty on type—to the Committee of Ways and Means.

By Mr. YEATES: Papers relating to the claim of Emile Lepage—to the Committee on War Claims.

IN SENATE.

THURSDAY, *February* 21, 1878.

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

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

PETITIONS AND MEMORIALS.

Mr. WHYTE presented the memorial or L. E. Barbour, Michael Ahern, William H. Askew, and others, engaged in the manufacture of plate-iron, of Baltimore, Maryland, remonstrating against a reduction of the duties on foreign imports, and against the reimposition of the war tax on tea and coffee; which was referred to the Committee on Finance.

Mr. WINDOM. I present the memorial of the board of commissioners appointed by the States of Ohio, Pennsylvania, West Virginia, Kentucky, Tennessee, Indiana, and Illinois to look after the improvement of the Ohio River. The memorialists ask, in the name of those States and in behalf of their people, "that the Congress of the United States will, without delay, consider the question of the improvement of the Ohio River and its tributaries; not as a mere local question as heretofore, but as one of great national importance, demanding the especial exercise of governmental powers to render it a great transportation highway for the nation, uncontrollable by corporations or combinations, and justifying, in view of the future of the country, large expenditures of money from the common revenues of the nation." They also submit a great many facts and arguments showing why their requests should be granted. I move the reference of this memorial to the Committee on Commerce.

The motion was agreed to.

Mr. HARRIS presented the proceedings of a meeting of the Merchants' Exchange and the citizens of Nashville, Tennessee, in the nature of a petition, praying for the remonetization of silver, and that it be made a legal tender without limit; which were ordered to lie on the table.

He also presented proceedings of the Chamber of Commerce of Memphis, Tennessee, in favor of the free coinage of silver and restoring its legal-tender character; which were ordered to lie on the table.

He also presented additional evidence in the case of M. L. Gager, of Memphis, Tennessee, praying compensation for property alleged to have been taken and used by the United States authorities in that city during the late war; which was referred to the Committee on Claims.

Mr. BECK presented the petition of W. W. Agnew and 114 others, citizens of Lewis County, Kentucky, praying for the restoration of the silver dollar to the coinage, and for the repeal of the resumption act; which was referred to the Committee on Finance.

Mr. BECK. I present the petition of William Cash, of Princeton, Kentucky, praying compensation for the use and occupancy of certain property at Memphis, Tennessee, taken possession of by order of the military authorities in 1863, and for the loss of the same by fire. There was an adverse report in the last Congress, but he has sent me a petition accompanied by numerous affidavits which I think bring it within the rule allowing papers to be withdrawn.

The VICE-PRESIDENT. Is there new and additional evidence?

Mr. BECK. Additional evidence with the papers. I want to have the papers now on file in the Senate withdrawn and referred with this additional evidence to the Committee on Claims.

The VICE-PRESIDENT. The order will be entered.

Mr. CONOVER presented the petition of John Wallace, of Tallahassee, Florida, praying to be allowed a pension; which was referred to the Committee on Claims.

Mr. FERRY presented a petition of Thomas J. Craft and 34 others, citizens of Detroit, Michigan, praying for the passage of a law for the preservation of the food-fishes of the great lakes and the rivers and straits connecting the same, and appropriating a sufficient amount to maintain fish commissioners; which was referred to the Committee on Appropriations.

Mr. MITCHELL. I present a memorial of Thomas Rowley and others, citizens of Oregon City, Oregon, engaged in the manufacture of woolen goods, in which they represent that the prices of all domestic fabrics are now lower than ever before, wages are at the lowest endurable point, many works are at a stand, and the distress among workingmen is so great that Congress cannot be ignorant of it; but as bad as the situation is here they are advised and believe that it is worse in England, that wages are lower there and goods cheaper, and that such a reduction of our tariff duties as will open the American market to their wares is greatly desired by English manufacturers; that while they sympathize with foreign workmen they owe a duty to their own families; that they do not want charity, they want work, and claim as a right the home market for the products of home industry. They say further that they are advised of the urgency with which salaried English agents in this country are pressing for what they call "revenue reform," but they beg Congress to consider that it will be no gain in the end to favor the foreign traders who want to sell their cheap goods, and to find that protracted idleness has ruined our ordinarily industrious workmen. For these and other reasons they respectfully remonstrate against any reduction of the duties which protect their labor and also against the reimposition of the war tax upon tea and coffee, which was abolished, as they say, by the friends of the workingman. I move the reference of this petition to the Committee on Finance.

The motion was agreed to.

Mr. JOHNSTON presented the petition of the Jeffersonville and Louisville Ferry Company, praying the passage of a law authorizing the payment of a balance claimed to be due for transportation of troops, stores, ammunition, &c., during the late war; which was referred to the Committee on Claims.

Mr. CHRISTIANCY presented the petition of Mary B. Marsh, widow of Wells R. Marsh, late surgeon of the Second Iowa Infantry, praying for a pension; which was referred to the Committee on Pensions.

REPORTS OF COMMITTEES.

Mr. HAMLIN, from the Committee on Post-Offices and Post-Roads, to whom was referred the bill (H. R. No. 927) for the relief of James W. Glover, postmaster at Oxford, in the State of New York, reported it without amendment, and submitted a report thereon; which was ordered to be printed.

Mr. BAILEY. The Committee on Post-Offices and Post-Roads, to whom was referred the bill (S. No. 559) for the relief of James C. Rudd, have had the same under consideration, and directed me to report the same back adversely and recommend that it be indefinitely postponed.

Mr. McCREERY. Let the bill go on the Calendar.

The VICE-PRESIDENT. The bill will be placed on the Calendar, with the adverse report of the committee.

Mr. McMILLAN, from the Committee on Claims, to whom was referred the bill (H. R. No. 1487) making appropriations for the payment of claims reported to Congress under section 2 of the act approved June 16, 1874, by the Secretary of the Treasury, reported it with amendments.

Mr. GORDON, from the Committee on Commerce, to whom was referred the bill (H. R. No. 2887) to authorize the granting of an American register to a foreign-built ship for the purposes of the Woodruff scientific expedition around the world, reported it with an amendment.

Mr. McMILLAN. I wish to state for myself and the Senator from Alabama [Mr. SPENCER] that we dissent from the report just submitted.

BILLS INTRODUCED.

Mr. PLUMB asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 784) for the relief of James P. Worrell; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. SPENCER asked, and by unanimous consent obtained, leave to introduce a bill (S. No. 785) to provide for building a military post for the protection of the citizens of the Black Hills region; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. JOHNSTON (by request) asked, and by unanimous consent