that my notice stands for Monday, and that at 2 o'clock on that day, if I can not reach it earlier, I can have consent to take up that bill.

Mr. HARRIS. I make the motion, then, Mr. President.

The PRESIDING OFFICER. The Senator from Tennessee moves that when the Senate adjourn to-day it adjourn to meet on Monday next.

The motion was agreed to.

COUNTING OF ELECTORAL VOTES.

The Senate, as in Committee of the Whole, proceeded to consider the bill (S. 9) to fix the day for the meeting of the electors of President and Vice-President, and to provide for and regulate the counting of the votes for President and Vice-President and the decision of questions arising thereon.

Mr. SHERMAN. Mr. President, I have no purpose to inflict a long speech upon the Senate on the electoral bill. I think, however, that this important question ought to be considered at a time when we are as free as we ever can be from political bias. I believe that this bill affects a question that is more dangerous to the future of this country than probably any other. For twenty years it has been debated in this Senate Chamber whether we could not devise some mode better than the present one to count the electoral vote. Various expedients have been proposed by able Senators, and they have always been approached with an acknowledgment of the difficulties in the way, and yet with an earnest desire by every one of both parties to reach a satisfactory conclusion.

For a long time, I think for fifteen or twenty years, we had a joint rule to regulate the mode of counting the vote. That proved to be unsatisfactory, and when a critical time arose, it being within the power of either House, the joint rule was withdrawn, and the result was that this most important duty of counting the electoral vote, this most important act of the people of the United States, is now without law or rule to govern the mode and manner of its procedure.

The Committee on Privileges and Elections for a number of years has given to it its careful consideration, and I think two or three times has reported without a division, certainly with no division on party lines, a proposition, but with the distinct understanding and feeling among them all that it was not entirely satisfactory, and that all that could be hoped for would be to bring about a conference with the other House, and in that way come to some satisfactory solution of this most difficult problem.

Mr. President, the bill that has twice passed the Senate and been sent to the House, rather with a view to gain a conference than otherwise, is now before us again. A conference was defeated by the unwillingness of either House to abate its ideas on this question, and it now comes before us again at the beginning of an administration, when no party advantage can be derived from our decision, when the Senate is clearly on one side in party politics and the House clearly is on the other; and now, if ever, this matter ought to be settled upon some basis of principle.

The bill before the Senate in its general provisions, those which are merely legislative or regulating the mode and manner of proceeding, is not objected to by any one. The critical points involved are two, and they are both presented by the fourth section. This bill provides that in case of but one return from a State, when the two Houses shall meet according to the provisions of the Constitution the votes shall be opened by the presiding officer of the Senate, in whose custody they have been, and that they shall then be counted. That mandatory provision is the only mandatory provision in the Constitution on this subject, that the votes of the electors "shall then be counted."

There is no mode pointed out in the Constitution by which they must be counted. No provision is made in the Constitution for a dispute as to the legality of the votes of the electors, whether the electors have conformed to the Constitution, whether one set of electors or another set of electors have been elected; no provision whatever pointing out either any authority or any person or any body to decide which of two sets of electors shall be counted, or whether the votes of some of the electors on account of their being ineligible shall be rejected or whether the State was in a condition to have its vote counted, or whether an act o. Providence, such as a snow-storm that occurred in the case of Wisconsin or some other accident, prevented the electors from voting at the time fixed by the Constitution—in none of these cases is there a mode provided by law by which these questions are to be determined. It all rests in the single provision contained in a single paragraph of the twelfth amendment to the Constitution. Upon its construction all these matters, of which I intend to speak very briefly, depend. There is no declaration that the President of the Senate, who opens the electoral vote, shall count them, or that the House or the Senate either shall pass upon the question of counting. This is the clause:

> The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

It is to be presumed that the framers of the Constitution did not foresee and could not foresee the difficulties that have arisen since upon this matter. The constitutional provision as to the election of President was unsatisfactory to the framers of the Constitution, and it was changed after the celebrated difficulty when it was a long time in doubt whether Aaron Burr or Thomas Jefferson should be President of the United States. This demonstrated that the original provision of the Constitution was faulty, and our predecessors of that day undertook to correct it and adopted a new provision, but that new provision presents many of the same difficulties that occurred under the old, and to this day Congress has never been able to solve any of them.

Since that time there have been eleven cases of disputes as to electoral votes, and twenty-one objections have been made to the electoral votes of different States, presenting a great variety of questions. For instance, in the Missouri case the question came up whether the vote of Missouri, which before being admitted as a State undertook to vote for President and Vice-President of the United States, should be counted. That created a difficulty which was finally solved by the men of those days by simply resolving that whether it was counted or not it would make no difference in the result, and they therefore passed it by.

Again, when the electors of Wisconsin had been prevented by a great snow-storm in the Northwest, just in the midst of winter, from meeting at the place appointed by the Constitution at the time designated by law, they were unable to convene and could not vote according to the Constitution, but met the next day and voted and sent their votes here to be counted. I remember as well as I remember the countenances that are now before me the scene of riot and tumult, of disorder and confusion, that arose when the question about Wisconsin came up in 1857, when Mr. Buchanan was elected President of the United States. I never saw the House in a condition of tumult and disorder more violent than occurred then. The President of the Senate, Mr. Mason, undertook to give a construction to this clause of the Constitution, which was at once met by violent outcry not only from members of the House but from members of the Senate, and it led to the separation of the two Houses in confusion and the return of the Senate to this Chamber, and the only way by which the difficulty could be solved at that time was by passing a resolution that whether Wisconsin was counted or not the result was the same, that James Buchanan was elected President of the United States.

And so, sir, in the many cases that have occurred since that time where the votes of several States were in dispute, especially after the reconstruction period, the same difficulties arose and were solved in the way I have mentioned, by saying that whatever way the disputed vote was counted the people have elected by their electors a President of the United States. And, sir, in my judgment, if in 1869 the election of President Grant had depended upon the vote of the State of New York, after it had been made public and was generally known all over the country that the election in the city of New York had been carried by overwhelming fraud, I do not believe the people of the United States would have been satisfied with any result that depended upon the vote of the State of New York. But there again, fortunately for the country, we were able to avoid the difficulty by the fact that, however New York might be counted, it would not change the result. No question was made about the vote of the State of New York at that time, because it was known that however it was counted—and it was counted upon the face of the papers for Mr. Seymour—it would be acquiesced in, because it made no change in the result.

Several times that condition of affairs existed, until finally, in 1877, we came to a point that did really threaten our national existence; when civil war might have occurred under certain circumstances; where the disputed votes did change the result; where a change even to the extent of one vote might have altered the result. That was happily avoided by a contrivance—for I can not call it much more, and I suppose Senators did not think it much more; I did not support it at the time, but it was a wise measure—by which a solution was brought about of this difficulty without producing actual contention and strife.

I feel, therefore, that this is a vital question that we ought to decide. We ought to approach it without regard to party division, and try to resolve, if we can, this most difficult question of American politics.

The objection I have to this bill is that it does not solve the most dangerous of these contentions. It does not settle a single one of those that have arisen in the past or that are likely to arise in the future. This bill makes a distinction between the votes of electors from States where there is but one return and votes from States where there are two or more returns or papers purporting to be returns. This is a distinction without a difference, because in any case of a dispute that may arise the manufacturing or creating of double returns is the easiest possible process to present the question involved. If there is but one return, then this bill provides that the return shall not be excluded except by the concurrent votes of the two Houses.

If the two Houses disagree as to the validity of the return, then the vote is counted. But suppose on that return or from evidence on file it appears that some of the electors claimed to be elected from the disputed State were ineligible, were members of Congress or judges of the courts or officers of the United States, and therefore ineligible to be electors, how would that question be determined where the matter in dispute did not go to the whole electoral vote, but only to a part of it?

I suppose that under a strict construction of this section, in that case the votes would have to be counted, and therefore votes that are declared by the Constitution itself to be illegal would have to be recorded in making up the result.

There are many supposable cases. Suppose that one House in the future should determine that in a case like that of Wisconsin the vote ought to be counted and the other House should determine that it ought not to be counted, how would this rule determine it? I presume that on the strict language of the bill the vote of Wisconsin would be counted because the two Houses disagreed, and in that particular case where the informality grew out of an act of Providence that would be right; but I could name many cases where it would be wrong, where a difference between the two Houses would compel the counting of an electoral vote when it ought not to be counted.

Even in such a case how shall it be counted, by whom shall it be counted, and who shall declare the result? But I could overcome these doubts; I would not stand in opposition to this bill because it does not solve all possible disputes. I can see that there ought to be some mode of determining questions arising at the count, and if the two Houses, who are made by the Constitution the witnesses of this act, agree upon the counting of a certain vote, I would regard that as the best solution. Where the two Houses agree, the vote ought to be counted; the two Houses may properly be regarded as the judges of whether the vote ought to be counted; but if they disagree, why should you give to the opinion of one House more weight than to the opinion of the other? Why should we say that in case of disagreement the vote shall be counted? Who will count the vote? The tellers? That leaves it still in confusion.

Mr. HOAR. If the honorable Senator will pardon me, I think in this particular it is proper to interrupt him for a moment.

Mr. SHERMAN. I am perfectly willing.

Mr. HOAR. As I understand, the bill provides for the process of counting. I do not rise now to answer the Senator's argument, but to point out an insufficient comprehension of the bill itself. The bill provides a certain process to be gone through with, and it then declares:

> And the votes having been ascertained and counted in the manner and according to the rules in this act provided, the result of the same shall be delivered to the President of the Senate.

The bill provides for tellers, members of the two Houses and their representatives, who are to receive a certain statement purporting to be the certificate of a State of its action in a matter which the Constitution most carefully commits to State action. The theory of this bill is that when a State presents itself and by but one utterance declares, "This has been my action," it shall be counted as the constitutional action of the State, unless both Houses of Congress agree to reject it. When there are two voices, each purporting to be—of course not each actually, but each purporting to be—the declaration of the State what its action has been, then it requires the concurrence of the two Houses to accept one and reject the other. Of course in each case it is a rejection of something.

And now, without going at this time into the argument in favor of the wisdom, as far as it goes, of this provision in comparison with the existing law, that is the proposition of the bill.

Mr. SHERMAN. Mr. President, the Senator does not yet meet the difficulty. Suppose the question is not merely upon the admission or the legality of the vote at the time, a question that affects the whole vote of a State, but suppose that some of the electors are ineligible?

Mr. HOAR. My friend will pardon me; I did not rise to meet the difficulty; I did not undertake to address myself to that; I rose simply to answer the question put by the Senator from Ohio, who was to count under the bill?

Mr. SHERMAN. I do not think the Senator answers that question. Here is the language of the bill. Where there is but one return the bill provides as it now stands:

> And no electoral vote or votes from any State from which but one return has been received shall be rejected except by the affirmative votes of both Houses.

This permits both Houses acting in concord at the time to reject the vote of a State, for it provides that in case there is a division of the two Houses a vote shall be counted. What vote? The whole vote or part of the vote in dispute?

Mr. EDMUNDS. Does my friend from Ohio wish for an explanation now?

Mr. SHERMAN. No; I think it would interrupt me.

Mr. EDMUNDS. That might be so, but I think there is a perfect answer to what my friend has said. I will reserve it.

Mr. SHERMAN. I could overcome in my own mind—and the subject has often been a matter of conversation as well as debate in the Committee on Privileges and Elections—the difficulty in this matter, because I can see that this provision might be sustained, that if both Houses agreed to accept a vote that probably was as good evidence as we could have; but suppose they agree to reject the vote of a State? That is a dangerous power. That allows the two Houses of Congress, which are not armed with any constitutional power whatever over the electoral system, to reject the vote of every elector from every State, with or without cause, provided they are in harmony in that matter.

It was one chief object of the framers of the Constitution to separate as wide as the poles the election of electors from the power of the legislative branch. That is plainly shown by the debates. It was at one time proposed, as has been adopted in France, to allow the Congress to elect the President, but this was rejected as being dangerous to our system of government, and therefore the framers of our Government selected an entirely distinct body of men, of the same number it is true, but chosen in a different way by the States, to perform the high duty of selecting a President of the United States, and the Constitution gives to Congress no power whatever over that great act except the power to be present at the count of the votes and to see the result declared. All the rest of the power drawn from that clause of the Constitution which I have read is inferential.

Now, sir, even this proposition—to which I might agree from the difficulty of pointing out a better way to pass upon the count—does violate the idea of the framers of the Constitution that the election of a President should be by electors separate from the legislative or law-making power of the country. The President speaks the voice of the States and of the people. He is chosen by electors elected in the several States according to the laws of each State; and yet this bill confers power upon Congress, the two Houses being in harmony with each other, to exclude the vote of any State.

But that is not my chief difficulty. The difficulty with me grows out of another clause of the bill. I ought to say the second section of the bill provides a mode by which the legality of the appointment of electors may be decided according to the laws of each State by judicial interpretation. I see some objection to that, but at the same time I do not make any point against it. Then the fourth section provides:

> And in such case of more than one return or paper purporting to be a return from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which the two Houses, acting separately, shall concurrently decide to be the lawful votes of the legally appointed electors of such State.

This gives to either House of Congress in the case of a double return the power to exclude the vote of New York or of any other State in the Union, not by the will of the two Houses, but by the veto of either House. We know the frailties of human nature well enough to know that the Senate of the United States and the House of Representatives, though great political bodies, as deserving of respect as probably any that have ever been elected under a republican system of government or any other, yet after all we are human, and are governed by passions and by prejudices and by party bias and by party feeling—I ask you whether it is safe to confer upon either House the power by its simple vote to reject the electoral vote of any State because there are two returns from it. If this was a case that could only arise in rare events it would be different, but the cases of double returns can be provided for in every election in any State at each Presidential election. Suppose a dispute arises, suppose the question shall arise whether a Republican body of electors or a Democratic body of electors have been elected in any particular State, and there is an honest difference of opinion as to which was elected. We recently had an important instance where in the State of New York the whole matter turned upon a thousand votes. Suppose there had been a question between the Republicans and Democrats as to the legality of that count and the regularity of those proceedings, and there had been a meeting of two bodies of electors, the Republican electors and the Democratic electors in New York, and double returns from those two opposing bodies had come here to be counted, representing two political parties; suppose the Senate of the United States should be Republican as now and the House Democratic as now, and that question arose between the two parties in a great State which would affect and control the results of the election, and that question was to be decided by the majority votes in these several Houses.

Here is a case where the vote of either House might under this bill defeat an election. If the Senate should reject the vote of a State, and thus secure a party advantage, the House could reject the vote of another State to obtain a like advantage, and a contention would spring up which would prevent the election of a President of the United States. Here is the difficulty with this bill, and I wish I could overcome it. I do not think we have the power under the Constitution to give to either House the right to exclude the vote of a State. The Constitution says that in the presence of the two Houses the votes shall be counted. That is all there is mandatory in the Constitution as to the election. Congress has no right to go behind those votes. The votes must be counted one way or the other, for or against, and we can not by a bill of our framing here enable either House upon this case of double returns to exclude a State from the count. It not only goes to the extent of double returns, but it goes further——

Mr. HOAR. Will the Senator allow me to make an explanation?

Mr. SHERMAN. Yes.

Mr. HOAR. I wish to inquire of the Senator, as part of this very interesting statement, what in his judgment is the existing law on that subject; that is, who is to count the vote now?

Mr. SHERMAN. I will come to that in a moment. I will answer that. I am perfectly willing to come to that, and propose to do so in a moment.

This not only provides for the case of double returns, but it provides for the case of more than one return, or "paper purporting to be a return," from a State; and in some of the cases I have seen of the counting of the electoral votes for President I have heard papers read purporting to be returns which were ridiculous, frivolous, foolish; still they were properly read, because the presiding officer can do nothing

but to lay before the two Houses all the papers. So it provides not only for two formal returns by contesting electors but any paper purporting to be a return.

Now, not only is the question sometimes involved which of two sets of electors are the legal electors, but the question often arises as to whether the electors themselves were competent to be electors, whether a particular elector received the requisite number of votes, or whether some of both tickets may not have been elected, as occurred in some of the earlier cases in the history of the Government.

Mr. EDMUNDS. It occurred in California within a short time.

Mr. SHERMAN. Yes; a case may frequently occur where the question does not extend to the whole electoral vote of the State, but only to a part of it, or to an individual member.

Mr. President, it seems to me that this is not a constitutional measure; that it does not provide what the Constitution provides for, the counting of the vote, but it provides for the exclusion of the vote upon the mandate of either House. I have no doubt whatever of the power of Congress to do all that is necessary to regulate the mode and manner of counting the vote. I think that power is as plainly given by the Constitution as any power expressed or implied, because in the absence of any provision in the Constitution itself to carry it into execution the Constitution confers upon Congress full power to regulate the mode and manner of carrying into effect all the granted powers, and therefore of counting the vote, but with this one limitation upon the power of Congress, which stands like a rock in the Constitution, that "the vote shall then be counted." Nothing can be done under color of law by the action of the two Houses to prevent the count of the vote, because "the votes must then be counted."

I now come to a question of greater difficulty. How are you to deal with this? The Senator from Massachusetts asked me what I proposed to do.

Mr. HOAR. Under the existing law what is to be done?

Mr. SHERMAN. There is now no law or rule except the Constitution.

Mr. HOAR. My learned friend did not understand my question. My question was not by what other methods he proposed dealing with it, but where the existing authority is now, as he understands, to determine all these questions. I am not speaking of the distinction between an act of Congress and the Constitution, but I suppose if two returns come from a State or one return about which questions of law are raised somebody must determine it. He says Congress must not. Where has the authority from the beginning of the Government to this day been lodged to do this thing that somebody must do?

Mr. SHERMAN. I think I have answered that already.

Mr. HOAR. I did not hear the answer.

Mr. SHERMAN. Congress has undoubted power under the residuary clause in the Constitution giving powers to Congress to pass all laws suitable and necessary to carry into execution the express grants of power. Here is a provision in the Constitution for the election of electors, and therefore the mode and manner by which the votes of electors may be counted may be pointed out, but Congress shall not provide that the votes shall *not* be counted, because the Constitution says that the votes shall be counted then and there.

Mr. HOAR. I must have shown a great want of clearness in putting my question. The question which I ask the honorable Senator from Ohio was not whether Congress had the power to make a law for the future; not, if it had, what law he would make; but to make his statement complete, that I might understand his constitutional theory, I wanted him to state where the power had been, not to provide for a method but to do this thing for the twenty-four Presidential elections we have had. Who had the right to count the vote in John Adams's day, or Thomas Jefferson's, or Mr. Grant's, or Mr. Hayes's, or Mr. Garfield's? Was it the Vice-President, or was it nobody, or was it the two Houses of Congress?

Mr. SHERMAN. I said before that I had no doubt about the power of Congress to pass a law prescribing the ordinary proceeding, the mode and manner of counting the vote, how the list should be prepared, how the returns should be made, what should be done with them, and all the necessary steps that lead to the counting of the vote; but when that vote is to be counted in the presence of the two Houses, Congress has no right to interfere at the critical moment and say that the two Houses while engaged in this business shall separate, and that either House may in case of a double return declare that the vote shall not be counted. That is the point. There is a limit to the power of Congress in this respect. Its power to pass laws to carry into execution provisions of the Constitution does not give Congress power to override the plain mandate of the Constitution. That is the only answer I can make to the Senator.

Mr. HOAR. Then, if the Senator will pardon me, I understand as the basis of his constitutional argument that he avows that for the last ninety-six years, I think——

Mr. SHERMAN. Do not impute to me language that I did not utter.

Mr. HOAR. There has been no lawful authority to count the votes in the Presidential election in existence under our Constitution.

Mr. SHERMAN. I never said such a thing in the world.

Mr. HOAR. That is the substance of what the Senator said.

Mr. SHERMAN. I say there is lawful authority to count the vote, it must be counted, but you can not allow one House to prevent the vote from being counted. You can not make a law that would deprive the people of the United States of the power to elect electors whose vote shall be counted. You may prescribe the mode and manner and form, the clerical work, and all that sort of thing, but when it comes to counting the vote you can not interpose a law and say that no vote shall be counted unless the Senate agrees to it or unless the House agrees to it. The vote shall be counted.

All the proceedings had heretofore have been recorded and are set out in this book and in the books that I hold in my hand. They show every case where these difficulties have arisen and were put aside as not changing the result of the election at the time to be dealt with. Therefore it is that now, when we have no Presidential election in view, when the two Houses are of opposing parties, I desire, if possible, to find some way that will enable us to count the vote according to the Constitution.

The Senator will no doubt remember the position I took when this question was before us in 1876. Then there was no law on the subject. The joint rules had been abandoned. The two Houses could not agree upon the mode of counting the vote. We discussed it day after day. Then it was that the plan of an electoral commission was gotten up. I did not believe in the constitutionality of that plan. It was a wise solution of a great difficulty; it operated well; but I should like to have the provision pointed out to me which authorized Congress to make such a tribunal for such a purpose. I could not think so then; but I was glad, and will be glad to see agreed upon now any mode of solution that will secure a settlement of the question.

I have never claimed that the Constitution conferred upon the President of the Senate the absolute power to count the vote. All that I have said, and the substance of what I said, was based upon the remark made by Chancellor Kent in his Commentaries, in which he says:

> The Constitution does not expressly declare by whom the votes are to be counted. In the case of questionable votes, and a closely contested election, this power may be all-important; and, I presume, in the absence of all legislative provision on the subject, that the President of the Senate counts the votes and determines the result; and that the House are present only as spectators to witness the fairness and accuracy of the transaction, and to act only if no choice be made by the electors. (Kent's Commentaries, volume 1, page 277.)

What I have contended is that the power of the presiding officer of the Senate to count the vote in the absence of all other legislation, resting alone upon the provisions of the Constitution, naked and unchanged, might be fairly inferred from the Constitution. This officer opens the returns, hands them to the tellers, performs the ordinary duty of a presiding officer, and declares the result. What may be the legal effect of that declaration I never have pretended to say. It is not final and conclusive upon the people of the United States. On the contrary, my opinion has always been that if the declaration made there in the presence of the two Houses is not satisfactory or is contested, the House of Representatives may then meet and upon their authority to do a certain act in a certain event may decide that the time had arrived for them to perform their duty and proceed to elect a President of the United States, and that the Senate, under like circumstances, on the failure of the electoral college to produce a result, might also proceed to elect a Vice-President of the United States. This would at once present a contest for the courts to decide.

I do not give these opinions with any desire to excite controversy, but only with a desire to produce a solution of this question. I am satisfied that the bill as it stands is not a proper solution, nor would I vote now to confer such a power upon a presiding officer or upon any man. I think Congress ought to do its duty in this behalf and make other provision, and not leave to any human being alone to exercise so great and important a power.

There are three ways which have been proposed at different times to solve the questions that may arise in the presence of the two Houses upon the vote of any State as to its legality in whole or in part. As to the form and time and manner in which these questions should be decided, there ought to be ample provisions by law—some tribunal provided to whom all questions should be referred. It has been suggested that the President of the Senate should be clothed with that power. I do not believe it, except in the absence of all legislation, when I think it is a part of his duty as a presiding officer to announce the result, leaving to others to determine the legal effect of that announcement. But I do not believe in that mode. It would be totally unsatisfactory, and I would vote for no bill which would confer such a power.

Another plan which has been proposed in the debates at different times, and I think also in the constitutional convention, was to allow questions of this kind to be certified at once to the Supreme Court for its decisions in case of a division between the two Houses. If the House should be one way and the Senate the other, then it was proposed to let the case be referred directly to the prompt and summary decision of the Supreme Court. But there is a feeling in this country that we ought not to mingle our great judicial tribunal with political questions, and therefore this proposition has not met with much favor. It

would be a very grave fault indeed and a very serious objection to refer a political question in which the people of the country were aroused, about which their feelings were excited, to this great tribunal, which after all has to sit upon the life and property of all the people of the United States. It would tend to bring that court into public odium of one or the other of the two great parties. Therefore that plan may probably be rejected as an unwise provision. I believe, however, it is the provision made in other countries.

I think it is so in Mexico; and my impression is that it is so in France, but I have not recently read their constitution. In France the election is made by their legislative bodies. Therefore I regard it as being on the whole not a wise provision to refer the question to the Supreme Court.

What other remedy is open? After all the forms provided by the law shall have been gone through with, and after a marked and decided vote between the two Houses shows that one is on the one side and one on the other, I know no better way than to bring the two Houses into joint convention, and there polling each House separately to decide the result by a vote of a majority of the representatives of the people and the representatives of the States combined.

I know that in the Senate this usually has not been considered with much favor. In the first blush I did not myself like it. The Senate of the United States being a smaller body than the House of Representatives naturally does not wish to see its power blended in and formed as a part of the whole of which it is but a comparatively small part. In ordinary matters I would reject this as being a departure from the separate and independent action of our two legislative bodies, one the representatives of the States, the other the representatives of the people. But when you have examined all other remedies proposed this seems to me the wisest solution of this question.

This very proposition was adopted with great wisdom by the Senate of the United States by the act of 1866 prescribing the mode of electing members of this body. Our Constitution declares that the electors shall be chosen according to the laws of the States. Our Constitution also declares that the members of this body shall be chosen by the Legislatures of the States. In every State of our Union two bodies compose the Legislature. In 1866 Congress declared that if the two Houses should disagree upon the election of a Senator they should meet together in joint convention and decide that matter by a majority vote of the members voting.

The same repugnance existed in that case as in this. It was the Legislature that was to act, and yet our people stood for seventy years the inconvenience of the old system before they proposed this radical remedy. For a time Ohio was not represented in the Senate, because the senate of the State was one way and the house was the other, and they would not agree to go into joint convention. Nearly every State in the Union had been from time to time partly unrepresented by the contests that grew out of the election of United States Senators.

At one time before the passage of that law there were several vacant seats in this body, made vacant by the want of unanimity in the two legislative bodies of a State. Before that time the case often occurred when a pending controversy over a United States Senator hung the Legislature in doubt for one or two and sometimes three years, divided it politically, and entered into all business of the Assembly, and was made the basis of corrupt propositions, until the election of Senator in the old-fashioned way became—I can scarcely use any word strong enough—it became the mere plunder of political contention and barter. That was the old way.

Finally the two Houses were brought to a concurrence by corrupt arrangements that had been made beforehand. So it was alleged at the time that the law was passed. In the case in New Jersey, which I believe was the immediate cause of the passage of that law, the case of Stockton, the matter was hung here in the Senate and we debated over it for days and days, and we all could see that in the speedy future, unless that controversy about Senators was settled, we would have grave difficulties from time to time in our own body, and that the time of the Senate would be constantly employed in dealing with these disputed cases.

The case of Stockton took many weeks of debate. Then it was that Congress, the Senate waiving its objection to mingle the two houses of the State Legislature into a joint convention, doubting the power to do it, because it was then contended that the Legislature meant a vote of the two houses separately, still overruling that construction of the constitution of all the States of the Union, did pass the law of 1866, which provided that in case the two houses disagreed as to their choice they should, not as houses but as members of the two houses, meet in joint convention on the next day, and then by the vote of the majority a Senator should be promptly elected. From that time to this we have had no trouble in having these seats filled by all the States entitled to representation.

Now, why is not that a good example for the counting of the electoral vote? We meet not with full powers to count the electoral votes, not with the same power that the State assemblies have to elect a Senator, but only with the power conferred upon us to witness the counting of the vote. Therefore, if there must be some tribunal to decide disputes which may arise from time to time on the question of counting the electoral vote, why not, after we have tried by discussion and debate in the separate Houses to agree, meet together and vote there, representatives of States and representatives of the people on the same footing, vote for vote, and abide the result? That at least does furnish a decision. That provides a mode by which a controversy may be ended, because if you take a body of four hundred men it can scarcely be possible in the course of human events that these two bodies should be divided equally if merged together; while, if you require a separate vote in either House, more than half the time in all your political history the two Houses have differed in opinion, and therefore you would have an equal chance every four years either of the rejection of the votes of an equal chance every four years either of the rejection of the votes of States by want of agreement or the admission of the votes of States by want of agreement. This plan does at least furnish a solution.

When this bill was sent to the House of Representatives last year they sent us a proposition called Mr. Eaton's bill. He had his views upon it very decidedly. It was a plan not like this, because there the two Houses were at once merged, and the votes of Senators and Members, I believe, were to be counted in alphabetical order upon every question without a division. That did not seem to be satisfactory; the Senate would not agree to it. I remember the committee of conference would not agree to that proposition. But it does seem to me that we would not lower our standard, that we would not lower our position as Senators, that we would not lower our position as representatives of States by going into a joint convention and there taking the vote by separate Houses, but let the result be determined by a majority of the aggregate assemblage then gathered together.

This might not create a different result. Suppose, however, that by a narrow vote of one in the House of Representatives they should declare that the vote of a certain State was not legal and should not be counted, and we here by a united vote, governed as we thought by the interests of the people of the United States, should declare that the vote ought to be counted; in that case, the very case provided for by the bill, a majority of the two Houses taken together would be in favor of counting the vote and carrying out the will of the people. While if the majority of one House, actuated by political motives, perhaps by the passions and contentions of the hour, should say no, the great State of New York or Pennsylvania or Ohio or even the smaller States in the Union would be excluded from this great college of electors by the arbitrary will of a majority of one House.

After a full study of all this question I am perfectly willing to adopt the principle of the act of 1866, to surrender my superiority as a Senator in legislation and go in with the Members of the House. After we have tried to agree in separate Houses and failed, I am willing to go with them and settle the question in dispute, whatever it may be. In this case we would at least secure a mode of decision that would probably be effective, and that in all time would not result in an even division of opinion. Then, according to the mandate of the Constitution, which is put in there without any *ifs* or *ands*, without any qualification, the vote shall then be counted. It would be done even if it was not satisfactory to us in the Senate.

Mr. President, these are my views, and with these opinions I intend to submit some amendments which in my judgment will carry them out, but if they are defective in detail I should be very glad indeed to have them referred to the Committee on Privileges and Elections, or to my friend from Massachusetts who has charge of the bill, for any revision or criticism that he may make upon them. It is my idea that after all these proceedings in this bill have been gone through with the clause allowing either House to exclude a vote should be stricken out of the bill, and that there should be inserted in it a provision that when an agreement has failed between the two Houses they should then meet in joint convention, have the votes of each House counted, add the aggregate together, and let the majority decide.

Mr. EDMUNDS. Mr. President, the proposition of the Senator from Ohio, which has not been read at the desk but has been clearly stated, is——

Mr. SHERMAN. Will the Senator allow me to have the amendments sent up and read?

Mr. EDMUNDS. Never mind; we may treat them as sent up, and they can be printed.

Mr. SHERMAN. Very well; I will send them to the desk.

Mr. EDMUNDS. The Senator from Ohio has stated with clearness his proposition. After the votes, as they are called, are opened and a disagreement arises between the two Houses in regard to what shall be done in identifying a vote (for that is all there is to it, because everybody agrees that whatever is the vote of a State must be counted, so that the action of both Houses, or either House, or any other tribunal, is to ascertain whether the paper presented is the vote of the State), that dispute existing, the proposition of the Senator from Ohio is that in case the Senate and the House of Representatives disagree in their constitutional and automatic capacity as the Government of the United States, there shall be a consolidated count of heads of the seventy-six Senators and the three hundred and twenty-five Representatives, as the numbers are now, and that the majority of all, per capita, shall determine the result. The Senator appears to have laid some stress upon the fact that that is only a last resort; that where after discussion and consideration in either House they have failed to come to an agreement,

then in order to get some solution this is the best thing to do. If I were a mouse and had got to be eaten up by the cat at last, I should just as soon be swallowed to-day as to be undergoing a discussion in her claws for three or four days before I was swallowed. That is exactly this case. The Senate of the United States might just as well propose to the House of Representatives a bill which declares that in case of a disagreement between the two Houses in respect of the identification of a vote, then and there the judgment of the House of Representatives shall prevail and be done with it. That is all there is to it.

Mr. SHERMAN. That is what the bill says now.

Mr. EDMUNDS. I beg the Senator's pardon; that is not what the bill says now. The bill says now that in case either of these equals, one representing the sovereignty and purity and independence of the States, and the other representing the mass of the people of all the States without regard to State lines, disagree, in a certain event, nothing shall be done in respect of the particular point of disagreement. That is all it says.

My honorable friend has stated that the thing which has seduced him (if I may use such a phrase) into this remarkable proposition has been the analogy which he sees, the parallelism, between the act of Congress of 1866 providing for the election of Senators by the Legislatures of States and his proposition. With the greatest possible respect to my distinguished friend from Ohio I must disagree with him in that respect. There is in my judgment neither constitutional, nor political, nor moral parallelism in any respect between the act of Congress of 1866 and what is here proposed; and why? The government of a State is a unit; it is not complex. The division of its own powers within itself is only a partition of limitations and securities of private rights against hasty legislation. The composition of the Congress of the United States and the Government of the United States is not a unit. It is complex. It recognizes in large and important respects the importance of preserving the independent sovereignty and powers of each one of the States; and every letter and every line in the Constitution of the United States that refers to this complex autonomy separates it from being a unit into three several parts, neither of which can act without the consent of the two others except in the case of overriding the Presidential veto by two-thirds of all the States and two-thirds of all the people represented in the other House. There is the distinction.

There is, therefore, I repeat, with great respect, no possible analogy between the provision of the act of Congress that the Legislature of a State, its senate and its house of representatives, shall vote as a solid body in a certain event for a Senator of the United States, and the case of providing that it shall be determined who shall be the President of the United States under our Constitution by the consolidated vote of the members of the Senate and the members of the House of Representatives of the United States.

Do you not remember, Mr. President, does not every Senator remember, how carefully and how explicitly in the Constitution of our fathers, as it now stands, still undisturbed by amendment, unassailed by public opinion, are preserved the rights of States in every act that leads to and is consummated in the election of a President of the United States? First, the Constitution declares that the several States shall appoint their own electors of President, and nothing is left in all the other provisions of the Constitution in regard to that great act except the mere method of ascertaining what is the will of each State as a State in regard to who its choice shall be for the Chief Magistrate of this nation. Then when the occasion should happen, as our fathers saw it might, that there was a failure of any one candidate to receive a majority of all the electors of all the States put together, which was required to make a valid election, they provided that the House of Representatives, not voting *in solido*, not voting per capita, not voting with the members of the Senate, not voting concurrently with the Senate as a body, but voting by States, each delegation for its own State casting one vote and one only, should select the person who should discharge the executive functions for the next four years.

Yet in the face of all that, my honorable friend asks the Senate of the United States to provide that in case the question of the identification of an electoral vote is so doubtful and so difficult that the two Houses acting in their independent and constitutional character (named in the Constitution as the two Houses and not the members of the two Houses who are to participate in this great act of summing up the result) disagree, the representatives of the States shall be lost and dissolved in the representatives of the people, and that a per capita voice shall determine the result. I can not see that there is safety in that; I can not see that there is constitutional right in that; for whether the State be great or small, whether it be Ohio or Delaware, the necessity to the people of either and each and both of those States is just as great that their Statehood, their independence, in this act, as in every other under the Constitution, must be preserved intact and exclusive for itself, whether it be a great State or a small State.

But I did not expect this afternoon to go into a general discussion of this subject, and therefore I will leave the matter with what I have now said for the time being.

Mr. SHERMAN. Mr. President, I have but a very few words to say in reply to the Senator from Vermont, for whose opinion I have great respect. The first point and the only point that he makes in this case is that the Senate surrenders something of power. I deny it. The bill as it stands now gives to a majority of the House of Representatives the right to exclude the vote of any State where two returns have been made or even formulated on a paper purporting to be a return. The bill as it now stands gives the House of Representatives absolute power, per capita, without the vote of the Senate at all, overriding the vote of the Senate, to exclude the vote of any State where there are two returns.

If, therefore, there is any surrender of the power of the States it is in the bill as it stands, because it is not any answer to say that we have the same power to defeat the will of the people. We assume that the Senate of the United States would never do that, and it does not give us any advantage to say that we can do as much mischief as the House can do. If the House is bent on evil, to follow partisan designs and party ends, it has it now under the bill. Whatever may be our opinion in the case I put, where by a majority vote of one in the House of Representatives a State may be excluded and our united vote could not overtop that single vote of a single member, the House has the power to exclude the vote in any case.

The only other objection which occurs to me is that the Senator says this is an abandonment of State rights. Not at all. The States are equal, New York and Delaware, Pennsylvania and Florida, and that we all stand by as the basis of the organization of the Senate.

But does my proposition make any inequality of the States? Does not Florida have as many votes in that joint assembly as the State of New York? Does not Delaware vote equally with Pennsylvania? Where is the inequality of the States? It may be that the presence of the Senate disagreeing with the House, with its vote representing the States, might change the result which otherwise would be within the power of the House by party majority, by party votes, to overturn and override the will of the people and exclude States from their votes. They represent people; we represent States.

Therefore the proposition made by me gives the advantage to the smaller State, if there is any advantage, because when we go there in joint assembly the small States may have 3 votes for a population of 200,000, while the great States would have only 1 vote for 160,000, or whatever it may be. So the advantage is always with the smaller States, and my proposition does not disturb that advantage but gives them the benefit of it.

Nor do I see anything in the point made by the Senator that our Government is a complex government. So it is; but one of the essential properties of this Government has been to separate the powers of the great divisions of the Government—executive, legislative, and judicial. It was the intention of the framers of this Government to make the election of a President far removed from the Congress of the United States, and the only part Congress plays in it on the face of the Constitution is that the votes must be counted in the presence of the two Houses. The bill as it stands now not only gives Congress power by the two Houses to override the will of the people expressed through their electors, but it gives to either House upon a prepared case that can be made in any State the power to defeat the will of the people.

Now, sir, I do not want to see that power rest anywhere, and if it must rest somewhere I want it to rest with the largest body of representative men—who represent the honor, the property, the States, and the people of this great country. I should rather take the decision of a majority of four hundred men than the separate decisions of two bodies, one composed of seventy-five and the other of three hundred and twenty-five. In the one case there is a certainty of a decision, and that is more than anything else, because even a bad decision is better than no decision. No decision in the case of the election of a President may involve us in a civil war, which God forbid—we have had enough civil war for our generation or for all generations—while if there is a settlement of this question by the vote of a majority we know how cordially the people acquiesce in whatever is done according to law.

Senators, I have given to this subject my earnest consideration, certainly with no desire of a party advantage, and I have come to the conclusion that the safety of our country within a brief period of time may turn upon the mode in which we decide this question. I am willing to leave the decision of the controverted questions which come up in those stormy scenes, seven of which I have witnessed to the final resort, to be settled by the majority of the votes of the representatives of the people and the representatives of the States united in one general assembly.

Mr. EDMUNDS. The difficulty that the Senator from Ohio suggests, of not deciding in one case and deciding in the other, is an imaginary one. Under the bill as it now stands, or any other possible bill that regulates by law this process, the result is a decision conformable to the form of the law. It does not leave anything undecided. It only provides by law that whatever the two judges can not agree upon shall be followed by a result, that that paper shall not be treated as the authentic act of the State. Now, suppose you put it the other way, that would decide it equally well, that wherever they could not agree the paper should be treated as the authentic act of the State; and having reached that, as I said before, we have got to the end of the question, for the authentic act of the State having been ascertained, then the Constitution, superior to everybody and everything, declares what shall be the consequences of it, and that the man who gets the majority of all the votes of the electors of the States shall be the President. It does

not leave anybody to decide anything, and that is just where the case stands. Therefore, when the Senator proposes that in the case of a disagreement between the two Houses of a complex government respecting distinct and separate rights and liberties, that shall be followed by leaving it to one of those two Houses (for that is what it is) to decide what shall become of the rights and liberties and securities in elections of the people, you have given away your case.

The Senator says: Why the House of Representatives may be influenced by a political bias and by 1 majority may declare that a vote shall not be counted or shall, because they may decide either way. Where is the Senate? May not the Senate be influenced by a similar bias and in a similar way? We are all alike. So we do not gain anything in the illumination of this result by saying that one body or the other body may be influenced by a bias, or by corruption, or by whatever.

Power must be reposed in every government somewhere. The fathers who built this Government reposed it, as it regards this matter and all others affecting the whole people of the United States, in three separate bodies, four in fact, the legislative in its two branches each acting independently of the other, the executive, and the judiciary. That was the system, and I repeat a thing to which my friend did not refer at all, that every step in this constitutional process of the election of a President is a step of States and nothing else. So when you declare that the States shall disappear in case of disagreement between their representatives and the representatives of the whole body of the people, and that seventy-six Senators shall be consolidated with three hundred and twenty-five Representatives, you might just as well in a case of party bias leave the Senate out altogether. Take it as it is now, 6 or 8 Republican majority, whatever it is—not being much of a politician I have not counted it up, but somewhere there—and the House of Representatives, as I believe, 40 or 50 Democratic majority. Now, suppose the case of this bias which is to operate at the other end of the Capitol in one way on a disputed vote and to operate at this end of the Capitol the other way. We are then consolidated. The voice of the Senate is lost except as to the 6 votes, or the 8 votes, or whatever it is. Suppose fifteen years ago, when the House of Representatives had a large Republican majority and there was the same party bias, then the result would be exactly reversed if bias is to have its influence. That is the case which my friend presents, and nothing else, that we are to get rid of the difficulties of either House acting by itself under a bias, and to accomplish that result, to obviate that bias, by putting the two biases together and letting the biggest bias manage the performance. That is the way it is.

We can not legislate in that way, sir. We must legislate upon the theory that in these two great departments of the legislative power of the Government, and of all its power so far as regards carrying on a government, year in and year out and in the long time to come the States and the people will have such representation as on the whole will be a representation of justice and of the truth; and when you undertake to legislate in view of the idea that one party or the other is to be carried away by a bias you are legislating for a contingency of affairs that no human contrivance can provide for. You have only put together the opposing influences of bias or of corruption, or whatever it may be, and say that the largest amount of corrupt influence, if it were that, that can be got together in one solid body shall have its victory.

That, Mr. President, is not the theory of this Government. The theory of this Government, as the Constitution declares in this respect, is that the States shall choose their electors, that the votes of those States, as certified by the governors, as it respects the character and office of the persons who cast them, shall be counted, and that they shall be counted not in the presence of the members of the two Houses, not to be acted upon by the members of the two Houses, as such, as one body, but in the presence of the Senate of the United States and in the presence of the House of Representatives of the United States; and when there is a failure of the character described in the Constitution, then the members of the House of Representatives, each State acting through its own delegation as one single unit of power, shall choose the President. Now, into the face of that is thrown the proposition that the States and the representatives of the people shall be poured into one mass and melted together, and that every disagreement—and there would always be one in such a case where there was a possibility of raising it—shall be left to that solid body to decide. I can not see either the constitutional propriety or the wisdom of such a proposition.

Mr. EVARTS. Mr. President, if we are to test the question now in debate by its influence in the determination of the election of a President, and if that determination is to be decided by one or two of the Houses of Congress, or by the two Houses of Congress together, it is worth while for us to see in what possible predicament this issue may be placed under the Constitution. If it be true that the only debate raised in behalf of the power of the Senate is against its being swallowed up in the numerical count of the two Houses—in other words, that its preference and its duty may be sacrificed by this numerical count—let us see how the disposition of the case is to present itself, and what the consequence is to be to the Senate's power, if there is a difference between the two Houses.

It is not worth our while to debate what may be the juncture when the rejection or the acceptance of the vote of any State will not affect the election. It is only in the critical condition when the rejection of the vote of a State or its acceptance will vary the result; and how can that arise? It never can arise from suppressing the vote of a State except in its depriving a candidate of a majority of the electors; otherwise it is ineffectual. You therefore must deduct from the triumphant candidate, if the State's vote is counted, enough to deprive him of the right of election, but you can not confer upon the competing candidate the superiority of votes to elect him. A candidate, to succeed, must have a majority of the electoral college. You can not increase the vote of the candidate who is to profit to a certain extent apparently by depriving his competitor of votes.

What, then, happens if you adopt the system that difference between the two Houses by negation of opinion shall suppress the vote of a State? Simply that that candidate whose vote is suppressed has not a majority; his competitor has no majority, and the Senate in numerical count is absolutely swallowed up by the House whenever it chooses to make a difference of opinion, for then by the House making a difference of opinion it prevents there being a majority for any candidate, and then the House is in possession of the election. There the method proposed by the Senator from Ohio at least gives an opportunity to have the Senate in its count with the House carry the day in a nice contest, when absolutely the Senate is suppressed entirely by the mere assertion of difference of opinion by the House. Thus by the difference raised as to the suppression of a vote, when the suppression of the vote takes the election away from a candidate who would have with it a majority, the House is at once the master of the election, and what can happen when the two Houses meet together and try conclusions in a numerical count except that the House carries it? That is, to reject the vote, and then be in possession of the election, which it was in possession of before there was any comparison.

I will agree that when the election of President would not depend upon whether a State's vote was to be rejected or accepted, it is a matter of interest and of importance that no such injustice or no such rashness of judgment should suppress a vote; but I submit that the only debate here, and that is the way it has only been urged, is that the vote of the Senate and its protective power in the election is lost by the count in the general ballot of the two Houses connected. I can not but perceive that the methods proposed by the Senator from Ohio give one opportunity to the Senate to overcome the majority in the House by the count of the united votes of the two bodies.

Mr. SHERMAN. I ask that the amendments which I sent to the desk may be printed in the RECORD. It is hardly worth while to read them.

The PRESIDING OFFICER. The order to print will be made if there is no objection.

The amendments intended to be proposed by Mr. SHERMAN are as follows:

In section 4, lines 37 to 39, strike out the words:

And no electoral vote or votes from any State from which but one return has been received shall be rejected except by the affirmative votes of both Houses.

In same section, lines 51 and 52, strike out the words "acting separately" and the word "concurrently" and insert "as hereinbefore provided" before the word "shall."

In same section, lines 57 to 60, strike out the words:

Then those votes, and those only, shall be counted which the two Houses, acting separately, shall concurrently decide to be the lawful votes of the legally appointed electors of such State.

And insert the following in lieu thereof:

Then upon the reading of such returns or papers purporting to be a return from such State, the same proceedings shall be had as are prescribed in the preceding section.

In same section, line 62, after the words "decision of the," insert "two Houses on the."

In lieu of section 5 insert:

SEC. 5. If it shall appear from the action of the two Houses that they disagree upon any question submitted to them under the provisions of the preceding section, then the members of the two Houses, in joint convention, shall immediately, without debate, upon the roll-call of the respective Houses, vote upon the question or questions upon which there has been such a disagreement, and the decision of the majority of the members of the joint convention present shall be deemed final and conclusive, and the vote shall be counted accordingly and be announced by the President of the Senate.

That while the two Houses shall be in meeting as provided in this act the President of the Senate shall have power to preserve order; and no debate shall be allowed and no question shall be put by the presiding officer except to either House on a motion to withdraw, or upon questions upon which the two Houses have disagreed as aforesaid.

Mr. MORGAN obtained the floor.

Mr. EDMUNDS. With the consent of my friend from Alabama——

The PRESIDING OFFICER. Does the Senator from Alabama yield to the Senator from Vermont?

Mr. MORGAN. I yield to the Senator from Massachusetts [Mr. HOAR], who desires to explain a point in the bill.

Mr. EDMUNDS. I beg pardon.

Mr. HOAR. I do not desire to enter into the debate at this time, for I am not sure that the condition of my voice will allow me to be heard, but it seems to me that the remarks of the Senator from New York [Mr. EVARTS] are based, I will not say upon a misapprehension in regard to so eminent a constitutional authority as he, but upon a

difference of opinion with the committee as to the effect of the bill. I understand his proposition is that if the vote of a State be rejected by the operation of the mechanism provided in the bill it will result as a subtraction of so many votes from the otherwise triumphant candidate in the case where it makes a difference in the election, but it will not result in an addition of those votes to the other candidate or in a diminution of the number of votes necessary for a choice, which must be a majority of the whole number of electors. As the committee understood that proposition, so far as I know, and I think I have a right to speak for them in that particular, they supposed that when there are two returns from a State and under the operation of the bill no return from a State is counted, that is not merely a subtraction of the votes from one side or the other of the two candidates, but it is a diminution of the whole number of electors found by that legal and constitutional process to be appointed. For instance, if three electors are certified to have been appointed from the State of Rhode Island by one return, and three different electors are certified to have been appointed by the State of Rhode Island by another return, if the two Houses differ and, thereupon, Rhode Island is not counted, it is no more counted in making up the number of electors appointed than it is counted for one or the other of the particular candidates. So, then, the proposition, as I understand it, of the Senator from New York proceeds from a difference of opinion on his part with the committee as to the effect of its bill.

Then he says that in that case, if it resulted in no choice after the count had been made in this way, the House would get possession of the question equally under the bill reported by the committee and under the method proposed by the honorable Senator from Ohio, and would proceed to elect; but the House as an electing body is quite a different thing from the House acting per capita under the proposition of the Senator from Ohio, because in one case it is to be an election by the House by States. For instance, there are to be but 38 votes cast for the Presidency in the existing condition of the Union, and under the process of the Senator from Ohio it is a body of four hundred persons and over, who are practically and in effect, though not in form, to elect the President of the United States.

Indeed, Mr. President, though I do not wish to discuss this question now, with all due respect to the honorable Senator from Ohio who has just addressed the Senate, it seems to me that his proposition to solve this grave constitutional difficulty is precisely Mr. Pickwick's advice to his followers how to behave when they came into a town where there was a mob. "Always shout with the mob," said Mr. Pickwick. "But," said Mr. Tupman, "Suppose there are two mobs?" "Then shout with the largest." [Laughter.]

Mr. EDMUNDS. Now, Mr. President, with the consent of my friend from Alabama who wishes to address the Senate——

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

Mr. EDMUNDS. 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 twelve minutes spent in executive session the doors were reopened, and (at 4 o'clock and 5 minutes p. m.) the Senate adjourned.

CONFIRMATIONS.

Executive nominations confirmed by the Senate January 21, 1886.

POSTMASTERS.

Norval Blackburn, to be postmaster at Decatur, in the county of Adams and State of Indiana.

W. H. Norton, to be postmaster at Elkhart, in the county of Elkhart and State of Indiana.

William P. Baird, to be postmaster at Mount Carroll, in the county of Carroll and State of Illinois.

William H. Bennett, to be postmaster at Bluffton, in the county of Wells and State of Indiana.

William H. Elgar, to be postmaster at Plattersville, in the county of Grant and State of Wisconsin.

Thomas H. Bayless, to be postmaster at Hope, in the county of Hempstead and State of Arkansas.

Thomas Richards, to be postmaster at Stanford, in the county of Lincoln and State of Kentucky.

ENVOY EXTRAORDINARY AND MINISTER PLENIPOTENTIARY.

Charles D. Jacob, of Louisville, Ky., to be envoy extraordinary and minister plenipotentiary of the United States to the United States of Colombia.

MINISTER RESIDENT.

Lambert Tree, of Illinois, to be minister resident of the United States to Belgium.

MINISTER RESIDENT AND CONSUL-GENERAL.

Boyd Winchester, of Kentucky, to be minister resident and consul-general of the United States to Switzerland.

SECRETARY OF LEGATION.

Edward H. Strobel, of New York, to be secretary of the legation of the United States at Madrid.

HOUSE OF REPRESENTATIVES.

THURSDAY, *January* 21, 1886.

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

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

CLAIM OF S. F. RICE.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, transmitting, with accompanying papers, a letter from the Attorney-General relating to the claim of S. F. Rice for services in prosecuting certain deputy marshals; which was referred to the Committee on Claims.

PACIFIC RAILROAD SINKING FUND.

The SPEAKER also laid before the House a letter from the Secretary of the Treasury, submitting an account of the investments of the sinking fund for the Union Pacific and Central Pacific Railroad Companies, and recommending a modification of the provisions of the act of March 7, 1878, indicating the securities in which the fund shall be invested; which was referred to the Committee on Pacific Railroads, and ordered to be printed.

BUILDING NO. 17, NORFOLK NAVY-YARD.

The SPEAKER also laid before the House a letter from the Secretary of the Treasury, transmitting an estimate from the Secretary of the Navy of an appropriation for altering and refitting building No. 17 at the Norfolk navy-yard; which was referred to the Committee on Naval Affairs.

DRAWBACK ON EXPORTED STILLS.

The SPEAKER also laid before the House a letter from the Secretary of the Treasury, inclosing letters from the First Comptroller and the Commissioner of Internal Revenue asking that section 10 of the act of March 1, 1879, be amended so as to provide for the payment of drawback of internal-revenue tax on exported stills as such claims accrue; which was referred to the Committee on Ways and Means, and ordered to be printed.

CHANNELS LEADING TO PENSACOLA, FLA.

The SPEAKER also laid before the House a letter from the Secretary of the Treasury, transmitting a communication from the Light-House Board asking an appropriation of $17,250 for aids to navigation in the channels leading to Pensacola, Fla.; which was referred to the Committee on Commerce, and ordered to be printed.

PROTESTS AND SUITS AGAINST CUSTOMS EXACTIONS.

The SPEAKER also laid before the House a letter from the Secretary of the Treasury, transmitting communications from customs and law officers recommending a revision of the laws regulating protests, appeals, and suits by importers against the exactions of money as duties by collectors of customs; which was referred to the Committee on Ways and Means, and ordered to be printed.

SENATE BILLS REFERRED.

The SPEAKER also laid before the House Senate bills of the following titles; which were twice read and referred as indicated:

A bill (S. 209) for the relief of the legal representatives of John M. Robeson, deceased—to the Committee on Claims.

A bill (S. 241) for the relief of Joseph W. Parish—to the Committee on War Claims.

A bill (S. 311) for the relief of James Trabue, Thomas Thatcher, Michael Callahan, and the widow of John Waters—to the Committee on Claims.

A bill (S. 498) for the relief of George T. Dudley—to the Committee on Military Affairs.

ORDER OF BUSINESS.

The Speaker proceeded to call the committees for reports to be placed upon the appropriate Calendars.

J. W. EWING.

Mr. MORGAN, from the Committee on Patents, reported back adversely the bill (H. R. 830) to provide for extension of letters patent for improved medical compound to J. W. Ewing, assignee of M. R. Garsam, administrator of the estate of C. H. Mitchell, deceased; which was laid on the table, and the accompanying report ordered to be printed.

REPORT OF THE PUBLIC LAND COMMISSION.

Mr. BARKSDALE, from the Committee on Printing, reported back favorably the joint resolution (H. Res. 18) for the further distribution of the report of the Public Land Commission; which was referred to the Committee of the Whole House on the state of the Union, and the accompanying report ordered to be printed.

The call of standing and select committees and of the commissions and committees authorized by statute to report to the House was continued and concluded, no further reports being presented.

INCREASE OF PENSIONS OF WIDOWS AND DEPENDENT RELATIVES.

The SPEAKER. The morning hour for the call of committees for the consideration of measures already reported now begins at 12 o'clock

thousands of barrels of that hot water wasted every day, and below where there are any hospitals at all there are hot springs and hot water and it goes off in immense quantities. If the water was wanted merely for construction and he paid for it, he did that which he had no right to do. It was an imposition on the Government.

Mr. JONES, of Arkansas. My impression on that point is this: These hot springs come out, as the Senator very well knows, at a point higher than the location of the hospital. The water he speaks of that goes to waste runs at the foot of the mountain. It would be perhaps cheaper to buy the privilege from those who claim to own the springs and have the water go directly to the hospital than to have it pumped or drawn by horse-power or other means from the creek below. That might be a mere matter of expediency. The point I make is that the water is certainly not free while the agent of the Government can not control it.

The PRESIDENT *pro tempore*. It is the duty of the Chair to announce that the hour of 2 o'clock having arrived, the unfinished business is now before the Senate, being the bill (S. 9) to fix the day for the meeting of the electors of President and Vice-President, and to provide for and regulate the counting of the votes for President and Vice-President and the decision of questions arising thereon.

Mr. BERRY. I ask unanimous consent that the regular order be postponed or informally laid aside, or whatever the proper order is, until the resolution is disposed of.

The PRESIDENT *pro tempore*. The Senator from Arkansas asks unanimous consent of the Senate that the unfinished business be laid aside informally with a view to conclude the consideration of the resolution which has been before the Senate. Is there objection?

Mr. HOAR. I object to that.

The PRESIDENT *pro tempore*. Objection being made, the request can not be entertained.

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. O. L. PRUDEN, one of his secretaries, announced that the President had, on the 19th instant, approved and signed the following acts:

An act (S. 128) to authorize the Secretary of the Treasury to issue a duplicate certificate of deposit to the People's National Bank of Lawrenceburg, Ind.;

An act (S. 471) to provide for the performance of the duties of the office of President in case of the removal, death, resignation, or inability both of the President and Vice-President; and

An act (S. 602) to legalize the election of the Territorial Legislative Assembly of Wyoming.

HOUSE BILLS REFERRED.

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

A bill (H. R. 3827) to remove the political disabilities of Thomas L. Rosser;

A bill (H. R. 3846) to remove the disabilities of Alexander P. Stewart, of La Fayette County, Mississippi; and

A bill (H. R. 4409) to remove the disabilities of Edward G. W. Butler, of Missouri.

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

A bill (H. R. 16) granting a pension to Mrs. Nancy L. Ribble;

A bill (H. R. 414) granting a pension to Daniel B. Clark;

A bill (H. R. 551) granting a pension to Rhoda Dane;

A bill (H. R. 602) granting a pension to Mrs. Anna D. W. Eichman;

A bill (H. R. 634) granting a pension to John Defenbaugh;

A bill (H. R. 646) granting a pension to Thomas M. Commuck;

A bill (H. R. 650) granting an increase of pension to Charlotte D. Crocker;

A bill (H. R. 693) to restore to the pension-roll the name of William B. Keith;

A bill (H. R. 698) granting a pension to Phillip D. Campbell;

A bill (H. R. 700) granting a pension to Mrs. M. A. Bickerdyke;

A bill (H. R. 702) granting a pension to Dr. J. F. Bruner;

A bill (H. R. 758) granting a pension to Alexander Harper;

A bill (H. R. 802) granting a pension to August Schindler;

A bill (H. R. 1468) increasing the pension of John P. Davis;

A bill (H. R. 1475) granting a pension to Margaret Flaherty; and

A bill (H. R. 4410) for the relief of John C. Clark.

The joint resolution (H. Res. 57) to print an addition to a report on wages, ordered printed January 17, 1884, was read twice by its title, and referred to the Committee on Printing.

CHIPPEWA INDIANS IN MINNESOTA.

The PRESIDENT *pro tempore* laid before the Senate the following message from the President of the United States; which was read, and, with the accompanying papers, referred to the Committee on Indian Affairs, and ordered to be printed:

To the Senate and House of Representatives:

I transmit herewith a communication of the 16th instant from the Secretary of the Interior, submitting, with accompanying papers, a draught of proposed legislation providing for negotiations with the various tribes and bands of Chippewa Indians in the State of Minnesota, with a view to the improvement of their present condition.

It is requested that the matter may have early attention, consideration, and action by Congress.

GROVER CLEVELAND.

EXECUTIVE MANSION, *January* 25, 1886.

NATIONAL CONFERENCE OF ELECTRICIANS.

The PRESIDENT *pro tempore* laid before the Senate the following message from the President of the United States; which was read, and, with the accompanying papers, ordered to lie on the table, and be printed:

To the Senate and House of Representatives:

I transmit herewith a letter from the Secretary of State, which is accompanied by the report of the United States electrical commission of the proceedings of the national conference of electricians held at the city of Philadelphia in the month of September, 1884.

GROVER CLEVELAND.

EXECUTIVE MANSION,
Washington, January 25, 1886.

COUNTING OF ELECTORAL VOTES.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 9) to fix the day for the meeting of the electors of President and Vice-President, and to provide for and regulate the counting of the votes for President and Vice-President and the decision of questions arising thereon.

The PRESIDENT *pro tempore*. The Senator from Alabama [Mr. MORGAN] is entitled to the floor.

Mr. DAWES. I ask the Senator from Alabama to consent to my getting the bill informally laid aside that we may finish the Sioux bill. I do not think there is going to be very lengthy debate upon the Sioux bill. It has been before the Senate now for a week in the morning hour, and I have not felt like asking the laying aside of the regular order heretofore.

Mr. MORGAN. I have no charge of the bill upon which I am about to submit a few remarks. The charge of the bill, I believe, is in the hands of the Senator from Vermont [Mr. EDMUNDS] and the Senator from Massachusetts [Mr. HOAR], and I do not care to interfere with the progress of the bill one way or the other.

Mr. HOAR. I hope we shall finish the electoral-count bill. It has been before the Senate four or five days, and been very thoroughly debated in former years and passed with great unanimity. It seems to me we ought to dispose of it.

The PRESIDENT *pro tempore*. Objection being made, the Senator from Alabama [Mr. MORGAN] has the floor.

Mr. MORGAN. Mr. President, the question upon which I desire to submit some remarks is fully presented in the amendment of the Senator from Ohio who occupies the chair [Mr. SHERMAN], proposed to become section 5 of the bill; and, as my remarks will bear almost entirely upon that feature, I send it to the desk that the Secretary may read that proposed amendment.

The Secretary read the proposed amendment of Mr. SHERMAN, as follows:

SEC. 5. If it shall appear from the action of the two Houses that they disagree upon any question submitted to them under the provisions of the preceding section, then the members of the two Houses, in joint convention, shall immediately, without debate, upon the roll-call of the respective Houses, vote upon the question or questions upon which there has been such a disagreement, and the decision of the majority of the members of the joint convention present shall be deemed final and conclusive, and the vote shall be counted accordingly and be announced by the President of the Senate.

That while the two Houses shall be in meeting as provided in this act the President of the Senate shall have power to preserve order; and no debate shall be allowed and no question shall be put by the presiding officer except to either House on a motion to withdraw, or upon questions upon which the two Houses have disagreed as aforesaid.

Mr. MORGAN. Mr. President, the bill reported by the committee has been frequently before the Senate, and has been heretofore discussed by many members of this body, and has been three times in substance voted upon by the Senate. In each instance the principles of this bill have been adopted by the Senate, on the last occasion without a division, and on each of the preceding occasions by a very decided majority. The first time the question arose in the Senate since I have been here it came up in the form of a concurrent resolution, which I had the honor to report from a select committee of this body when the Senate was Democratic.

The identical proposition which is antagonized by the Senator from Ohio and the Senator from New York was presented in that concurrent resolution, I think in the very language in which it is presented in this bill. The Democratic Senate, largely aided by Republican votes in this body, passed that resolution, as I remember. It went to a Republican House and they refused to concur in it. Indeed they filibustered in the House to prevent action upon it. Afterward, when the Senate became Republican, the honorable Senator from Vermont [Mr. EDMUNDS] brought forward this same proposition, and the bill was passed. It then went to a Democratic House and failed of consideration. I believe that it never came back from the committee to which it was referred, or, if it did come back, it was not considered by the House.

So in the debate on this question we may all assume that there is no political controversy involved, and that we are trying to find the bound-

ary and measure of our powers under the Constitution of the Constitution in respect to this very important matter.

From the foundation of the Government, or rather from the adoption of the twelfth amendment to the Constitution, this has always been an interesting question, and questions have arisen in the count of electoral votes for President frequently which both Houses have found it necessary to evade a decision upon by passing the resolutions referred to in the remarks of the Senator from Ohio.

I have heard it very frequently stated in debate, and more frequently in private conversation with Senators and others, that the Constitution of the United States needs further amendment upon this subject. I do not concede that there is any occasion for any further amendment of the Constitution. On the contrary, I believe that the highest wisdom has been displayed not merely by the original convention which adopted the Constitution, but also bythe Legislatures of the States and by the Congress which adopted the twelfth amendment to the Constitution. That original article was formed, and the twelfth amendment was adopted as a substitute for it, at a time when men who understood the whole scope and purpose of the Constitution of the United States were present in the respective bodies.

It is scarcely prudent in us to say that we now find at a later day that they have so contrived to confuse this great subject of the election of a President of the United States as to leave difficulties in it which must be removed and can only be removed by a constitutional ordinance or amendment. We are too apt in considering a question arising upon the twelfth amendment of the Constitution to look alone at the particular clause under discussion, and not to take in view the whole purpose of that amendment. We are too apt also to forget the fact that the States of the American Union, and not the people of the States, appoint the electors to choose a President and a Vice-President. We are too apt to forget that the office of elector in its original institution was intended to be a great and an independent office, in which the electors would be called upon and authorized to express their own personal conviction, if they chose to do so, as to the persons who ought to be selected for President and Vice-President of the United States.

The influence of popular opinion in the United States is so potent, so irresistible, and has interwoven itself so thoroughly with this question of the election of electors of President and Vice-President that they have got to be in popular estimation mere dummies, mere agents for the purpose of expressing the will of a partisan majority in this entire country. I do not know that I shall ever make an effort to reverse that tide of public opinion which has entirely subordinated and almost extinguished the high office of elector in the United States; at the same time, when we come to consider the constitutional questions with which we have the liberty of dealing, I must revert to the original character and power and authority and independence of this great office of elector of President and Vice-President of the United States, and still claim for them the full measure of their rights and independence as they are established in the Constitution.

In doing this I hope that in some future day of trouble I will be found to have done my duty to the country.

I find on looking into the meaning of the Constitution, as displayed in the twelfth amendment and in other parts bearing closely upon this subject, that there are three distinct electoral bodies, if not four, mentioned in the Constitution, each one in succession taking its turn in choosing a President and Vice-President according to the circumstances upon which its jurisdiction and authority arise, to act for whom? Not the people of the United States considered as people, but separately for the States of the American Union. The first electoral body is composed of the electors chosen by the States in such manner as the States by their legislatures shall prescribe. They compose the voting duties of the electoral college, as I call it, of the first degree.

Another tribunal, however, was made necessary to ascertain what votes these electors cast, the persons for whom they were cast, and to ascertain the result and perhaps to decide it. The two tribunals, one to vote and the other to count, were necessary from the fact that, in order to secure the absolute independence of the electors in the respective States the Constitution requires that the electoral vote shall be cast in those States. In order that the power of New York, for instance, with its great and dominant supremacy in commerce as well as in other respects, might not overawe the power of a State like Colorado, the requirement of the Constitution is that the electoral votes shall be cast in the respective States. That preserves the independence of the electors and enables the State government and the people of the State to supervise and secure the independence and the integrity of the action of their own chosen electors. That, of course, rendered it necessary that when these voters had voted another tribunal should be established in the Constitution of the United States for the purpose of counting the votes and ascertaining the result, and the two together compose the electoral body of the first degree, as I have said.

All the controversy that arises under this bill and the amendment of the honorable Senator from Ohio relates to the construction of some of the words which give power and jurisdiction to the counting tribunal of this first electoral college; but great light is to be reflected upon the determination of these constitutional questions by reference to the organization of the entire body of electoral colleges which may assemble, one after another, under that system.

The electoral college of the second degree is the House of Representatives which may then be in commission, composed of the members who have been elected and qualified in that House.

The electoral body of the third degree is the Senate of the United States acting separately, but only upon condition that the House has failed to elect a President; the first electoral body having also failed to elect a President; and then the Senate of the United States, acting as a separate electoral body and casting its vote not by States but *per capita*, chooses a Vice-President of the United States; and if on the 4th of March succeeding the general election there is no President of the United States chosen according to the Constitution, that Vice-President becomes President of the United States, as the law is now, for the full term from the 4th of March after his election, for four years. Therefore the Senate of the United States becomes in such an event an electoral body, having conferred upon it by the Constitution the powers of electors, which it exercises by a vote *per capita* in this Chamber.

The fourth electoral body, which perhaps is not less distinctively made such in the Constitution, is the Congress of the United States, which has what I term electoral power, for that is the nature of it as I conceive, to fill up a vacancy when one has occurred both in the office of President and Vice-President. That must be done by a law, and only recently both Houses have passed a law, and the President I understand has signed it, so that it is now the law of the land, by which the succession of the Presidency at the hands of this fourth electoral body has been changed entirely from the officers that were formerly qualified to hold it into the hands of the Cabinet ministers of the United States in a certain succession mentioned therein.

Then we have four distinct electoral bodies. Let me ask the Senate the question, When either of these electoral bodies finds itself possessed of a particular power defined and settled in the Constitution itself, can any other body in the United States interfere with them? Can the judiciary interfere with them? Can Congress by legislation interfere with them? Can anybody in the United States deprive that electoral body of its constitutional rights as defined therein? Why were these four electoral bodies ordained? Obviously because the first might fail and the second might fail, and if the second fails the third might proceed; and the third might fail and the fourth might proceed, and thereby secure not merely the perpetuity of the Government, but the transmission of the executive power from hand to hand without obstruction, without friction, and without danger.

Sir, with this grand scheme standing before us thus ordained and established and nicely adjusted in the Constitution of the United States we should be wary how we interfere so as to give the slightest disturbance to it. I for one confess that I see no occasion for a constitutional amendment, for I see in this wise and conservative action of the founders of our Government and of the Congress and the people who afterward amended the Constitution by the twelfth article perfect security for the transmission of the Presidency from hand to hand through all the coming generations of men that shall ever enjoy the blessings of this great Government.

After this definition of the general subject I propose to address my remarks to the precise question before the Senate, which is embodied in the amendment of the Senator from Ohio, which is that we should usurp into the hands of Congress a power that is not given to us in the Constitution, and a power the exercise of which under the proposed amendment of this bill would tear down and destroy the first of these electoral bodies.

The leading provisions of this act relate to and are intended to execute the single clause in the twelfth amendment of the Constitution in these words, "and the votes shall then be counted."

The duty thus enjoined is mandatory and is also peremptory, and rests with all its grave responsibilities on the oath-bound consciences of all persons concerned in counting the votes. No person who is not a Senator or Representative, except the President of the Senate (who may not be a Senator), can participate in counting the votes.

The Constitution requires that the House of Representatives and the Senate shall be present when the votes of the electors are opened and counted, but is silent as to the number of Senators or Representatives who shall be present. Upon the principle of the inclusion of the one there is necessarily to be implied the exclusion of the other. When we find that the Constitution says that the Senate and the House of Representatives shall be present at the opening and counting of these votes, it means that no other tribunal can be there, to say the least of it, and participate in that count.

The number of individual members of either House required to be present is mentioned in the twelfth amendment, where each House is resolved by the mandate and force of the Constitution into a separate electoral body, so that the Constitution, when it is silent as to the number required to compose a house to be present at the count of the votes under the twelfth amendment must refer for the number required to be present to section 5, Article I, which provides that a majority of each House shall constitute "a quorum to do business." This means in both Houses a majority of all the elected and qualified members. When the Senate and the House of Representatives meet to count the votes, or to hear them counted, they are and must be as complete and separate in their constitutional organization as they are when they are in session in their respective Chambers.

I think I need scarcely remind you that a voluntary assemblage of Senators and Representatives, though met on the day appointed by law or by resolution of the Houses for the counting of the votes, without being organized under the presidency of the President of the Senate or the Speaker of the House, could scarcely be called the House of Representatives and the Senate of the United States. Suppose, sir, that in the absence of the Speaker the members of the House should assemble there, or in the absence of our President the members of the Senate should assemble there, would that be considered a meeting of the House and Senate within the meaning of this requirement of the Constitution of the United States? According to the Constitution, each House when they are so in meeting remains under the presidency of its own officer. We frequently hear it stated that the President of the Senate is the president of the joint meeting. If he is, it is only by reason of some rule or agreement between the two Houses. The Constitution is silent upon that point. The Constitution speaks of no officer who is to preside over the joint meeting.

The Constitution does not any more disqualify the Speaker from presiding over the House when the Houses are met than it authorizes the President of the Senate to preside over the House, and there is no presiding officer named in the Constitution on that occasion for either body. It is a house, and that is enough. To be a house in parliamentary law and in constitutional law it must be organized under the presidency of its rightful officer. The Constitution merely confers on the President of the Senate the special duty of opening all the certificates, which it requires shall be transmitted to him, of the persons voted for for President and Vice-President.

The House is here, we will say, assembled on that side of this Chamber, its Speaker presiding. The Senate is here assembled on this side, its President presiding. That fulfills the Constitution to the letter and in spirit also, and the President of the Senate can not even call the Houses to order except by common consent. His duty as fixed in the Constitution is that in the presence of the two Houses he shall open the certificates, and the votes shall then be counted. This is the whole of it. That act certainly would not disorganize the Senate. That act has no tendency to disorganize the Senate. The President of the Senate may perform this act of opening the certificates, handing them to the tellers, or whoever else is required by law to receive them, without the slightest impression upon the organization of the Senate. On the contrary, the Senate must be present, as such, when this act is performed, in order to make it valid.

The opening of the certificates of election sent to him by the express mandate of the Constitution—for he is named in the Constitution as the person to whom they are to be sent—is a duty outside of his duty as President of the Senate under other circumstances, outside of any legislative or parliamentary control of the body, and it has not, I repeat, the slightest tendency to disorganize the body, nor can any inference be drawn from the duty imposed on him on that occasion that the Senate is not the Senate when met in the presence of the House.

So far there is no hint in the Constitution of the dissolution of either House into its original elements, nor of a common membership in both Houses of the persons who belong to each House. On the contrary, the Houses, as such, must be present when each and every vote is opened and counted, and it must be in session with a quorum to do business. No other business could then be in order when the Houses are in meeting but the opening and counting of the votes for President and Vice-President, because the Constitution requires the Houses to be present on that business. And it nowhere authorizes them to be present with each other on any other business. So that the sole business the Houses have to deal with is the opening and the counting of the votes, and that business must be performed by them as Houses, and not through the individual membership of each House, without organization, or in some blended arrangement.

I am asked by the honorable Senator from Mississippi what function they perform. I did not intend to spread my argument over that view of the case, because it was not necessary to the point that I am debating.

Mr. GEORGE. Then I withdraw the suggestion.

Mr. MORGAN. I have my views about the function they perform, but it is not necessary that I should express them now. I can say, however, that they can not perform any other than constitutional functions.

Now, how this business may be transacted by the two Houses is a matter to be regulated by agreement, or by law, and is what this bill seeks to regulate. But it must be so conducted that a majority of each House shall declare the will of that House on every question that arises upon the business before them. That is a proposition that is considered self-evident. Each House, when in session, must in every case, where it takes any action, declare its will by a majority vote of "a quorum to do business," unless the Constitution otherwise directs. This is constitutional law, and it is also parliamentary law.

No House can through its membership declare its will otherwise than under its organization and pursuant to its constitution; and the will of a majority in each House fixes irrevocably the act of the House, so far as the binding of its membership is concerned, by the authority and influence of that will so expressed. Neither House, when in session, can permit a member of the other House to participate in its actions or deliberations. We can not invite any member of the House of Representatives to take a seat in this body and participate with us in our deliberations either in speaking, in making motions, or in voting. We have no such constitutional power and the House has no such constitutional power. We can take no cognizance of a member of the House of Representatives as being authorized to participate with us as an individual in any of our deliberations or actions. So, on the other hand, can not the House do the same thing.

So that, if the respective members of the Houses may vote together and in common on any question of counting or rejecting an electors' vote, it must be at a time and on an occasion when the Houses are not in session; it must be when the Houses are in recess or are adjourned; and yet we find that a House that is in recess or adjourned is not a House that can participate in the opening or counting of the electoral votes.

Let us see how the opposite idea of the Senator from Ohio would work. Here is the vote, I will say, from the State of Illinois, that determines the result of a Presidential election. It is not counted by the Houses. They have made the effort to count it under the proposed amendment of the honorable Senator from Ohio as well as under this bill, and they have failed, because they have not agreed to count it. Being divided in opinion, they can not count it. Then, in order that it may be opened, if that is the question, or that it may be counted, if that is the question, and in effect the amendment of the Senator from Ohio requires that the Houses must dissolve, or recess, or adjourn, so that the will of the majority in each House, which has been just expressed, shall not bind its membership, and that each member may be permitted to find recruits to support his views, which were lost in the body to which he belongs, among the members of the other body. In this new, heterogeneous, and ungoverned assemblage of the *disjecta membræ* of the two Houses, no longer in session, the question is put, "Shall this package, purporting to be a certificate of votes of electors from Illinois, be opened, one certificate from that State having been already opened, but not counted?" The vote of the meeting is no.

The vote of the electors in that certificate is suppressed, and A is elected President instead of B by an act which is not done in the presence of the Houses, but in presence of a meeting of the members of both Houses. If the question is, "Shall the vote just opened be counted, notwithstanding there are other certified lists of votes of electors from Illinois that have been duly transmitted to the President of the Senate and have not been opened," and the vote of the meeting should be ay, that result would prohibit the opening or the counting of any other vote from Illinois, and would take from the President of the Senate the constitutional right to open the certificates, that came duly to his hands, in the presence of the Senate and House of Representatives, because neither body would be present in a capacity to do business. A general meeting of members of both Houses would in the case I have supposed have overruled the action of one of the Houses and totally set aside its will as declared by its majority vote on precisely the same question.

If this notion of a new constitutional power is not drawn solely from the generous warmth and fertility of the imagination of the Senator from Ohio, he ought in justice to mention the great constitutional authority whose name must have escaped everybody's recollection except that of the honorable Senator, so as to inform the Senate of its authorship. To my apprehension it is entirely new.

The Senator from New York contents himself to support and re-enforce this new discovery of constitutional power to open certificates and count the votes of electors when the Houses are not present, but are adjourned, or in recess, or are dissolved, by the great weight, everywhere admitted, of his opinion, which he gives us in round full orb, without taking the trouble to display the analysis or the synthesis of the subject—of its root, its growth in logical development, or its progress of ripening in the warm sun of the splendid autumn of his wisdom.

The honorable Senator, whose coming here is welcomed by the country as a great power added to the Senate, is filled with a sudden dread that the Senate, when differing with the House of Representatives in counting a vote that would settle an election, might, by so differing, cause the House wickedly to make an opportunity to defeat a choice by the electors appointed by the States and seize the power to elect a President as the electoral body of the second degree provided by the Constitution. If we must grant, for the sake of the argument, that the members of the House could so readily disburden their consciences of the grave obligations of their oaths as to thus capture the position from which the House could dictate the succession in the Presidential office, it may be asked on what rule of probabilities is it ascertained that the danger to the Senate would be less when seventy-six Senators are voting pell-mell with three hundred and twenty-five Representatives than when the one vote of the Senate is equal to the one vote of a House that has set out to capture the Presidency by rejecting the vote of a State like New York, so that no candidate should receive a majority of the votes of all the electors appointed by the States?

The amendment of the Senator from Ohio provides for this mixed vote only in case the Houses have first disagreed in counting the vote of a State.

The Senator admits that it is the right of the two Houses to separate themselves, and as Houses to pass upon the question whether the vote of a State shall be opened or whether it shall be counted; but after they have separated and passed upon it and the Senate has expressed its will, which is binding everywhere upon the members of the Senate, when they meet again, after having disagreed, he proposes that by law the individual members of the Senate and of the House shall become what? The electoral body to choose a President of the United States. For, as was observed by the honorable Senator from New York [Mr. EVARTS] the other day, this question never becomes a significant or material one unless the particular act to be performed is one that would change the result of a Presidential election. Then there being two votes from a State, two sets of certificates, each certificate I will say under the great seal of the State, and both have been opened, the question is submitted to each House separately, Which of these votes will you count, which will you declare to be a vote emanating from the constitutional authority of the particular State? The Houses take the subject, they decide it each for itself, and they disagree and make a record of their disagreement, which record binds every member of each House, there being a majority vote in favor of a given proposition. After this solemn action on the part of both Houses, that question which is to decide the fate of a Presidential election is brought back before the individual membership of the two Houses.

Now let me ask if that question, thus pregnant with importance to the people of this country, which decides the fate of a Presidential election, is submitted to the men who are members of the House and members of the Senate to be voted upon per capita and to be decided according to the voice of the majority of that assemblage, is not that an electoral body? They are not legislatures; they could not consider the question of removing the disabilities from a rebel even though they might wish to do it; they have no function or duty there except in connection with the constitutional mandate that the vote shall be opened and counted in their presence.

But the amendment of the honorable Senator from Ohio, when it brings them together after the two Houses have failed to agree, confers upon them the authority of a new electoral body, and their vote elects the President of the United States. Thus the Constitution having ordained that there shall be four successive electoral bodies, and having given them powers that are intended to cover every emergency that can arise, the Senator from Ohio seeks to create a fifth electoral body, and thus amend the Constitution by an act of Congress.

Can there be a more towering threat or a greater danger to the limitations of constitutional organization and power than that which the honorable Senator from Ohio, sustained by the honorable Senator from New York, bring forward when they declare the right of Congress to create an electoral body, which the people have never chosen, with reference to the election of a President of the United States, and that that electoral body shall decide the question for the States absolutely, and in doing so override and break down the deliberate opinion, as voted and recorded, of one of the co-ordinate branches of the great legislative department of this country. Sir, I can only characterize it as a daring movement against the Constitution. It brings the electoral powers of the States into judgment before a tribunal to which the Constitution has never made them subject.

If it had been proposed that this question should be submitted to a committee of one hundred men to be appointed by the President of the Senate, we would have no more authority to do that than we have to confer upon this pell-mell organization the powers of an electoral body under the Constitution of the United States.

In the case of the wicked scheme suggested by the fears of the Senator from New York, if the House wishes to seize the Presidency it would first vote to exclude from the count the vote of a State which would deprive a candidate of a majority of all the votes of the electors appointed. This could only occur where the majority in the House were all ambitiously wicked or were corrupt. But in almost every such case the corrupt majority in the House (I dislike to indulge in such conjectures) would be strong enough to overbalance the minority with the votes of the virtuous element of the Senate added to it.

It ought to be taken into calculation also that perhaps a Senator is not, in a political sense, always altogether a virtuous man, and that the motives and incentives of a high ambition, or even the stimulating efficacy of party zeal, might cause a Senator, as it has sometimes, we believe, caused Supreme Court judges, to abandon the atmosphere of purity and simple justice and act on other motives in his desire to adhere to the dictates of a party in deciding a question relating to this great subject of a Presidential count. It is not to be calculated that every Senator who went into this political meeting would always vote for the right against his party. We are just as apt to find a corrupt Senate as we are to find a corrupt House, either in the past or in the future.

The Senate as a body, with its traditions now too proud, and its character too well established to admit of a voluntary disgrace, is stronger for the right and is a more powerful enemy to fraud and unholy ambition than its members individually could be when disbanded to take part in the tumult of a meeting, where the vote of two districts would equal the entire vote of the State if cast in the Senate.

If the House should, under this bill, as it is conjectured it might, seize the power to become the electoral body of the second degree, has it not occurred to the Senator from New York that in such a case the 325 votes would shrink to 38, to be distributed by the accident of majorities in the districts of the States respectively?

The doctrine of chances, which alarms the Senator from New York, would dismay a mountebank if he could see no clearer way to fleece his victim in a hundred trials of depraved trickery than the House would have to seize the Presidency through a scheme that has so startled the Senator from New York with its sudden and unexpected materialization, and has caused the Senator from Ohio to warm up with a new fervor of devotion to the rights of the people, whom we all know he loves so tenderly. The Senators can have no real occasion for alarm.

The Senate, in whose body the equal influence of a State can never be disturbed, is a safer guardian of the right which belongs to a State, and only to a State, to appoint electors to choose a President, than any other body, however constituted, in which the two Senators from New York would mingle their votes and dissipate their power among thirty-four Representatives. Both the Senators who have opposed the bill seem to regard with horror the fratricidal blow which destroys the vote of a State that both Houses can not agree to count. I share in their unhappiness, but it is sometimes unavoidable. They seem to forget that this result can only occur when there are two alleged States in the same limits, and that one can not live unless the other dies.

The bill of the honorable Senator from Vermont submits this question to the two Houses separately and their disagreement destroys the vote of the State, as we say, only in case there are two sets of returns regularly on their face under the Constitution, which it appears to be the duty of those who participate in the count to consider, and if the Houses can not agree upon that, of course the vote is lost. They seem to forget that this result can only occur when there are two alleged States in the same limits, and one can not live, as I have remarked, unless the other dies.

It is the painful duty of somebody to declare the survival of the fittest when two sets of electors from the same State send up in due form, according to the Constitution, two sets of lists and votes of electors, each regular on its face. And the real question seems to be whether we will decide the matter by constituted tribunals, according to usage and with the deliberation and composure of judges, or whether we will disband our court, join a mob, and inflict the death-penalty on the one we like the least. But it is asked, Why do you destroy the votes of both sets of electors because the Houses can not agree as to which of them is lawful? I answer, because the fault of the State has made it unavoidable. I answer further, distinctly and without reserve, that I take the ground of rejecting the vote of a State in such a case because that is the true course as indicated in the Constitution, and not because merely it is the best we can do under the circumstances.

There are four distinct electoral bodies under the Constitution, as I have argued.

I will add, for the sake of a clearer definition and to free the discussion from embarrassment, that the people are not, and under our Constitution can not be, electors of our President and Vice-President. Their powers, in every instance, are indirect, and are represented through their States and by the agents of the States, except that the people elect the members of the House of Representatives, who in voting for President represent their States.

A rule of constitutional law which would govern one of the electoral bodies of the first, second, or third degree ought, by analogy, to govern in either of the other two where the circumstances are alike. When the House votes for President, if ten of the Representatives from Illinois vote for A and ten vote for B, the vote of the State is balanced and entirely lost; and that according to the provision of the Constitution. So we find the Constitution, *ex industria*, providing for a case, when the House comes to vote (and they vote by States in the House), where the balance of the vote, the tie between the ten on one side and the ten on the other, annuls the voice of the State in the electoral count.

Shall we say in such case that the vote is lost by a tie in the electoral power in Illinois by the inability of the State to act? That is true if the power of the State expressed according to law is the true electoral power. If we say, however, that the true electoral power is the will of the majority of the people of Illinois as expressed in the ballot-box, the tie vote in the House, which expresses the will of each of the twenty Congressional districts, reverses and destroys the will of the State. Ten of these representatives may represent 100,000 more of the people of Illinois than the other ten. This is the destruction of the electoral power of Illinois, in the case supposed, by the act of her own electors who sit in the House—the electoral body of the second degree. If they can constitutionally destroy it by a tie vote, why may not the Houses destroy it? This is a greater evil and, as our history shows, far more dangerous to the public tranquillity than any that have startled the Senators who oppose this bill, and that seem to have frightened them into the still more dangerous expedient of dismembering the Senate in a case where so ruthless an act might seem to be a necessary sacrifice to save the electoral vote of a State.

But this precise method of destroying the electoral vote of a State by a tie vote of its members in the House is provided for in the Constitu-

tion. This may be styled the death of the electoral vote of a State *per infortunium*. Another method of destroying the electoral vote of a State by the act of the electors in the college of the second degree that the Constitution permits is where a State delegation in the House withdraws or fails to be present, which I suppose might be termed *felo de se*, or death with suicidal intent. A third method of destroying the entire power of the House to elect a President is for thirteen out of the thirty-eight States to be absent from the body, for it requires two-thirds of the States to have a representation on the floor of the House to constitute a quorum to elect a President. It also requires the vote of a majority of all the States, including those not present, at the election to choose a President. Thirteen of the States of the American Union finding that a person is to be elected whose election instead of executing reverses the public will, thirteen States finding that fraud has been perpetrated in one or both of the Houses in counting an electoral vote or in refusing to count it in order that the election may be devolved upon the House of Representatives, can quietly withdraw from that House and break its power.

Are not these ample guarantees to the minority and to the Senate that the mere brute force of three hundred and twenty-five men in the House shall not be successfully used to annul the power of the Senate in counting the votes of the electoral college of the first degree, and that the House can not have its own sweet will in choosing a President.

Another guarantee is that the House can only elect a President from the list of persons, not exceeding three, who have received the highest vote in the college of electors of the first degree.

Then comes the final guarantee to the Senate, which stands by as the electoral body of the third degree to execute the will of the States.

If the House fails to elect a President by the 4th day of March next succeeding the time of choosing electors fixed by law, the President elected by the Senate, voting per capita, shall, on the 4th March next after the general election, become, as the law now is, the acting President of the United States for the next full term.

Now, the whole scope and purpose of this bill is to provide in advance against possible or probable events that may give rise to trouble and friction in transferring the executive power from the hands of one person to those of another. The objections of the Senators from Ohio and New York consist mainly, if not entirely, in this specific difficulty, that the House of Representatives, in order to usurp the electoral power into their own hands, may dishonestly refuse to agree with the Senate in counting the votes of the electors of a State. Without respect to the inherent improbability of such a danger, is it not clear that the House would not once in a hundred or a thousand such events find itself able to exercise the power it had thus seized, as against the power of thirteen out of the thirty-eight States, to destroy the constitutional quorum?

Thirteen States out of thirty-eight can always remand the election of the real President to the Senate. Will it ever be that thirteen States will not be found that will meet a revolutionary and traitorous scheme of the majority to seize the Presidency, against the will of the people, by resorting to the simple, rightful, and constitutional duty of turning their backs upon the fraud, and of refusing to be present so as to aid in its consummation?

I confess that I look over this subject with exceeding gratification, and with increased veneration for the builders of our constitutional system, when I find that the Senate has been made the very keep and citadel of the rights and powers of the States, to preserve for them inviolate, and against all enemies, their great function of electing the President of the United States.

I would not, if I could, either by legislation or by constitutional amendment, lay hands on any part of this great system of successive electoral bodies, with their present wise adjustment; behind two of which the Senate stands as the third in degree, and more conservative than any, with powers adequate to save the country against any evil consequences that may arise from the disagreements of either of the electoral bodies of the first and second degree.

The Senate and the Supreme Court are our only perpetual bodies, and they are or should be far removed from all temptation to seize upon powers that are revolutionary or dangerous, or to surrender any powers that they rightfully have. The States are constantly finding in these bodies their shield of protection against encroachment and abuse. The States would not long survive in the Union the loss of these sheltering tribunals. In this bill there is but one sentiment, and that is to secure to each State its full electoral power, to be expressed and exercised, as far as may be, under the Constitution, through its own laws and through the final and conclusive judgment of its own tribunals. It is a bill worthy of the Senate, and recalls, with force, our attention to and our approval of the fact that this body is the still powerful and still consistent friend of the rights guaranteed to the States.

The States elect the President and Vice-President of the United States, and this bill is well adapted to secure to every State the free and final power to declare its choice through its own methods and authorities. If they are unwilling to take part in any election they can not be forced to do so. If faction dominates the State so that its true voice is difficult to distinguish, its own tribunals can decide and should decide the controversy, and make its decision, whether right or wrong in the light of prevailing opinions elsewhere, still final and conclusive on everybody.

If political revolt within a State has instituted dual governments there, one *de facto* and the other *de jure*, so that two returns are sent to the President of the Senate, somebody must decide which is the true return from the true State.

That tribunal must be the Houses, as only the Senate and House of Representatives can be present with authority at the count of the vote.

This tribunal is essentially appellate in such a juncture, whether the appeal is to be tried on the record, or on the facts that may impeach the record, or on facts that may be added to the record. Both certificates are laid before this high and peculiar council of state, consisting of the two great organized Houses of Congress, and, each having an equal voice, they fail to agree.

Each appellant loses its case, and the voice of the State is silenced. All cases of appeal are lost where the appellate court is equally divided, and men, possibly innocent, have been hanged on the force of that inevitable law.

That the vote of a State should be thus killed would be a misfortune, and its pitying epitaph might be "*inter arma leges silent.*" But in the majority of cases the fault of the State to provide for the preservation of order within its limits would be the real cause of the loss of its electoral power for the time, and it would have no just power to complain of the judges if they could not discern the real lines of justice and right in the tumult of strife between rival parties of factionists or patriots, who may have usurped the powers of the State under the forms of its laws.

Cases of extreme hardship are always arising in all tribunals, but they only serve to modify the rigor of judgment to the degree that is permissible without making shipwreck of principle. Under this bill the cases will be rare in which a State is without fault if it permits two sets of votes of electors to be sent to the President of the Senate in the name of, and under the great seal of, the State. If the States will not dutifully exercise their own powers, so that their rights can not be abridged, they can not justly complain if the two Houses, met to count their votes, are unable to agree as to which of two sets of electors are the rightful representatives of the electoral powers of such States. If the vote is lost in such cases, the fault is wholly with the State.

Twice I have recorded my vote in the Senate in favor of the principles of this measure and once in favor of a concurrent resolution which was based on the same views I have just expressed. On each occasion I have voted with the majority in the Senate, once when the Senate was Democratic and twice when it was Republican, the last time without a division. So this has never been a party question in the Senate since I have been here. I prefer a concurrent resolution, because it is equally as efficacious as a bill, and it is free from the disagreeable fact that the President is to participate in legislation that may directly interfere with a subject of the highest personal interest to him.

No power of legislation can so bind the will or regulate the conduct of "The high council of state and discretion," as my former honored colleague from Alabama (Mr. Pryor) aptly named this electoral body of the first degree, as to make it possible that any other department of the Government can annul or set aside its decree. It may trample under foot every law we enact, and every rule we agree to, and promulgate its decree as the final and conclusive settlement of the question as to who is elected President, and yet its decree will stand. A law will be as a cobweb and a joint rule as a rope of sand as against the power of this tribunal.

No power in this Government can or ever will set aside and annul the declaration of who is elected President of the United States when that declaration is made in the presence of the two Houses of Congress; so that whatever law we may pass, whatever rule we may agree upon, we do no more than to impose upon the consciences of members a sentiment of obedience to law. We can not annex to the law or to the rule any penalty or any sanction by which either can be enforced after the two Houses, met together to count the Presidential vote, have willfully violated and destroyed it and trampled it under foot, and yet have counted the votes and declared the result.

The honorable Senator from Vermont remarked recently in debate that there is a point beyond which you can not bind the human conscience. There is a power in this country existing in most of the tribunals which no one has a right to question or disregard. A decision of the Supreme Court of the United States might be made as a result of bribery, yet there is no power in the country that can set it aside; that is the supreme tribunal. The votes of the Senators in this body might be cast in favor of or against a measure under the direct influence of bribery, but there stands the vote and there is no power that can set it aside because bribery might have influenced Senators in casting it. The vote stands and no power remains to set it aside by searching into the motives of the men who cast it. So this joint tribunal may vote down the voice of the State's electors, or it may sustain one set of certified votes in preference to another, and after the act has been done the power to revoke it, even the power to question it, has passed beyond human control; the only answer is, in such a case, *ita lex scripta est.*

Why then should we call to our aid the mere moral power of a President's approval of a law which nobody can enforce, when, in doing so, we compromise him, in some sort at least, by asking him to pass judgment on a rule which might make or unmake him as the next President?

I prefer to keep free from Presidential interference, whether it is in-

vited or volunteered, in a matter where the Constitution assigns to him no duty and a proper caution warns him not to intrude. It is a matter where, under the Constitution, no duty is assigned to him, and from which he can abstain, as Mr. Lincoln abstained from acting in a case of the kind, without the slightest danger to the liberties of the country. I agree with Mr. Lincoln in his message to Congress, dated February 8, 1865, on the question of his participation with the Houses in the declaration respecting the electoral votes of Tennessee and Louisiana, which I will read.

As I remember the incident, the two Houses passed a joint resolution and sent it to Mr. Lincoln for his signature before his second election was declared. That resolution expressed the will of Congress that the votes of Tennessee and Louisiana were not entitled to be counted in the electoral vote, and while that had no effect upon the election, it had such a connection with it as that it aroused the sensitiveness of Mr. Lincoln's nature. He did not return the resolution to the House in which it originated until after the votes had actually been counted. The House then adopted the twenty-second rule as a substitute really for that resolution because, I suppose, they had been informed of Mr. Lincoln's intention not to participate in any way in that election, and after the election had been declared he returned the resolution to the Senate with the following message:

To the honorable the Senate and House of Representatives:

The joint resolution entitled "Joint resolution declaring certain States not entitled to representation in the electoral college" has been signed by the Executive in deference to the view of Congress implied in its passage and presentation to him. In his own view, however, the two Houses of Congress, convened under the twelfth article of the Constitution, have complete power to exclude from counting all electoral votes deemed by them to be illegal; and it is not competent for the Executive to defeat or obstruct that power by a veto, as would be the case if his action were at all essential in the matter. He disclaims all right of the Executive to interfere in any way in the matter of canvassing or counting electoral votes; and he also disclaims that by signing said resolution he has expressed any opinion on the recitals of the preamble or any judgment of his own upon the subject of the resolution.

ABRAHAM LINCOLN.

It is dated February 8, 1865, but it was not sent in until the day after the count took place.

Now that is a worthy example, Mr. President. That message of President Lincoln shows that he was a man who was considerate of his own personal honor and sensitive in respect of any intrusion upon the power and authority of another department of the Government, or any electoral body where the Constitution did not make him expressly a participant in its action.

For that reason, and only for that reason, and because, as I have stated, there can be no sanction given to a rule or to a law which the two Houses cannot trample out at their will and defy, I have always believed that a concurrent resolution between the two Houses regulating in advance what would be their method of action as questions arose of the kind that are presented in the bill for consideration was the thing that we ought to do. Nevertheless, because others have differed with me in that regard who concur with me in the great point that the two Houses and not the President of the Senate are the bodies who are to regulate and decide questions that arise upon the count of the votes, I yield my opinion upon that matter.

Still, it does seem to me that the President of the United States if he can use the approving power can equally use the veto power, and if we should unfortunately enact a law, for instance the amendment which the honorable Senator from Ohio suggests, and the President should approve it now, and it would turn out that on the last days during the last Congress he has to serve during his incumbency of the office that the different districts in the United States had sent men here who were Democrats in a large majority in the House, say a majority of seventy-five or one hundred, but that when the elections in November came around the people had pronounced against the Democratic party, if you please, by a majority of one hundred in the electoral college, it might be that this very law which the honorable Senator from Ohio wants to put upon the statute-book would enable the House of Representatives with its great majority united with the Senate to defeat the will of the people.

Mr. SHERMAN. Mr. President——

The PRESIDING OFFICER (Mr. CHACE in the chair). Does the Senator from Alabama yield to the Senator from Ohio?

Mr. MORGAN. Yes, sir.

Mr. SHERMAN. The Senator from Alabama and myself have only the same object in view in this matter, and I will ask him a question. Take the case he puts, where the majority of the House is largely against the result of the vote of the electoral college as shown upon the face of the papers, does not the bill as it stands enable the House by a bare majority of one or two or three to reject the vote of a sufficient number of States to nullify the electoral college? Is not that the difficulty? While the proposition I make does not entirely cure it, and I admitted that in the argument, it does bring another element into play, and that is the conservative force of the Senate. I ask the Senator whether the real trouble with the bill is not that a bare majority of the House of Representatives, whose conduct itself might have been the cause of the people revolting and voting against the party which was represented by that majority, might set aside the votes of the people in the electoral college?

Mr. MORGAN. Certainly; I do not deny that a corrupt House of Representatives or one strongly under partisan influence, with a large majority, I will say, in favor of the Democrats, could disagree with the Senate upon the question of which of two sets of returns was the proper one from the State of New York. I will put it that way.

Mr. SHERMAN. Would the Senator like to see that power put in the hands of a majority of either party to defeat the will of the people?

Mr. MORGAN. The Senator from Ohio by his amendment puts it there in the event that the majority of Democrats in the House added, we will say, to the minority of Democrats in the Senate, constitute a majority of the two Houses in the meeting, and in that case, although the President elected, a Republican, might have 100 electoral majority, or something like that, the House by disagreeing in cases of the kind that we have supposed might reverse the entire action of the people in choosing their President and relegate the whole question of the decision as to who was to be President of the United States to men who might have been elected on local issues, such as the cleaning out of the Kiskiminetas or the Cahawba River, or some local question of that kind which belonged to the particular district.

Mr. SHERMAN. What I ask is, does not the bill as it now stands reported from the committee enable either House to do that by a party majority by disagreeing on the count of the electoral vote?

Mr. MORGAN. I have admitted it, and those who framed the Constitution foresaw that such a thing as that might take place, and consequently they put into it a second electoral body or a third electoral body. They put it also in the power of thirteen of the thirty-eight States by simply withdrawing to break the quorum and prevent an election. Now that is guarantee enough. When thirteen out of thirty-eight States, desiring to prevent the consummation of a terrible fraud of the character which is supposed by the Senator from Ohio and which I confess might take place, can prevent it by simply turning their backs on the fraud, as I have observed, and going away from it and breaking the quorum, is not that a great power in reserve?

I do not pretend that the bill covers every evil, but I do say that the bill has in it two principles that are undeniable. The first is that the Houses must be present in their organization to witness and control the opening and count of the votes; and the second is that whatever tribunal acts as a tribunal of control, whether we call it an appellate tribunal or what not—when a tribunal acts as a tribunal of control over other tribunals and it consists of two members, it has always been held that where they could not agree the judgment of the inferior court would stand. Where they can not agree, says the bill, there is no electoral vote because they can not agree. Their disagreement as to which of two electoral votes shall be counted necessarily excludes both lists from the count.

Mr. SHERMAN. That is just what I should like to accomplish, but I do not so understand it. The bill provides that where the two Houses disagree the judgment of the electors shall not stand; that the vote shall not be counted either way to change the result. There is the difficulty.

Mr. MORGAN. That is because there is a tie vote. Let me ask the honorable Senator from Ohio if the same thing would not occur in Illinois in case the House was electing a President, and there were ten Democrats there and ten Republicans—twenty Representatives. What would become of the vote of that State?

Mr. SHERMAN. Under the old law, prior to 1866, the result was that the Senate had often many vacant seats, because of disagreement between the two houses of State Legislatures; and therefore by public opinion it was——

Mr. MORGAN. I am speaking of the electoral vote. I am speaking of when the House is electing a President, and the State of Illinois, having one vote out of thirty-eight, is called, and ten members vote for A and ten vote for B in that House. What becomes of the vote of Illinois?

Mr. SHERMAN. If there is a tie vote in the electoral college the House of Representatives immediately proceeds, under the express provisions of the Constitution, to elect a President.

Mr. INGALLS. No, not a tie vote.

Mr. MORGAN. The Senator is quite mistaken, there is no election. If there is a tie in a State that gives a candidate less than a majority of all the votes of the States, there is no election.

Mr. INGALLS. There is no election.

Mr. SHERMAN. There would be no election in the case of a tie vote.

Mr. MORGAN. And if there is a tie vote in Illinois, which has twenty Representatives, the vote is not counted. Because the State can not agree, the vote is lost. So when there is a tie vote between the two Houses here in respect of determining which of two votes shall be counted as the vote of Illinois, it is lost. We can not get rid of that difficulty.

Mr. MCPHERSON. The State consents to lose it.

Mr. MORGAN. The State consents to lose it, says the honorable Senator from New Jersey. So when a State fails to provide for the preservation of order within her borders so that she can certify her official acts up to the Congress of the United States, she ought to be put in the category of consenting to be robbed of her electoral power.

This, let it be remarked, is a matter which belongs to and concerns

the States of this country, for the States appoint the electors, and if the States, through negligence or through the cowardice or the treachery of their own officials, do not see proper to preserve the electoral vote in such form as that honest men here can ascertain what is the true voice of the State, let it go as it goes in the case of a tie, as I have mentioned in respect of the State of Illinois.

Mr. President, I did not suppose when this bill was before the Senate in the last Congress that any of us would ever be called upon to discuss its merits again, but I found here among gentlemen on this side of the Chamber a degree of uncertainty in their views of the matter that led me to feel that it was my duty, having been heretofore connected officially by the votes of this side of the Chamber with this subject, to express my views upon it in the feeble way that I have done. I appeal to Senators that they will not, in order to get rid of a difficulty which does arise sometimes and will naturally arise, tear down the limitations of the Constitution, and convert the members of the two Houses into a new electoral body to choose a President and take from the Senate its rightful prerogative to command and control the minority of the body wherever that minority may be found, acting in their capacity as Senators.

It can never be necessary to destroy the Houses of Congress as organized bodies by merging their membership into a new and unauthorized body in order to save to the States or the people the honest results of a Presidential election.

Mr. HOAR. Mr. President——

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

Mr. MAHONE. With the Senator's permission, I beg to make some reports from a committee.

The PRESIDING OFFICER. Does the Senator from Ohio withhold his motion for that purpose?

Mr. SHERMAN. I give way to the Senator from Virginia for the purpose indicated.

ADDITIONAL REPORTS OF COMMITTEES.

Mr. MAHONE, from the Committee on Public Buildings and Grounds, to whom were referred the following bills, reported them severally with amendments:

A bill (S. 230) for the erection of a public building at Worcester, Mass.;

A bill (S. 305) for the erection of a public building at Huntsville, Ala.;

A bill (S. 482) to provide for the erection of a public building in the city of Norfolk, in the State of Virginia;

A bill (S. 453) for the erection of a public building at Jacksonville, Fla.; and

A bill (S. 610) to provide for a building for the use of the Federal courts, post-office, and internal-revenue and other civil offices, and a United States jail in the city of Fort Smith, Ark.

Mr. MAHONE, from the Committee on Public Buildings and Grounds, to whom were referred the following bills, reported them without amendment:

A bill S. 201) to provide for the erection of a public building in the city of Annapolis, Md.;

A bill (S. 228) for the erection of a public building at Camden, N. J.; and

A bill (S. 481) authorizing the partition of certain land in Louisville, Ky., belonging jointly to John Echols and the Government of the United States.

Mr. VANCE, from the Committee on the District of Columbia, to whom was referred the bill (S. 349) for the promotion of anatomical science and to prevent the desecration of graves, reported it with amendments.

REPORT ON COAST DEFENSES.

Mr. DOLPH. I ask leave to make a report at this time.

The PRESIDENT *pro tempore*. The Chair will receive it, if there be no objection.

Mr. DOLPH. The board appointed by the President, under the provisions of the fortification act passed at the last Congress, to report what fortifications and other defenses were most urgently required, &c., filed a report this morning, which was referred to the Committee on Coast Defenses. On behalf of that committee I now report by resolution, and ask that the resolution and the report of the board be referred to the Committee on Printing.

The PRESIDENT *pro tempore*. The resolution reported from the committee will be read.

The resolution was read, as follows:

Resolved by the Senate (the House of Representatives concurring), That 7,000 additional copies of the report of the board of fortifications or other coast defenses be printed; 2,000 for the use of the Senate, 4,000 for the use of the House of Representatives, and 500 each for the War and Navy Departments.

The PRESIDENT *pro tempore*. The resolution will be referred to the Committee on Printing under the rule.

Mr. DOLPH. Together with the report of the board.

The PRESIDENT *pro tempore*. Together with the report of the board.

ADDITIONAL BILLS INTRODUCED.

Mr. CAMDEN introduced a bill (S. 1232) granting increase of pension to John S. Hale; which was read twice by its title, and referred to the Committee on Pensions.

Mr. EVARTS introduced a bill (S. 1233) for the relief of John R. Harrington; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Patents.

Mr. SHERMAN introduced a bill (S. 1234) to remove the charge of desertion from the military record of George W. Stelts; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Military Affairs.

He also introduced a bill (S. 1235) granting increase of pension to Joseph W. Rhinehalt; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

EXECUTIVE SESSION.

Mr. HOAR. I call for the regular order.

The PRESIDENT *pro tempore*. The pending bill will be reported by its title.

The CHIEF CLERK. A bill (S. 9) to fix the day for the meeting of the electors of President and Vice-President, and to provide for and regulate the counting of the votes for President and Vice-President and the decision of questions arising thereon.

The PRESIDENT *pro tempore*. Pending which the present occupant of the chair while on the floor moved that the Senate proceed to the consideration of executive business. The question is on agreeing to that motion.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After twenty-three minutes spent in executive session the doors were reopened.

DEATH OF REPRESENTATIVE RANKIN.

Mr. SAWYER. I move that the resolutions from the House of Representatives in regard to the death of Mr. RANKIN be taken up.

The PRESIDENT *pro tempore*. The Chair lays before the Senate resolutions from the House of Representatives, which will be read.

The Chief Clerk read as follows:

IN THE HOUSE OF REPRESENTATIVES, *January* 25, 1886.

Resolved, That the House has heard with sincere regret the announcement of the death of Hon. JOSEPH RANKIN, late a Representative of the State of Wisconsin.

Resolved by the House of Representatives (the Senate concurring), That a special joint committee of seven members of the House of Representatives and three members of the Senate be appointed to take order for superintending the funeral and to escort the remains of the deceased to Manitowoc, Wis.; and the necessary expenses attending the execution of this order shall be paid out of the contingent fund of the House.

Ordered That Mr. BRAGG of Wisconsin, Mr. VAN SCHAICK of Wisconsin, Mr. STEPHENSON of Wisconsin, Mr. GUENTHER of Wisconsin, Mr. CARLETON of Michigan, Mr. HENDERSON of Illinois, and Mr. JOHNSON of New York, be the committee on the part of the House.

Resolved, That the Clerk communicate the foregoing resolutions to the Senate.

Mr. SAWYER. Mr. President, I offer the resolutions which I send to the Chair.

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

The Chief Clerk read as follows:

Resolved, That the Senate has heard with deep sensibility the announcement of the death of Hon. JOSEPH RANKIN, late a Representative from the State of Wisconsin.

Resolved, That the Senate concur in the resolution of the House of Representatives providing for the appointment of a joint committe to take order for superintending the funeral and to escort the remains of the deceased to Manitowoc, Wis., and that the members of the committee on the part of the Senate be appointed by the President *pro tempore*.

The resolutions were agreed to.

The PRESIDENT *pro tempore*. In obedience to the resolution the Chair appoints the Senator from Wisconsin, Mr. SAWYER; the Senator from Kentucky, Mr. BLACKBURN: and the Senator from Arkansas, Mr. JONES, as the committee on the part of the Senate.

Mr. SAWYER. As a mark of respect to the memory of the deceased I move that the Senate do now adjourn.

The motion was agreed to; and (at 4 o'clock and 5 minutes p. m.) the Senate adjourned.

EXECUTIVE NOMINATIONS.

Received this 25th day of January, 1886.

MINISTER RESIDENT AND CONSUL-GENERAL TO COREA.

William H. Parker, of the District of Columbia, to be minister resident and consul-general of the United States to Corea, to fill a vacancy.

DISTRICT JUSTICE OF THE PEACE.

Joseph W. Davis, of the District of Columbia, to be a justice of the peace for the District of Columbia, to reside in Georgetown, D. C., *vice* Jenkin Thomas, deceased.

For appointment in the Army of the United States.

MEDICAL DEPARTMENT.

To be assistant surgeons with the rank of first lieutenants:

Henry S. T. Harris, of Virginia, January 5, 1886, *vice* Maddox, killed in affair with Indians.

them for equipments lost in the service of the United States had never been paid, and that the surviving widows and children of those soldiers had a right to be paid, and requesting, as their claims had been sent to me, that I would ask the passage of a bill for their payment. To the end therefore that, instead of paying a claim agent about $62,000, nearly the whole of the $92,000 proposed to be paid in money by the General Government for the debt which the State had assumed in defending her soil from the Indians, I propose that a condition should be attached to it that the money should be first applied to the payment of the surviving soldiers who had not been paid and to their widows and children in preference to this payment of 15 per cent. upon an enormous claim to an alleged State agent, who was not known and who had rendered no service, and who could not possibly render any service or contribute in any way to the passage of the bill.

The present governor of the State has informed me in a recent conversation that he would regard such a condition as a reflection on the State. I regard it as a reflection upon the Senate of the United States, upon the Senators and Members of Congress, and a great injury to the State that the large amount of 15 per cent. on $464,000 should be paid for services never rendered, while the soldiers who rendered the services for which the State government is paid remain in part unpaid and their widows and children suffering and unprovided for. Under these circumstances I consider it a public scandal that a vast sum of money should be paid to lawyers or pretended agents for votes to be given in Congress by Senators and Representatives upon subjects clearly ascertained, upon which the history of the legislation of the country has been fixed for years, as it has been on this subject of reimbursing the States for expenses incurred in suppressing Indian hostilities, where there is no possibility to render any service. The idea of $62,000 being paid out of the sum of $92,000 allowed by Congress I think should receive public condemnation, and I desire in my place in the Senate to give expression to his opinion that it may reach the people of the State. I have no doubt as to what the people of the State desire. They desire this money to be paid first to the honest and just claims of soldiers, their widows and children, who have rendered service and have not been paid, and then to be appropriated to the education of the children of the State, and not to the payment of individuals for services not rendered. There are no services that can by any possibility be rendered.

It is a plain question of legislation, upon which the history of the country has committed the Government and upon which there has never been a failure on the part of Congress to pay since the early history of the country. I have been informed that the Legislature of the State has directed that this money when paid shall be first applied to the payment of the soldiers who have not been paid.

There was a question, however, which I hope the committee will consider and act on favorably and without delay. No interest was allowed the State of Florida upon her claim for money expended in suppressing these hostilities. It will make a considerable difference in the amount, and it is in my opinion clear that this interest should be allowed by the committee, and a bill for the payment of the whole amount passed by the Senate. I desire that the subject shall again be investigated by the Committee on Military Affairs, and that the interest may be allowed the State upon this claim; and for this purpose this bill has been introduced.

The present governor informs me, unofficially, that he is not of the opinion, as far as he as an individual is concerned, that this alleged contract with his predecessor, Governor Drew, for the payment of this enormous sum, was a proper contract; but that officially he can express no opinion on the subject. I desire that the matter shall receive investigation by the committee, and that such a direction shall be given, so far as it is proper and consistent with the rights of the State, to this money when it is paid to the State of Florida as will secure its appropriation in conformity with the act of the Legislature of Florida, and will relieve the State officers and the State from all trouble from the alleged contract, and apply it to the payment, first, of those who rendered these services, and then the State will be at liberty to devote the rest of the money to education or to give it away, if she pleases, under the alleged contract, to agents for services never rendered, but claimed to have been rendered, here.

Mr. President, the governor of Florida and the courts of Florida and other authorities are doubtless entirely faithful and earnest in the performance of their duties to the people and quite as solicitous as I am over everything that concerns the welfare of the State and her people—and the interests of her people can be safely left to them—in respect to this and all other State interests; but I think a duty is presented by this case for the Senate and Congress to vindicate themselves by some public expression in regard to such a transaction. So far as I am concerned I urge upon the committee and the Senate immediate and favorable consideration of this bill and the payment of this claim, both principal and interest, and the release of the money due the State now in the Treasury Department and withheld from her because of the bond debt and other unsettled claims of the United States. The State needs this money for the education of her children and for other necessary public purposes. I shall spare neither time nor effort to accomplish this purpose, and if any considerable part of this money shall fail to be applied to these objects, but shall be donated to individuals under fictitious pretenses, the fault and the responsibility shall not rest on me.

I move that the bill be referred to the Committee on Military Affairs.

The motion was agreed to.

COUNTING OF ELECTORAL VOTES.

Mr. HOAR. I ask unanimous consent to have read at the desk and printed some amendments proposed to the bill (S. 9) to fix the day for the meeting of the electors of President and Vice-President, and to provide for and regulate the counting of the votes for President and Vice-President and the decision of questions arising thereon.

The PRESIDENT *pro tempore*. The Senator from Massachusetts asks consent to present amendments to the bill referred to at this time? Is there objection?

Mr. HOAR. I want them read, so as to go into the RECORD, and be printed.

The PRESIDENT *pro tempore*. The Chair hears no objection, and the proposed amendments will be read and ordered to be printed.

The Chief Clerk read the proposed amendments, as follows:

Section 4, line 57, after "counted," insert "which appear to have been cast by the electors whose names appear on the lists certified by the executive of the State in accordance with the provisions of section 136 of the Revised Statutes as hereby amended, or in case of a vacancy in the board of electors so certified, then by the persons appointed to fill such vacancy in the mode provided by the laws of the State, or, if there be no such list, or if there be more than one such list purporting to be so certified, then those votes and those only shall be counted which."

Add to the bill a new section, as follows:

SEC. —. "Section 136 of the Revised Statutes is amended to read as follows: 'SEC. 136. It shall be the duty of the executive of each State to cause three lists of the names of the electors of such State to be made and certified under the great seal of the State, and to be delivered to the electors on or before the day on which they are required by the preceding section to meet.'"

Mr. CALL submitted an amendment intended to be proposed by him to the bill; which was ordered to be printed.

SURVEY OF NICARAGUA CANAL ROUTE.

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

Resolved, That the Secretary of the Navy be, and he is hereby, directed to transmit to the Senate copies of drawings and report of a recent survey of the Nicaragua canal route made by Chief Engineer Menocal.

CONSIDERATION OF EXECUTIVE NOMINATIONS.

Mr. PLATT. I offer the following resolution:

Resolved, That executive nominations shall hereafter be considered in open session, except when otherwise ordered by vote of the Senate.

Mr. President, I have offered the resolution for reference to the Committee on Rules, and I ask that it may be printed also. I do not desire to speak upon it at the present time, except merely to call the attention of the Committee on Rules to it and to express the hope that it may receive early consideration and an early report. If the report should be favorable, I do not think I shall have anything to say on the resolution, but if otherwise, I shall then desire to submit some remarks on the subject of the resolution.

The PRESIDENT *pro tempore*. If there be no objection the resolution will be referred to the Committee on Rules and be printed.

SILVER DEPOSITS AT NEW ORLEANS.

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

Resolved, That the Secretary of the Treasury be, and is hereby, directed to communicate to the Senate whether any instructions have been issued to the assistant treasurer at New Orleans to refuse to receive silver dollars on deposit and issue therefor certificates, or whether he has been instructed to receive only a limited amount of said silver dollars, and if such instructions have been issued, to inform the Senate the reasons upon which they are based.

PAPERS WITHDRAWN AND REFERRED.

On motion of Mr. VAN WYCK, it was

Ordered, That the papers in the claim of John Fraser be taken from the files and referred to the Committee on Claims, there being no adverse report.

CHANGE OF REFERENCE.

Mr. VOORHEES. I move that the Committee on Finance be discharged from the further consideration of the bill (S. 559) for the relief of George F. Roberts and others, and that it be referred to the Committee on Claims.

The motion was agreed to.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. CLARK, announced that the House had passed a joint resolution (H. Res. 71) authorizing the Superintendent of Public Buildings and Grounds in the District of Columbia to supply plants and shrubs to fill certain vases in the Pension building; in which it requested the concurrence of the Senate.

STATUES OF LAFAYETTE AND GARFIELD.

The PRESIDENT *pro tempore* laid before the Senate the following communication from the Secretary of War, which was read:

WAR DEPARTMENT, *Washington City, January 29, 1886.*

MR. PRESIDENT: I notice in the RECORD that a concurrent resolution will probably be acted on to-day taking the circle at the intersection of Maryland avenue and First street west for the statue of Lafayette. I send you the proceedings of the commission showing the selection of that site, under law, for the statue of President Garfield; also, a contract made with J. Q. A. Ward to erect

Committee to Audit and Control the Contingent Expenses of the Senate. The question is on agreeing to the resolution.

The resolution was agreed to.

COUNTING OF ELECTORAL VOTES.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 9) to fix the day for the meeting of the electors of President and Vice-President, and to provide for and regulate the counting of the votes for President and Vice-President and the decision of questions arising thereon.

Mr. HOAR. I now move the amendments which were printed for the information of the Senate by the order made on Thursday last.

The PRESIDING OFFICER. The amendment of the Senator from Massachusetts will be read.

The CHIEF CLERK. In section 4, line 57, after the word "counted," it is moved to insert:

Which appear to have been cast by the electors whose names appear on the lists certified by the executive of the State, in accordance with the provisions of section 136 of the Revised Statutes as hereby amended, or in case of a vacancy in the board of electors so certified, then by the persons appointed to fill such vacancy in the mode provided by the laws of the State; or if there be no such list, or if there be more than one such list purporting to be so certified, then those votes, and those only, shall be counted which.

It is also proposed to add as a new section:

SEC. —. That section 136 of the Revised Statutes is amended to read as follows:

"SEC. 136. It shall be the duty of the executive of each State to cause three lists of the names of the electors of such State to be made and certified under the great seal of the State, and to be delivered to the electors on or before the day on which they are required by the preceding section to meet."

Mr. HOAR. If I can have the attention of the Senate I think I can state in ten or fifteen minutes the argument in favor of this bill as it will read if amended according to the proposition just read from the desk.

Mr. LOGAN. Will the Senator allow me? Before the Senator proceeds I should like merely to have an understanding about the bill in reference to the admission of Dakota, whether or not the Senator desires to go on to-day until this bill, that is now called up, shall be finished?

Mr. HOAR. I should like to do that. I think we can finish it to-day.

Mr. LOGAN. And have an understanding that the Dakota bill will then be the regular order?

Mr. HOAR. I understand that will be the regular order after this.

Mr. LOGAN. Will that be the regular order, Mr. President?

The PRESIDING OFFICER. The Chair is informed by the Chief Clerk that the Dakota bill will be the next business in order on the Calendar.

Mr. LOGAN. I merely wished to know, so that we could have it understood.

Mr. HOAR. I hope we may be able to finish this bill to-day. I shall endeavor to secure that result, and I think we can.

This bill is the result of more than twelve years' consideration and discussion in this body. The debate may almost be said to have been in progress during the whole time since the December session of 1875. The bill has passed the Senate three times, I believe, almost unanimously.

The object of the bill is to remove, as far as it is possible to be done by legislation and without an amendment of the Constitution, a difficulty which grows out of an imperfection in the Constitution itself; and I think I may say as a matter now settled by a pretty long experience that the arguments which are made against the bill almost all proceed from supposing that it is an attempt to amend a defect which is due to the Constitution itself and criticising it in that respect, and not reflecting that the bill while it does not of course undertake to intrench upon the provisions of the Constitution, reduces the difficulties which the Constitution has left to a minimum.

Two things we must consider, I think, settled for this generation; first, that the President of the Senate is not clothed by the Constitution with the power to count the electoral vote, that the determination of the grave questions of law and fact which must be decided in order to determine how many electors have been appointed or who has the majority of the votes of those electors has not been committed to any single officer; and, second, that the power to decide these questions and count the vote is not vested exclusively in the House of Representatives. Each of these views has had some advocates. Neither of them, as it seems to me, with great respect to those who entertain them, has ever borne the weight of a constitutional discussion, and neither of them is entertained by any considerable number of persons either in this or the other House. It seems to me that we must take as practical legislators considering the expression of opinion both these propositions as conclusively settled and determined for the present generation.

It is very difficult to any person who remembers the prevalent opinion, the jealousy, the purpose which occupied the mind of the framers of the Constitution, to any person who reads their debates, to suppose that they intended to intrust this vast power to the President of the Senate. Throughout the whole of the history of the formation of the Constitution appears the jealousy of its framers of the usurpation of executive power. The discussions in the Madison Papers and the press of that time, the other discussions which are less celebrated but still are preserved from that generation to ours, all show that the first object of the framers of the Constitution in making it, and their chief stress and labor in commending it to the people, was to show that usurpation or prolongation of power by the Executive of the United States had been rendered impossible in the form of government they had framed.

The contemporaneous State constitutions, established ten or eleven of them between the year 1775 and the close of the year 1787, had, with the only exception of New York—and it may be that there were one or two others—had committed the power of determining who was chosen to the chief executive office to the two houses of the State Legislature.

Of course it will not be forgotten that the Constitution provided for a vote for two candidates for President, one of whom became Vice-President. The President of the Senate would almost always be and would be expected to be one of the chief candidates for the Presidential office. He would have been one of the two principal candidates four years before, and it was the fashion of those days very much more than of these to continue the same person in public trusts and in political candidacy, and several times in our history the Vice-President of the United States has succeeded to the Presidency, Adams to Washington, Jefferson to Adams, Van Buren to Jackson. The conferring upon this officer of the power to determine these great questions would have been a transgression, would have been seen by the framers of the Constitution to be a transgression of that maxim so fundamental that Lord Coke says it is not even in the power of the British Parliament to transgress it—that is, to make a man a judge in his own case—in the most important case of personal interest which could ever be submitted to a human judgment.

When this subject began to assume very important practical shape as the determination of the Presidential election of 1876 approached, a leading member of the Senate, then representing the State of New York, said in his place here that every member of the Senate, except four, stood recorded and committed on his oath against the proposition of the right of the President of the Senate to count the vote, and he further said that the then Senator from California, Mr. Sargent, was the only known advocate of that doctrine on the floor of the Senate.

Taking that, without further discussing it, as practically determined for our guidance as legislators, I think we may further assume with the same confidence that no legislation can be adopted here for a generation which proceeds on the principle that the power to determine this result is lodged in the House of Representatives. The doctrine upon which that claim is based, it seems to me, will not bear discussion. That doctrine is that as the House of Representatives are to exercise a certain function if a certain condition of the vote appears, of course it must follow that that body is to determine upon the state of things which requires the exercise of that function.

I submit that the opposite of that proposition is much more nearly a general truth; that is, that when an official function or duty is lodged in any person or public body, that person or public body is never the judge of the question whether its own power exists or if the case for the exercise of its power has arisen. Neither of these propositions would be universally true; but the latter, it seems to me, most usually is. The Vice-President of the United States, who is to succeed to the Presidential office in case of the inability of the incumbent, surely can not be the sole and exclusive judge of the question whether the time has come for him to exercise that function or whether the House has chosen or has not chosen the President. The persons who are to exercise a power under the forms of a limited, written, and free constitution are almost invariably the persons who are not to determine whether they have got it. The question who is chosen to the Senate or the House is determined by the body to whom that trust is committed, not by the individual claimant, and so on.

Now, sir, if the President of the Senate gets no power in the beginning from the clause which has been so often read and discussed, it seems to me equally clear that he can not get it afterward without legislation. If he have it in the absence of legislation, he has it in spite of legislation. If the Constitution confer on him the power to open the certificates alone, and leaves either to the two Houses or to an officer provided by law the power to count, I can not see any reason, and I never have heard one stated, which, in the failure to exercise that legislative power or in the failure of the two Houses to act, justifies the conclusion that the powers of the President of the Senate should be extended to include a subject not committed to him by the Constitution in the beginning.

This bill assumes—and I do not propose to go over this argument for the hundredth time—that the framers of the Constitution, according to the universal fashion of those days, meant, as the English constitution commits to the two houses of Parliament in case of an abdication as it had been recently settled in the instances of James II and William of Orange, as the State constitutions almost without exception in that day permitted in case of a popular election the right to determine the title to the executive office to be exercised by the two legislative houses—meant to intrust this power to two bodies corporate, the Senate and the House of Representatives. The failure of the Constitution, the *casus omissus* is the failure to provide an arbiter when these two bodies dis-

agree. The provision for such an arbiter, therefore, comes within the legislative power committed to Congress—

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

A perfect bill, as I believe, would provide for a common arbiter between these two bodies, which the Constitution has left to the law-making power, and that has been the attempt of the statesmanship that has dealt with this subject from the beginning of the century to the present day; but every such attempt has failed. There never has assembled at the seat of government since the Government went into operation a Congress whose two Houses would agree as to the person who should be the suitable common arbiter between these two bodies. John Marshall tried it and failed in 1800; Daniel Webster tried it and failed in 1824; the men of 1876 tried it and failed, except for the single occasion with which the electoral commission bill dealt.

Now, the Senator from Ohio [Mr. SHERMAN] has undertaken by the amendment read by him the other day to solve this difficulty by a provision which shall create a common arbiter between these two branches, and with great respect to that Senator—and there is no man in public life in this country for whom my respect is more profound—it seems to me that of all the schemes which have been ever suggested since the beginning of the Government to deal with this question that of my honorable friend from Ohio is the worst. I would prefer to take the senior justice of the Supreme Court, as John Marshall I think proposed; but I suppose it would be impossible to expect an agreement on that official as an arbiter between the two branches in the present state of political and public sentiment in this country. But certainly whoever is taken, it is a person who is taken for the purpose of exercising a judicial function. I do not mean by "a judicial function" one of the functions usually assigned to courts, but I mean judicial in regard to the nature and character of the act to be performed; that is, you are to have a tribunal which is to determine the existing fact and the existing law, in contradistinction from determining the law or creating the fact according to his own desire. The legislator enacts the law as the legislator desires and thinks best for the public interest. The elector votes for the candidate who it is his wish shall succeed to the office voted for. But this function is to determine the existing fact and apply to it the previously declared and ascertained law. It is a function into which the wish or the desire of the person exercising it can not properly enter.

What does the Senator from Ohio propose for such a function as this? He proposes a very numerous body, a body which is to consist in the near future of nearly five hundred members. It consists now of over four hundred, and after the next census, with the addition of States, it will consist of nearly five hundred members. He proposes a body to deal with questions of frauds at elections, delicate questions of law, State and national, which by no possibility under the circumstances can either debate or give a hearing to any party interested. It is a body made up of earnest partisans, of four hundred or five hundred men selected in the United States more likely than any other body of the same number which could be selected, being brought together on any principle of selection, to have an earnest and impassioned and eager desire as to the result; a body of men whose personal interests, whose success in life, whose future are to be very largely affected by the decision one way or the other of the question before them; a body whose two political divisions are to share or be excluded from the councils of the Executive whose election is to be ascertained by this process—a body I say therefore more likely than any other which could be imagined to be excited by the very disturbing cause which it should be the policy of our legislation to exclude.

It is a body also where individual responsibility is wholly lost. A man who votes in this joint ballot votes with this crowd where his voice can not be heard in debate or to state his reasons, and where his own personality is entirely merged and disappears for the time being. It is a body also with no character of its own to sustain. If this function were committed to the Senate, it would be committed to seventy-six men whose own dignity and honor and authority, whose title to the respect and remembrance of mankind, depend, as we all feel, very largely upon the honor, credit, and dignity of the Senate. A man who fills a place in the Senate and does his best in it has not only the respect and remembrance of his countrymen which belongs to his personal character and quality, but the reflected honor and respect which come to him from being a member of this great legislative body which has existed from the beginning of the Government and is to exist until time shall be no more, in one continuous and unbroken succession; and in the strongest heat of party desire, in the wildest motion of waves of public clamor or the tide of public feeling, the Senators on either side may be trusted for the sake of the preservation of an official and a personal character which is so to survive the chances or the desires or the excitements of a single Presidential election, to do what is right, not what is desired by their party for the time being; and so of the House of Representatives. But this body created by the honorable Senator from Ohio perishes when the single function has been performed. You have therefore as little as possible of security from regard to the personal character of the men taking part in this great proceeding, and no security at all by reason of any dignity of character or permanance of authority of the body to which the function is committed, these persons too taking no oath of office, under no restraint of that kind. The whole of the proposition of my honorable friend from Ohio could be stated by enacting that when the two Houses fail to agree on any question, that question shall be determined without partisan bias and according to the merits, as contested-election cases are usually decided in the House of Representatives!

The Senator says that he takes this proposition; it has been suggested to him by an analogy to the election of Senators of the United States by State Legislatures where they vote in joint ballot. But that is a provision for election, not for judgment. Unquestionably the meeting together of the two Houses, the bodies who are to elect one or the other of two candidates, is not only a proper method, but in the case of differences between the two bodies a necessary method, of arriving at an election; but for judgment, I am not aware that in our legislative history there is any instance where there is committed to a body of this class or to two legislative bodies acting on joint ballot the judicial determination of any public question.

The present bill does not attempt to create a common arbiter between the two Houses of Congress. What it does attempt is to reduce to a minimum the cases where any difference can properly arise, proceeding upon the constitutional theory that the appointment of electors, including the determination of the question who has been appointed, belongs under the Constitution to the States, and that it was intended to exclude not only Congress but every person holding an office of trust or profit under the United States from the whole proceeding. As far as possible this bill remands everything to the State, and simply gives a decisive weight and power to certain official action of the State itself, and if the amendment which I have proposed shall be adopted no case can arise under this bill of rejecting the vote of any State except in the single case of dual State governments.

The bill provides that where the State has created a tribunal for the determination of these questions the proceedings of that tribunal shall be conclusive; that where the State has created no tribunal and there is but one return purporting to come from the State the vote shall not be rejected without the concurrence of both Houses of Congress; and the amendment provides that, in the absence of any State tribunal created for the purpose of passing upon the validity of the election of electors, the vote of that board of electors which has under the existing law the certificate of the executive of the State that they are the truly chosen board shall not be rejected except by the concurrent vote of the two Houses.

I have not heard upon the floor of the Senate, either in private or public discussion, and I have not found in looking over the debates on this question from the beginning of the Government, a suggestion of any possible case which this bill does not cover and determine except the single case where, growing out of civil war or other causes, there is a struggle in a State and a dispute as to who are lawfully exercising the powers of its government. In that case I think we should on reflection be pretty likely to agree that the vote of the State ought not to be received and counted without the assent of both Houses of Congress. It implies an existing civil war, or, if not a civil war, a state of civil disturbance and struggle which is inconsistent almost with any fair or satisfactory ascertainment of the will of the people of such a State. We have had several such instances in the United States, but they came at the close of a civil war, before the relation of the different parties of people in the State to one another or to the National Government had become settled. In that case the bill requires for the reception and count of the vote just what the Supreme Court of the United States held in Luther *vs.* Borden was required for the determination of which was the lawful State government in regard to all the rest of its relations to the National Government, that is, the recognition of the two Houses of Congress. In Luther *vs.* Borden it was held that in the absence of such recognition by the two Houses of Congress the recognition by the President of the United States would *prima facie* determine which was the true and lawful State government.

My honorable friend from Ohio says it is a great thing to reject the vote of a State, and he is not willing to trust to one House of Congress alone, guided, moved as it will be by political passions, the power of rejecting the vote of a State. I should like to ask if the Senator from Ohio knows of any way now under the existing law, of any way since the foundation of the Government, unless he holds to the theory that the President of the Senate has this right (which has been rejected by so large a majority of the persons who have dealt with this question), in which the vote of any State can be counted except by the concurrent assent of the two Houses of Congress? I do not know of any such unless the power were to be usurped or seized upon by the President of the Senate.

In other words, instead of conferring upon one House of Congress the power to reject the vote of a State coming here duly authenticated or in any other way, this bill limits and narrows the power to do that which has been in existence, though never used, from the foundation of the Government. In the case of a dual State government, two bodies

agree. The provision for such an arbiter, therefore, comes within the legislative power committed to Congress—

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

A perfect bill, as I believe, would provide for a common arbiter between these two bodies, which the Constitution has left to the law-making power, and that has been the attempt of the statesmanship that has dealt with this subject from the beginning of the century to the present day; but every such attempt has failed. There never has assembled at the seat of government since the Government went into operation a Congress whose two Houses would agree as to the person who should be the suitable common arbiter between these two bodies. John Marshall tried it and failed in 1800; Daniel Webster tried it and failed in 1824; the men of 1876 tried it and failed, except for the single occasion with which the electoral commission bill dealt.

Now, the Senator from Ohio [Mr. SHERMAN] has undertaken by the amendment read by him the other day to solve this difficulty by a provision which shall create a common arbiter between these two branches, and with great respect to that Senator—and there is no man in public life in this country for whom my respect is more profound—it seems to me that of all the schemes which have been ever suggested since the beginning of the Government to deal with this question that of my honorable friend from Ohio is the worst. I would prefer to take the senior justice of the Supreme Court, as John Marshall I think proposed; but I suppose it would be impossible to expect an agreement on that official as an arbiter between the two branches in the present state of political and public sentiment in this country. But certainly whoever is taken, it is a person who is taken for the purpose of exercising a judicial function. I do not mean by "a judicial function" one of the functions usually assigned to courts, but I mean judicial in regard to the nature and character of the act to be performed; that is, you are to have a tribunal which is to determine the existing fact and the existing law, in contradistinction from determining the law or creating the fact according to his own desire. The legislator enacts the law as the legislator desires and thinks best for the public interest. The elector votes for the candidate who it is his wish shall succeed to the office voted for. But this function is to determine the existing fact and apply to it the previously declared and ascertained law. It is a function into which the wish or the desire of the person exercising it can not properly enter.

What does the Senator from Ohio propose for such a function as this? He proposes a very numerous body, a body which is to consist in the near future of nearly five hundred members. It consists now of over four hundred, and after the next census, with the addition of States, it will consist of nearly five hundred members. He proposes a body to deal with questions of frauds at elections, delicate questions of law, State and national, which by no possibility under the circumstances can either debate or give a hearing to any party interested. It is a body made up of earnest partisans, of four hundred or five hundred men selected in the United States more likely than any other body of the same number which could be selected, being brought together on any principle of selection, to have an earnest and impassioned and eager desire as to the result; a body of men whose personal interests, whose success in life, whose future are to be very largely affected by the decision one way or the other of the question before them; a body whose two political divisions are to share or be excluded from the councils of the Executive whose election is to be ascertained by this process—a body I say therefore more likely than any other which could be imagined to be excited by the very disturbing cause which it should be the policy of our legislation to exclude.

It is a body also where individual responsibility is wholly lost. A man who votes in this joint ballot votes with this crowd where his voice can not be heard in debate or to state his reasons, and where his own personality is entirely merged and disappears for the time being. It is a body also with no character of its own to sustain. If this function were committed to the Senate, it would be committed to seventy-six men whose own dignity and honor and authority, whose title to the respect and remembrance of mankind, depend, as we all feel, very largely upon the honor, credit, and dignity of the Senate. A man who fills a place in the Senate and does his best in it has not only the respect and remembrance of his countrymen which belongs to his personal character and quality, but the reflected honor and respect which come to him from being a member of this great legislative body which has existed from the beginning of the Government and is to exist until time shall be no more, in one continuous and unbroken succession; and in the strongest heat of party desire, in the wildest motion of waves of public clamor or the tide of public feeling, the Senators on either side may be trusted for the sake of the preservation of an official and a personal character which is so to survive the chances or the desires or the excitements of a single Presidential election, to do what is right, not what is desired by their party for the time being; and so of the House of Representatives. But this body created by the honorable Senator from Ohio perishes when the single function has been performed. You have therefore as little as possible of security from regard to the personal character of the men taking part in this great proceeding, and no security at all by reason of any dignity of character or permanance of authority of the body to which the function is committed, these persons too taking no oath of office, under no restraint of that kind. The whole of the proposition of my honorable friend from Ohio could be stated by enacting that when the two Houses fail to agree on any question, that question shall be determined without partisan bias and according to the merits, as contested-election cases are usually decided in the House of Representatives!

The Senator says that he takes this proposition; it has been suggested to him by an analogy to the election of Senators of the United States by State Legislatures where they vote in joint ballot. But that is a provision for election, not for judgment. Unquestionably the meeting together of the two Houses, the bodies who are to elect one or the other of two candidates, is not only a proper method, but in the case of differences between the two bodies a necessary method, of arriving at an election; but for judgment, I am not aware that in our legislative history there is any instance where there is committed to a body of this class or to two legislative bodies acting on joint ballot the judicial determination of any public question.

The present bill does not attempt to create a common arbiter between the two Houses of Congress. What it does attempt is to reduce to a minimum the cases where any difference can properly arise, proceeding upon the constitutional theory that the appointment of electors, including the determination of the question who has been appointed, belongs under the Constitution to the States, and that it was intended to exclude not only Congress but every person holding an office of trust or profit under the United States from the whole proceeding. As far as possible this bill remands everything to the State, and simply gives a decisive weight and power to certain official action of the State itself, and if the amendment which I have proposed shall be adopted no case can arise under this bill of rejecting the vote of any State except in the single case of dual State governments.

The bill provides that where the State has created a tribunal for the determination of these questions the proceedings of that tribunal shall be conclusive; that where the State has created no tribunal and there is but one return purporting to come from the State the vote shall not be rejected without the concurrence of both Houses of Congress; and the amendment provides that, in the absence of any State tribunal created for the purpose of passing upon the validity of the election of electors, the vote of that board of electors which has under the existing law the certificate of the executive of the State that they are the truly chosen board shall not be rejected except by the concurrent vote of the two Houses.

I have not heard upon the floor of the Senate, either in private or public discussion, and I have not found in looking over the debates on this question from the beginning of the Government, a suggestion of any possible case which this bill does not cover and determine except the single case where, growing out of civil war or other causes, there is a struggle in a State and a dispute as to who are lawfully exercising the powers of its government. In that case I think we should on reflection be pretty likely to agree that the vote of the State ought not to be received and counted without the assent of both Houses of Congress. It implies an existing civil war, or, if not a civil war, a state of civil disturbance and struggle which is inconsistent almost with any fair or satisfactory ascertainment of the will of the people of such a State. We have had several such instances in the United States, but they came at the close of a civil war, before the relation of the different parties of people in the State to one another or to the National Government had become settled. In that case the bill requires for the reception and count of the vote just what the Supreme Court of the United States held in Luther *vs.* Borden was required for the determination of which was the lawful State government in regard to all the rest of its relations to the National Government, that is, the recognition of the two Houses of Congress. In Luther *vs.* Borden it was held that in the absence of such recognition by the two Houses of Congress the recognition by the President of the United States would *prima facie* determine which was the true and lawful State government.

My honorable friend from Ohio says it is a great thing to reject the vote of a State, and he is not willing to trust to one House of Congress alone, guided, moved as it will be by political passions, the power of rejecting the vote of a State. I should like to ask if the Senator from Ohio knows of any way now under the existing law, of any way since the foundation of the Government, unless he holds to the theory that the President of the Senate has this right (which has been rejected by so large a majority of the persons who have dealt with this question), in which the vote of any State can be counted except by the concurrent assent of the two Houses of Congress? I do not know of any such unless the power were to be usurped or seized upon by the President of the Senate.

In other words, instead of conferring upon one House of Congress the power to reject the vote of a State coming here duly authenticated or in any other way, this bill limits and narrows the power to do that which has been in existence, though never used, from the foundation of the Government. In the case of a dual State government, two bodies

claiming each to represent the will of a people, as I said before, I think there are very strong reasons why there should be a concurrence of both Houses before the State should be permitted, when law does not prevail, to take part in this supreme constitutional act—electing the Chief Magistrate for the whole country.

But there is something of a fallacy, it seems to me, lurking in the phrase which we so often hear, "Rejecting the vote of a State." It seems to me that the vote of a State is very much more rejected when you not only exclude the votes of the persons whom it has duly authorized to represent it, but in addition to that permit others whom it has not chosen to cast its vote and express its will without its authority or consent. The vote of a State may be rejected when it is not counted in making up the constitutional result, but the vote of the State is still more rejected when the true vote is cast out and a false vote is counted in its stead.

I believe, Mr. President, that this is all that it seems necessary for me to say at this time in regard to the bill. As it stands, when the executive of the State has made the certificate provided for by the old law, to which we now propose to add the great seal of the State to authenticate the certificate, to a particular body of electors, the vote of that body of electors is to be counted unless both Houses of Congress concur in its rejection; when the State has by a tribunal created by itself settled the question, the action of that tribunal is to govern Congress.

Now, I can not, as I said before, think of any case which this bill does not cover, determine, or remand to the State to determine, any case in which any friction or difficulty can grow out of the mechanism here provided, except in the case of dual State governments, and in regard to that the power of one House to reject the vote is not created by this bill, but it is the only remnant of that power which this bill does not take away.

Mr. SHERMAN. Mr. President, I do not care myself to continue this debate, because I feel very much in the condition of every other member of this body in regard to the bill. Whatever we do involves more or less danger, and I respectfully call the attention of the Senate to the fact that the amendment now proposed by the Senator from Massachusetts introduces another dangerous element, probably as dangerous as the present provisions of the bill.

In the case of a double return from a State, as where two sets of electors claim to have been legally elected by the people of a State, instead of providing as under the present bill that it shall require the assent of both Houses to count the vote of that State, the amendment proposes to substitute as the only mode and the final mode of testing the question between the opposing colleges of electors, where there is no tribunal provided in the State, the governor of the State must then decide which of the two sets of electors are the legal electors in the State. The Senator seeks to avoid the difficulty which he has pointed out and which is manifest to every one, the danger of allowing either of the two great political bodies to reject the vote of a State; and he now proposes to leave that question to be finally settled by the governor of the State.

Under the one hundred and thirty-sixth section of the Revised Statutes the governor sends to the Vice-President or the President of the Senate the votes of the electors; but suppose another body of electors in the same State, meeting together and claiming to represent the majority of the votes in the State, send their returns, as they can do without the agency of the governor, to the Senate's presiding officer? The bill provides that any paper purporting to be a return shall be received and read and presented before the two Houses of Congress. Instead of leaving that to be decided by the concurrent action of the two Houses, or by the objection of either House, the amendment proposed by the Senator from Massachusetts leaves it entirely to the governor of the State, who naturally belongs to one of the two parties represented by the two opposing colleges of electors.

My friend from Massachusetts has pointed out many objections, and I can see them very strongly too, to allowing this question to be decided by the presiding officer of the Senate, who has the charge of all the electoral votes; but he proposes as the final arbiter on this important question the governor of a State, who probably himself is one of the parties to the contest. It seems to me he is jumping out of the frying-pan into the fire. Are we willing to leave to one man, who, being the governor of a State, and therefore necessarily a party in the contest that has occurred in the State, to decide this question in which he probably from political feeling or otherwise is more interested than any other mortal man?

Mr. MAXEY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Texas?

Mr. SHERMAN. Certainly.

Mr. MAXEY. I suggest to the Senator from Ohio that the very point he is now upon was one of the difficulties which we had in the discussion in 1876. Who is the governor? That is the question. There may be two men claiming to be governor in the same State, as there were in Rhode Island once, and as there were in Louisiana. Now, in such a case which certificate is to govern?

Mr. HOAR. If the Senator from Ohio will pardon me, that is provided for by the bill. That is a case left where it requires the concurrent votes of both Houses to count, as I submit it is now. We can not get rid of that. That has been always the difficulty where there were two governors.

Mr. SHERMAN. But I come back to the point, waiving the question proposed by the Senator from Texas, which is a pregnant one, where there are two governors, and when the very election of electors may disclose the fact that there are two opposing candidates for governor, as would naturally be so, because by the laws of nearly all the States the governors are now elected at the same time that the electors are chosen. Nearly all the States have now adopted the mode of conducting the State elections at the same time that the Presidental election is held. The State of Ohio has been the last to abandon its old mode of electing the governor and State officer on a different day from that provided for the election of electors. I think by the laws of nearly all the States the governor is now elected on that day, so that in the very election which involves the election of electors probably the question of who is governor and who was elected governor at that particular time is involved. But suppose the governor is admitted to be duly elected, representing one of the parties of the State, especially of a great State, you leave to him the question of deciding this most dangerous and difficult point.

We can not overcome the difficulty by such a proposition as this. Let the Senator from Massachusetts point out some tribunal. It may be the Supreme Court; it may be an electoral commission organized under law; it may be a tribunal pointed out by the law beforehand in the nature of a judicial tribunal or some other kind of tribunal; but to leave the question in dispute to be decided by the governor of a State, it seems to me only involves this matter in greater difficulty. In cases which may arise where honesty of opinion and sincerity of conviction may exist in both parties, where there is a real dispute as to who have been elected electors for a particular State, it seems to me to select the governor of the State to decide the question is far more dangerous than to leave it even to the presiding officer of the Senate. So all the arguments which the Senator has used to show that the presiding officer of the Senate ought not to decide the question arise also as against the authority to give the governor of a State the power to decide the question. It seems to me that that will not answer, and that the remedy proposed by the Senator from Massachusetts, who admits the evil and the difficulty, is not a remedy at all, but only aggravates the disease.

In the face of the mandate of the Constitution that when the electoral votes are read before the two Houses, with all the formalities that can surround this grave political event, "the votes shall then becounted," the Senator from Massachusetts turns around and says that the votes certified to by the governor shall be counted. It seems to me that is not sufficient. It is not a remedy. On the other hand, I would far rather say that no vote of any State shall be excluded except by the concurrent vote of both Houses.

In the case of a single return, although that return may disclose an illegal election, although it may disclose the election of persons who were not eligible to the position of elector, although it may involve grave difficulties and doubts as to the election or as to the validity of the return, this very bill provides that the vote shall be counted unless both Houses agree that it shall not be counted. Now I would far rather apply that principle to the case put. On the contrary, the Senator proposes to amend the bill so as to make the clause read:

> And in such case of more than one return or paper purporting to be a return from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which appear to have been cast by the electors whose names appear on the lists certified by the executive of the State, in accordance with the provisions of section 136 of the Revised Statutes as hereby amended.

So it provides that in case of a double return the vote certified by the governor of the State shall be the vote to be counted, and under the operations of this provision even with both Houses concurring that the governor of the State is wrong, that he has disregarded the will of the people of the State of which he is governor, the two Houses concurring could not overrule the decision of the executive of the State. It seems to me that this is a more dangerous complication.

On the whole, without extending this debate further, this matter is surrounded by many difficulties. When I proposed the other day that the question should finally be decided by the two Houses acting in a joint convention I was not entirely satisfied, because I could see that that involved great difficulties. But suppose, as the bill stood, the House of Representatives should say that a certain vote should not be counted; in that case it would be the end of it; it would be excluded from the count, whatever opinion the Senate might have; but if, on the contrary, the Senate should come to a different opinion from the House, then at least there would be one other chance, by convening the two Houses in joint convention, of having a settlement and a determination of the question, and not merely a rejection of the vote. As the bill stands, when either House objects the vote is not counted—that is, it is excluded from the count, and the State has no part or lot in the election of a President. In the amendment I proposed I provided for at least one rehearing of the question in case the two Houses disagree, when the Senate mingling with the House in joint convention might to some extent control or affect the vote. I admitted that it was not a sufficient remedy; I did not like to see the Senate merged in the House; still it gave an additional safeguard, and then it gave a decision of the

question so that the vote of the State was counted, and therefore was better than the proposition contained in the bill. Still I was not satisfied.

Now, I think if this amendment is adopted it will only make still more dangerous the difficulties that surround this count. It leaves the executive or governor of a State to decide the very question which we are not willing to leave to the two Houses to decide, which we are not willing to leave to either House to decide. It would be far better to take the expedient proposed by me than to take this, because it is certainly better to leave to the two Houses of Congress, two great political bodies representing all the people of the United States and who are to a large extent entirely disinterested, to decide this local controversy in a State, rather than to leave it to a governor of a State, who himself is necessarily a party to that controversy, to decide it.

The proposition of my friend from Massachusetts violates the very rule that he has quoted here as laid down by Lord Coke, that even Parliament can not make any man a judge in his own case. Yet this amendment provides that the governor of a State is the judge of the election as to which of two sets of electors is elected, and the governor himself is a party necessarily to the controversy.

But, as I said before, I do not wish to continue this discussion further. I do not believe that in the present condition of the bill we are likely to come to any wise solution of it. I would rather recommit the bill to the Committee on Privileges and Elections, which I know would approach this question with great care. At any rate, I trust that we shall not now be forced to vote upon propositions that are not satisfactory to the Senate. I would very much rather let the bill go over for a while, so that we may look into it and see whether some provision can not be agreed on for fixing upon a tribunal. I would rather take the Supreme Court of the United States, as much as I object to drawing that great tribunal into this controversy, because that court would at least give a decision; it would say which of two returns should be counted; but if the amendment of the Senator from Massachusetts is adopted it will be placed beyond the power of the two Houses to overrule the interested mandate of the governor of a State. If no other expedient can be adopted, I would say that some vote should be counted, that the Constitution should be obeyed, "that the votes shall then be counted," rather than to say that either House may by its arbitrary veto reject the vote, or, in other words, exclude it from being counted.

I therefore respectfully submit to my honorable friend from Massachusetts that he has not helped the matter any by his amendment, but has left it a source of dangerous dispute, and has selected a tribunal the last of all to decide this grave question.

Mr. HOAR. Mr. President, it seems to me, with the profound respect which I always entertain for my honorable friend, that his suggestion hardly indicates the reflection which he is in the habit of giving to such matters. This body has been engaged dealing with this question nearly thirteen years. It has debated it week after week, month after month some sessions, and at last it has three times passed this bill, after discussion, by a vote approaching to unanimity. Now my honorable friend thinks we had better put it off a little longer, recommit the bill to the committee, and see if we can not do something better. I submit that when a bill comes, at the end of twelve years' debate, three times adopted by the Senate of the United States, adopted by the committee which has had it in charge, reported to the Senate, stood on its Calendar six or eight weeks, the Senate is prepared to deal with that question if it ever is fit to deal with any question, and that it is not a case for recommitments or dreams overnight; it is a case for the judgment and decision of the Senate.

My honorable friend says it is a great inconsistency to deny the President of the Senate a power which you permit to the executive of a State. In the first place, it is the Constitution which denies that power to the President of the Senate, not the bill, in the judgment of most persons who have reflected upon this subject. In the next place, the cases are very different.

If the President of the Senate is to count the vote he is to decide who is chosen President of the United States, and there is to be given to him the full and final control of controversies which in our ordinary political history are to be controversies between him and one other man, the question whether he himself is chosen to the foremost office on the face of the earth, a choice more an object of ordinary human desire than any coronet, or crown, or star.

The belief that the Constitution, framed by men so jealous of executive power and executive usurpation, denied to a man interested in that question the function of being the sole judge to decide it the Senator likens to the case where the executive of a single State is permitted to certify whom that State has chosen for Presidential electors, having no relation to any of the rest of the elections in the country, and to have the certificate *prima facie*.

In the first place, I suppose the Senator agrees with me that this is a matter for the State; that the State ought to decide, should decide, and should be respected in deciding the question for itself; and that that bill is the best which remands that decision entirely to the State.

Now, this bill does not give any weight, authority, or dignity whatever to the certificate of the State executive unless the State which he represents has so chosen, because it provides that the State, in the first instance, may appoint another tribunal for the purpose, which implies the desire of the State itself that its executive should be its constitutional voice and authority upon this question that the bill respects. In other words, the bill only gives this *prima facie* authority to the State executive when the State itself chooses to repose that authority in him.

Will the Senator from Ohio himself deny that if the State of Ohio puts upon its statute-book, "It is hereby enacted that the votes for Presidential electors shall be counted and certified by the governor, and that count and certificate shall be conclusive," that would be something which we could not and should not go behind? The bill does nothing but that in substance, saying to the State: "Appoint your own judicature in your own fashion to determine this question; if you do not do it, we shall assume that you desire that the certificate of your governor shall determine it," and that is all the bill says.

The same authority is given to the certificate of the governor of a State in a thousand other cases. The governor's certificate comes here to the Senate to the credentials of a Senator, and although the Constitution gives the Senate a final judgment in that case, that is usually all that is required and the Senator takes his seat. It is a *prima facie* case; he sits in the Senate and votes and acts; at any rate, he is in his place. But a still stronger case is the election of the delegation to the House of Representatives. The New York or Ohio or Pennsylvania delegation comes up with the certificate of their governor, changing the entire control of the legislative power in one branch of the Congress of the United States, and those Representatives are put on the roll by the Clerk, they take part in the organization of the House, in the election of a Speaker, which involves the appointment of committees, and sit for weeks and months, even if there is a dispute or contest in their case, until that matter is decided.

So I say that this only is adopting the principle which the Constitution adopts. It only gives this power to the governor when the State itself desires it shall be reposed there, and it is only following the analogies and precedents which in all other like cases from the foundation of the Government have prevailed.

Mr. GEORGE. I desire to ask the Senator from Massachusetts a question.

The PRESIDING OFFICER. Does the Senator from Massachusetts yield?

Mr. HOAR. Certainly.

Mr. GEORGE. Is there any constitutional objection to the Legislature of a State authorizing the governor himself to appoint the electors?

Mr. HOAR. Not the slightest. It is perfectly within the power of the Legislature of a State.

Mr. TELLER. Or for the Legislature themselves to elect the electors?

Mr. HOAR. Or for the Legislature to elect them themselves. But the point of the question of the Senator from Ohio relates to the executive of the State. If he will pardon me, he seems not to reflect. We find here a constitutional difficulty never to be cured without a constitutional amendment. Congress after Congress, from 1800 down to the present time, have wrestled and labored with that difficulty. This is the only solution which seems likely ever to be agreed upon. I should unite with the Senator in agreeing to have either the Supreme Court or the senior justice of the court come in as an arbiter between the two bodies, but the Senator knows as well as I do that it is perfectly hopeless to expect to get any legislation to that effect.

In regard to this bill the Senator says, in other words, here are a hundred difficulties; you have cured ninety-nine of them—at any rate he does not submit any argument to the Senate to show that we have not done so well and properly—but the hundredth still remains; and because you do not to my satisfaction deal with that I shall not join you in the measure which at least disposes of the ninety-nine. That seems to be the substance of the argument of the Senator from Ohio.

Mr. SHERMAN. The Senator from Massachusetts himself admits that the bill, which has been the result of thirteen years' deliberation, is not satisfactory; that it is weak in the most vital point.

Mr. HOAR. The Senator will pardon me; I do not admit any such thing.

Mr. SHERMAN. The Senator by introducing this amendment admitted it.

Mr. HOAR. If the Senator means that a little amendment of detail is an admission of anything——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Massachusetts?

Mr. HOAR. If the Senator will pardon me, when I say the bill is not satisfactory, I do not mean to say that it is not the most satisfactory legislation that either I or any man can frame. I think it is. I say that what is not satisfactory is the condition of the constitutional provision on this subject, which commits a question to the decision of two bodies politic and does not provide for any common arbiter. That is the unsatisfactory thing.

Mr. SHERMAN. I commence again as I started a moment ago. The Senator admits it by introducing an amendment entirely foreign to the bill, which no one heretofore has proposed in the thirteen years of debate to try this initial point, this governing point of the whole contro-

versy, proposing a new arbiter in the governor of a State where a contest exists. This amendment comes from him, and we respect his opinions greatly, but it seems to me that the amendment itself ought to undergo the careful revision of the committee of which he is the chairman to see whether they would be satisfied to turn over this controversy from the two Houses to the governor of a State. But he says the governors of the States certify to our elections as Senators and to the election of members of the other House of Congress. So the governor does, purely as an administrative officer, and upon that certificate a Senator may be sworn in for a month or a day, and the members of the other House may be sworn in or turned aside even without being sworn in. That certificate is only *prima facie* evidence of the facts contained in it; it is not at all conclusive. But this proposition is to make the action of the governor of a State final and conclusive, so that the two Houses acting in concert can not overrule that decision, because it expressly provides that the two Houses when met together for the express purpose of counting the vote shall not count any paper except that certified to by the governor. In other words, it is conclusive and final upon the two Houses and upon the people of the United States.

I say that when the Senator proposes this amendment he enter a *cognovit*, a confession, that the plan heretofore, after thirteen years' consideration and debate, was faulty in the vital part of it; and that some provision must be devised by him to meet this difficulty. Everybody knows, no one better than the Senator himself, that I have great respect for him and for his opinion; but when he comes to a question that may affect peace or war, the existence of the United States, the election of a President, I do think that this measure ought to be surrounded with greater guards. If, going a little step further, he would provide that the return shall be received which shall be approved or certified after a trial before the supreme court of the State itself, and that the court shall decide between two opposing returns, I can see that there might be a solution of the difficulty. For ninety years, or whatever has been the period of our history, the certificate of the governor has been sent to us, but it was simply the certificate of the governor in the performance of an administrative duty, not binding upon either House, disregarded time and time again in our history, even in the election of a single Representative, and especially in the election of a Senator. But now, in the election of a President it is proposed to give the executive of a State the power to control that vote, when before that power is exercised the governor will know that the vote of that State may decide the election of a President.

It seems to me, therefore, that this is not a sufficient remedy, and that after our thirteen years' debate we have not reached a point where the other House or the Senate can be satisfied with the solution that is proposed of this most difficult problem. The Senator himself, it seems to me, concedes that by offering the amendment at this time.

I do not wish to prolong this debate, because I have said all that I desire to say on the subject, and I am willing to abide by the judgment of the Senate; but I believe it would be wiser to let this matter go over for further consideration or to recommit it and let us have the opinion of the Committee on Privileges and Elections as to whether the amendment now proposed, so vital and important, is the best that they can offer. Then we could decide—certainly not now. The Senator proposes to dispose of this matter to-day, when a proposition is made more decisive, more summary, more powerful in the hands of a single man than any that has yet been proposed. I am not prepared to consider it in a hurry. I hope therefore that this measure will go over until some further light can be thrown upon it, and let us see if it is the best of all the wisdom of the Senate of the United States that this matter should be committed to the governor of a State, not by the consent of the State or by the law of the State, because the law of the State would probably not leave to the governor this decisive action. I doubt whether the Legislature of any State would give to the governor the power either to appoint the electors or to decide finally and conclusively who have been chosen electors in the State.

Mr. HOAR. Where do you find that in the bill?

Mr. SHERMAN. The amendment expressly provides that no vote shall be counted in the case of a double return except the vote certified by the governor.

Mr. HOAR. It is only where the State leaves it to him. It provides before that that the State may appoint its own tribunal.

Mr. SHERMAN. Mr. President——

Mr. HOAR. Will my friend allow me, in order that we may understand each other? I do not like to interrupt him, but I should like to understand him and I should like to have him understand me. I put to him this direct question: Suppose the State of Ohio by her Legislature enacts that her governor shall count the vote for electors, and that his certificate shall be conclusive, are you not in favor of making it conclusive yourself under those circumstances?

Mr. SHERMAN. In the first place, if the Senator has got through, no State would repose that power in the executive. The Senator is supposing *if* it would do it, *if* Ohio would do it. Ohio would never do it.

Mr. HOAR. My friend will pardon me, that is all the bill does. This bill says that if Ohio leaves it to the governor, then the governor's certificate shall be conclusive. If she does not leave it to the governor, then his certificate will not be conclusive and will have no effect. I should like to repeat. I ask the Senator not to answer me by saying he thinks it is improbable it will happen, because that is as good an argument against him as it is against me. If it does happen that Ohio says, either in terms or by implication, "I want my governor to settle this question," are you not in favor of executing what the bill says shall be done?

Mr. SHERMAN. Such a position has never been taken in all this controversy for the last thirteen years. If the Senator is willing to say that the governor of a State shall decide all these controversies in case of double returns or in case of single returns, then, as a matter of course, there is no need for all the magnificent ceremony that is provided for by the Constitution. The intendment of the Constitution, as the Senator has reasoned over and over again, is that the two Houses shall count the vote; and now we propose to tie the hands of the two Houses and to say that they shall not count the vote, but they shall only count conclusively those votes which are certified to by the governors of the States. If that is to be the law, and that is the end of it all, then what is the use of having a law? Why not say "the vote shall then be counted as certified by the governors of the respective States," if that is the construction you propose to give to the Constitution?

But, on the other hand, the Constitution provides some other mode of dealing with it. It provides that the returns shall be received and held by the presiding officer of the Senate; that they shall be presented to the two Houses of Congress; and an imposing array is made there to see it done. Does the Constitution say that the governor of a State shall then count the votes, or that the votes certified by the governors shall then be counted? Not at all. If a State chooses to repose in its chief executive magistrate the power to decide these questions, that is quite a different thing. I may perhaps admit that in certain cases the State itself might invest the governor with powers of choosing electors, as the State may impose upon the Legislature that power; but that has never been done since the foundation of the Government. The executive officer of the State simply returns what appears upon the face of the record, and we, the two Houses of Congress, pass upon the validity of those returns.

We say, according to the doctrine of the honorable Senator from Massachusetts, which of those votes shall be counted; and now, as the end of this controversy, it is proposed to turn it over and take the report and decision of the governor of a State as final and conclusive. If so, then it does not make any difference about the two Houses meeting, it does not make any difference about the custody of the electoral returns, which are so safely guarded; all we have got to do is to receive a polite note from the governor of the State of Ohio, for instance, that such and such men were electors, and such and such men did vote so and so; and that is to be final and conclusive, even though both Houses may be of opinion that the governor has usurped authority and has falsely certified returns or manufactured them. So I submit that after all the Senator has not solved the problem.

Mr. HOAR. Mr. President, one word only. The Senator from Ohio seems to me to entirely overlook the constitutional purpose of the founders of our Government. They meant to take away from Congress, from executive, from national officers, as far as they possibly could, as far as the wit of man could contrive, any control over this matter at all. They said that the electors should not come to the national capital, but should meet at the capitals of their States and vote, and that they should all vote on the same day, so that one State should not be affected by the act of another; that no one holding an office of trust or profit under the United States should have anything to do with the selection of the President of the United States. It is the one place in the Constitution where State right, State authority, State independence was carefully preserved to the exclusion of any national or central authority whatever.

To that we all agree. And they were so confident that this thing would come to the seat of government from the States settled that they said the President of the Senate shall open these votes, and they supposed almost that they would count themselves, that "the votes shall then be counted," the mere arithmetical enumeration of those votes being in their eyes so unimportant and so a matter of course that it did not occur to them even to say in words who should do it.

That being the case, what does the bill do? The bill says to the State, "Questions have arisen in our historical experience in regard to your voice. Now, you may do one of two things. You may create another tribunal with express authority to settle that question, in which case the decision of that tribunal shall prevail, or you may leave it on your governor's certificate, just as you please." The bill says, therefore, that in case the State declines to appoint any other tribunal and chooses to leave it on the governor's certificate, we will leave it where the State has left it.

That being the condition of the bill, I put this question to my honorable friend from Ohio when he was up just now, Will you take the responsibility of saying yourself in argument, while you are attacking this bill, that you are opposed to doing exactly that thing; and will you say that if the State of Ohio or any other says, "I wish this thing

to be settled by my governor's certifiate," you will oppose its being done? Yet you object to the principles of the bill. Although the question was propounded to the Senator three times he was unwilling to say that he would not, but he met it by saying he does not think it is very probable that the State could safely let its governor appoint the electors, much more count the vote and decide afterward.. I asked the Senator, "Do you object to that, if the State does it?" The Senator says, "It is not likely the State will ever do it."

Mr. SHERMAN. Let me ask the Senator——

Mr. HOAR. Let me finish my proposition, and then I will answer the Senator. It may be true that it is not likely that the State will do that; but if in that improbable case, however, of the State doing it, the Senator would not object to it, and thinks it ought to be permitted, does not his whole argument against the bill as proposed to be amended fail? If it is not likely that the State would do it, then the contingency provided for never arises, and we have got the main portion of the bill which provides for the case settled in the State by the State tribunal. Now I will answer the Senator's question.

Mr. SHERMAN. This is the question I wish to ask: The bill does not propose that the State shall confer upon its governor this power. That is one thing. The bill proposes to confer that power by act of Congress, and I doubt very much whether it can confer any such power.

Mr. HOAR. I thought my friend wanted to ask a question.

Mr. SHERMAN. I ask that question, whether Congress can confer upon a governor of a State a power of this kind which has not been granted by the State?

Mr. TELLER. The bill does not do that.

Mr. HOAR. The bill does not do that. That, it seems to me, is a mere question of phraseology. Then the only point of the Senator's labored argument is this, the difference between an express statute authorizing the Governor to make the certificate and have it conclusive, and the State's leaving it to the governor by refraining to create any other tribunal after this act of Congress has pointed out what, if that tribunal is created, it shall do. In other words, by the admission of my honorable friend from Ohio, his labored criticism and attack on the bill is reduced to exactly this, that he thinks there is a certain important difference between the case where the State of Ohio, having it in its power to create some other tribunal or to confer this power expressly on the governor, does the latter, and the case where the State of Ohio, having it in its power to create some other tribunal or leave it to the governor without an express enactment, does the latter. It seems to me the argument disappears.

Mr. INGALLS obtained the floor.

Mr. SHERMAN. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from Ohio?

Mr. INGALLS. Yes, sir.

Mr. SHERMAN. I wish to call the attention of the Senator from Massachusetts and of the Senate itself to the fact that the electors have nothing to do with the governor of a State. The electors send their votes directly to the President of the Senate.

Mr. HOAR. My friend will pardon me; that is provided for in the bill. The governor of a State has a great deal to do with the electors. The governor of a State is bound by the law which has been in existence since 1792, or whatever is the date of the original law, to give three copies, three certificates to the board of electors whom he finds to be chosen. Those three papers are annexed under the statute of the United States to the electors' certificate of their votes. One of them is sent here by a messenger, one of them is sent here by mail, and one is deposited in the office of the clerk of the district court of the United States. Those are the certificates which the President of the Senate opens, and those are the certificates which are counted in the absence of anything to overthrow them.

Mr. SHERMAN. According to the laws of the United States the governor has nothing to do with the vote of the electors. He certifies and makes out three lists of electors, which he gives to the electors, just as he certifies who are elected members of Congress. He gives those lists to the electors who he thinks are elected, but from that time forward the governor has nothing to do with the electors. The returns are not made to the governor. You will have to change your law so that the returns of the electors shall be made to the governor and certified to the governor.

Mr. HOAR. Now, my honorable friend misunderstands me.

Mr. SHERMAN. Wait until I get through.

Mr. INGALLS. Where am I?

Mr. SHERMAN. I know this conversational debate between us——

Mr. GEORGE. Is very instructive.

Mr. SHERMAN. May not present the points, but I wish again to call attention to the fact that the governor has nothing to do with the electors. He is not a member of the electoral college; he has nothing to do with it. The electors meet and send their proceedings not to the governor. The governor may not know even who the electors are. He certifies here that the electors met and voted, and sends it to the presiding officer of the Senate, and they are never opened except in the presence of the two Houses, when "the vote shall then be counted." The interposition of this amendment would require the electoral vote to be certified to the governor and then by the governor to the presiding officer of the Senate. It would change the whole character of our electoral college.

Mr. HOAR. Mr. President, one minute.

The PRESIDING OFFICER. Does the Senator from Kansas yield?

Mr. INGALLS. Certainly.

Mr. HOAR. The Senator from Ohio certainly has not read the bill and amendment. The present law authorizes the governor, as the Senator states, to deliver to the electors his certificate. The electors annex their votes to it and send it here. The bill provides not that there shall be a certificate by the governor after the vote of the electors, but that the vote of those electors to which the governor's previous certificate of their election is annexed shall be the one *prima facie* to be counted. Now, if the learned Senator supposes that this proposition requires any submission of the vote of the electors to the governor after they have voted, it shows that he has not read or comprehended the bill.

Mr. INGALLS. Mr. President, I move to commit the bill to the Committee on Privileges and Elections. In support of that motion I venture to suggest the surprise I felt at the impatience with which the Senator from Massachusetts appeared to resent the suggestion of the Senator from Ohio that there should be further deliberation upon this measure, which he said had already engaged the attention of the Senate for more than thirteen years, the inference being, I assume, that the perfection of human wisdom had been reached, and that any attempt to reach higher excellence could not result in advantage to the Senate or in any wiser solution of the confessed difficulties by which this question is surrounded.

When I reflected that this bill from the Committee on Privileges and Elections, which had been thrice passed by the Senate by a vote, as the Senator informs us, practically unanimous, had been by his own motion within forty-eight legislative hours proposed to be amended by a provision that would have given two of the votes of Oregon in 1877 to Mr. Hayes and one to Mr. Tilden—a provision that the certificate of the governor of the State should be conclusive upon this great tribunal—I confess I was still more amazed at the Senator's unwillingness for further deliberation.

When I remembered that within ten days we have passed a measure dealing with one branch of this important subject, the succession by inheritance to the Presidential office, a bill, prepared by that Senator, and passed with such haste through this body that there was insufficient opportunity for consideration, so that a defect has already been discovered so obviously in violation of what was intended that an amendment is suggested, I confess that my surprise was increased to hear that procrastination or delay would result in some fatal disaster in the solution of this great problem.

Under the bill providing for the Presidential succession it is now admitted that in case the President and Vice-President elect should die before they were installed into office the out-going Secretary of State would hold that term for the four years for which the President and Vice-President were elected, a result that never was contemplated, an event provision for which never would have been omitted had the Senate had opportunity of considering whether it was one of the issues that was to be made effectual by the enactment of that statute.

So, Mr. President, I think we may not lose by delay. This matter has been debated since 1789. It will continue to be debated, no matter what action may be taken by the Senate, until there is a constitutional amendment, a change in the organic law that shall entirely take the subject out of its present attitude and place it where it should be placed, in accordance with the predetermined will of the American people. So the Senator need not comfort or console himself by the expectation that by any piece of legislative patchwork we can adopt here debate upon this great question is to come to an end.

The Senate seems to be in this matter in a mood of self-abnegation. As I understand the Constitution, each of the individuals and each of the constituent bodies composing this great electoral tribunal are charged with the responsibility of assuming jurisdiction of whatever parts of constitutional duty may fall upon them, which no law can affect. When the Constitution imposes a duty upon an officer he must be the judge of the time and method of discharging that duty, subject to his final responsibility to the people.

The Electoral Commission of 1877 was a contrivance that will never be repeated in our politics. It was a device that was favored by each party in the belief that it would cheat the other, and it resulted, as I once before said, in defrauding both. The Democratic majority in the House of Representatives at that time never would have consented to the creation of that tribunal had they not supposed that the fifteenth member of the commission, under the provisions of that statute, was in favor of the election of Samuel J. Tilden. We all know the providential interposition by which that great and good man David Davis, of Illinois, was removed from that tribunal and translated to a happier sphere. In the dispensations of Providence he was transferred from the bench of the Supreme Court to the Senate of the United States after the passage of the bill, and thus the fifteenth man upon the tribunal was in favor of the election of Mr. Hayes to the Presidency. That is the way that seven to eight became changed to eight to seven. I have heard much about the patriotism of the Democratic party in

that contest, and the moderation of its candidate in consenting to this measure and renouncing the Presidency, but I venture to say that could they have foreseen in December, 1876, when that bill was passed, what the transmutations of politics were to bring about there never would have been a concurrence on the part of the House of Representatives in the enactment of the electoral commission bill. It was a fatal error under the Constitution for the Democratic party; and the bill we are now considering is but a faint and feeble and fragile imitation of the Electoral Commission.

I shall be instructed far beyond my expectations if some great constitutional lawyer, profoundly familiar with the inner consciousness of the framers of our Government, can assure me how any legislative enactment that we may adopt now or at any time can in any manner whatever bind that great political tribunal which is to meet to declare the result of the Presidential election in 1888. Here is the fundamental difficulty in my mind about all these propositions. The function that is to be performed by the electors of the President and Vice-President of the United States is a political function exercised by the people of the United States acting in their primary capacity; it is a function that is reserved to them in terms by the Constitution itself, and whether the President of the Senate is to count the vote, whether the vote is to be counted by the Senate and House of Representatives separately or jointly, whether it is to be counted by the tribunal proposed by the Senator from Ohio, the fact still remains that the vote is to be counted, and that no act can be passed by any antecedent Congress that can deprive either of the persons or any of those great constituent bodies of the powers that they possess and which they are directed to exercise under and by virtue of the twelfth article of the amendments to the Constitution.

I heard the Senator from Massachusetts say that we can not confer nor impair this jurisdiction, and I agree with him upon that. No tribunal, no legislative enactment can determine, nor has ever attempted to determine, whether the President of the Senate shall count the vote or not. That officer must decide this question for himself; and, although I disapproved the declaration made by the Senator from Vermont [Mr. EDMUNDS] in his capacity as President *pro tempore* of this body in February last, although I believe it was an unnecessary act of renunciation on behalf of the Senate, a practical abdication of a power that might reasonably be inferred to belong to this body or to its presiding officer, and which many believed did so belong to it, I admit that he had the right to make it, because the duty was devolved upon him by the Constitution to determine for himself whether he would count that vote or whether he would not. If I had been in that position I would have counted it had the issue been left with me. Let me read what he said. After announcing the state of the vote he continued:

And the President of the Senate makes this declaration only as a public statement in the presence of the two Houses of Congress of the contents of the papers opened and read on this occasion, and not as possessing any authority in law to declare any legal conclusion whatever.

No sovereign ever laid down scepter and crown more absolutely, more unnecessarily, more in derogation of what might have been lawfully claimed to be the constitutional functions of the President of the Senate than was done by the Senator from Vermont on that occasion. It had never been determined by any tribunal, it had never been decided by any competent authority, that the phrase "the vote shall then be counted" might not by an absolutely justifiable inference have been held to mean that the President of the Senate, being the custodian of those votes, having the right to open them, had also the right to count them; and in the great contests of the future emergencies may arise, emergencies are not unlikely to arise in the state of the law on this subject, when it might be well not to be confronted by that pernicious precedent. This body by no expression of opinion upon any occasion, either then or at any other time, had renounced its authority through its presiding officer to count the votes in his custody in the presence of the two Houses, and therefore, although I think this act was not warranted by any decision of the Senate, it can not be denied that under the Constitution the Senator from Vermont, as President of the Senate, had the right to do what he did, because he was in the discharge of a duty under the Constitution that he was compelled to decide for himself and that no person could decide for him.

I heard the Senator from Alabama [Mr. MORGAN] on a previous day speak, I thought with something like idolatry, of the wisdom of the framers of this Government in the devices that they had contrived for determining the election of President and Vice-President, and he warned us with something of pathetic admonition against the dangers, the sacrilege, the impiety of venturing to offer any amendment to this system that was so near the perfection of human wisdom. Mr. President, the memory of those great men who formed our Constitution is venerated and revered. They made a sublime innovation in government that has formed an epoch in the upward progress of the human race. They had no precedents for their experiment, whose success has been one of the great wonders and marvels of the politics of the world. But they were human, and if their statesmanship and their wisdom has no stronger foundation on which to rest than the contrivance they devised for electing a President and Vice-President of the United States and determining the questions arising thereunder, the tenure, the succession by inheritance, the question of inability, then, sir, their reputation rests upon a very fragile and insecure and insubstantial foundation, for public attention can not be too frequently nor too forcibly directed to the dangers which threaten not only the peace but the perpetuity of this Government from the defective and uncertain state of the law governing the question of Presidential elections, succession, and inheritance.

Twice already in our brief history, once in 1801 by the possible failure to elect a President at all, and again in 1877 by the possible failure to determine the result of a disputed Presidential election before the close of the preceding term, we have been brought to the very verge and brink of revolution. The first crisis resulted in what is now known as the twelfth article of amendments to the Constitution, and the second, as I have before said, was averted by the invention of the Electoral Commission, which had no precedent and will have no successor.

In further illustration of the organic defects in the Constitution on this general subject, let me refer for a moment to the condition of the law upon the question of Presidential inability. In case of the removal, resignation, death, or inability of the President the Vice-President is to succeed to the powers and duties of that office. Who is to decide when inability occurs: its nature, extent, duration, and end? What law could be enacted to take away from the Vice-President of the United States the absolute duty under the Constitution of determining for himself when inability of the President occurs? Who doubts that in 1881, from the 2d day of July until the 19th day of September in that year, the inability of President Garfield was absolute under the Constitution in the full meaning of that term? He was sequestered for eighty days, in a seclusion as silent as the tomb to which he was so soon to be consigned. He was as incapable of performing any executive act as his marble effigy in the Hall of Statues, that is to transmit to posterity the memory of his triumphs and of his martyrdom. Only once during that long period did his failing hand trace in wavering characters the letters of his name. Here was a case of absolute inability under the Constitution. The event contemplated by the Constitution had occurred. And I believe that under that instrument, when James A. Garfield sank to the floor of the railroad station penetrated by the bullet of the assassin, the powers and duties of the Presidential office devolved, under the Constitution, upon Chester A. Arthur. Fortunately, sir, difficulty was averted. The world was at peace. The composure of the American people during that perilous period was a convincing and added proof of their capacity for self-government. But we had no President; we had no Vice-President who had entered upon the discharge of the powers and duties of the President. We were without an executive head. There was no law governing that subject. And yet does any one who recalls the slumbering passions of that epoch suppose for an instant that had there been any emergency, any exigency requiring the performance of executive functions, Mr. Chester A. Arthur could have gone to the door of the White House and peaceably entered upon the discharge of the powers and duties that had devolved upon him under the Constitution? I do not. I am convinced that any such attempt on his part while the breath of life remained in the body of James A. Garfield would have precipitated a convulsion in our politics that would have been pregnant with unknown disasters and perils to the Republic.

One thing further, sir:

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

As has been observed, the silence as to the person, or the body, or the tribunal by whom that computation is to be made is absolute. It is left entirely to inference, to be decided by the persons upon whom that duty may devolve under the Constitution. It can not be made any more certain, it can not be made any more positive, nor can it be abrogated or removed by anything that we can do in the premises; and we can pass no statute and make no enactment that will in any way interfere with or change or modify the will of that high tribunal when it may next meet in the discharge of the duties devolved upon it under the Constitution.

The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three on the list of those voted for as President, the House of Representative shall choose immediately, by ballot, the President.

Who is to decide whether any person has a majority or not? Who is to decide who are the three highest on the list that have been balloted for heretofore? Take the case of 1877. Supposing there had been no Electoral Commission, if those certificates had been opened, if the votes had been counted by the tellers at the desk, who was to decide when the emergency arrived which devolved that power upon the House of Representatives? Could any act of Congress, recent or remote, have determined that? Could any act of Congress deprive or take away anything from the power of the House of Representatives to determine for themselves whether there had been an election or not, which of the three candidates on the list were those having the highest votes, and which of those should be elected by the exercise of the power confided to them by the Constitution?

Careful consideration of this subject will convince any thoughtful student of the Constitution that the scheme which has been devised and which now remains in our organic law is fatally defective, and that nothing can be done by way of legislation to cure the inevitable evils by which it is surrounded, and the more we proceed by legislation to patch, to bridge over apparent difficulties, to abbreviate the number of perils which surround it, by so much we retard and delay the exercise of the power which the people must ultimately be called upon to perform in adopting some system that shall remove the perils in which it is now environed.

A casual survey of the debates in the convention which formed our Constitution discloses a singular condition of doubt and uncertainty upon this subject. No less than ten methods of choosing a President were seriously proposed and debated. As the article stood within four days after the convention met and as it remained down to within less than two weeks before it adjourned in September, the National Executive was to be elected by the National Legislature for the term of seven years, and was to be ineligible for another election, and it was not until near the close of the convention, when the rights of the smaller and the larger States began to be in controversy and the people in the Southern States saw that by reason of the exclusion of the negroes from the voting population they were to be at a disadvantage, that this device of an electoral college was finally agreed upon as a compromise for the purpose as far as possible of taking away the power of choosing their President by a direct vote of the people themselves.

It was supposed that these men called electors would be selected from the most virtuous, the most discreet, the most upright, and the most "continental" persons, as the phrase then employed was, who should assemble apart from the people, like a conclave of cardinals who choose a pope, and then in the deliberations of their councils canvass the merits of the best citizens in the country for the chief executive office, and finally select him without any popular interference whatever. This plan lasted just twelve years. George Washington received all the electoral votes; but in 1800 parties were organized and a Presidential caucus was held, and from that time to this the electoral system has been *débris;* it is rubbish. The electors under the Constitution are puppets. They are like the marionettes in a Punch and Judy show. The entire functions that they were supposed to exercise under the Constitution have been stripped from them by the people in demanding the right to select a President for themselves; and when they were deprived of the power to vote directly for President by the interposition of this absurd device of an electoral college, in the first place through the Congressional caucus and in the next place by the party nominating convention, they have deprived these electors of the semblance of power, and they now stand before the people as the instructed and elected and chosen delegates of a party; and no man so chosen would dare, having been chosen as the electoral candidate of a party, to violate his trust. If any elector at the last election, having been chosen as an elector for Mr. Cleveland or as an elector for Mr. Blaine, had ventured in the college of electors in his State when they assembled for choosing a President under the Constitution to vote for any other than the man that he was elected to support, he would have been an outlaw and an outcast upon the face of the earth.

For these, with many other reasons that might be brought forward, I am unalterably opposed to any further tinkering with this electoral business. The country has outgrown it. It is out-worn. It has been repudiated. It no longer has any significance or substance; and any attempt to patch it, to plaster over its deformities, by any means of props and supports to strengthen it, merely delays the action of the people upon this subject in the acceptance of some scheme that will enable them in the exercise of their great functions to decide who shall be President without the intervention of electoral colleges, and certify their imperial will to some competent and defined power that shall declare the result.

I said at the outset that in my judgment the fact that the Senator from Massachusetts had offered an amendment of so material and vital a nature as that which appears in the print before me justified further deliberation upon this subject, and if I understand the meaning of this amendment—and the Senator from Massachusetts assures me privately that I do not—I feel sure that had it been incorporated in the Electoral Commission bill and could have been made effective it would have resulted inevitably in giving the result of that election in favor of the Democratic candidate, because, if I recollect aright, out of the three electors in Oregon two of them were certified by the governor to have been elected by the Republicans and one, Cronin, I think was the name, was declared to have been chosen by the Democrats, and thereupon would have been committed to the fortunes of Mr. Tilden. I may be mistaken. I should like to ask the Senator from Oregon if that was not the condition at that time?

Mr. MITCHELL, of Oregon. That is correct. Certificates were given to two Republicans and one Democrat.

Mr. INGALLS. The certificate of the governor of Oregon was that two of those electors were chosen by the Republicans and one was chosen by the Democrats; and if there is no escape from the conclusion that under this amendment if adopted by the Senate and enacted into a law so far as a statute could have any effect on this subject at all in a similar case there would be no possibility on the part of the tribunal passing upon these matters to review that decision, then I should like to hear what the Senator from Massachusetts has to say by way of explanation; and if that is the result, if a principle so important as this upon the spur of the moment, without debate or consideration or consultation, is to be adopted by the Senate, pregnant with such momentous consequences, I am very sure that he will not feel that I have been wanting in any respect to him in moving to recommit this bill.

Mr. EVARTS. Mr. President, I propose to offer a few remarks upon the matter now before the Senate, but at this hour perhaps it would not be convenient to the Senate for me to proceed.

Mr. HOAR. I ask the Senator from New York if he prefers to proceed to-night or to-morrow? It is now after 4 o'clock.

Mr. EVARTS. I can go on to-morrow.

Mr. HOAR. If the Senator from New York will yield to me for one moment I will move an executive session, but I wish to say one word before moving it.

The PRESIDENT *pro tempore.* Does the Senator from New York yield the floor?

Mr. EVARTS. Yes, sir.

Mr. HOAR. I wish to say simply that the Senator from Kansas seems to labor under a misapprehension which has found a place in the press. I interpose my most absolute denial to his statement that the Presidential succession bill which lately passed contained any defect that was not brought to the attention of the committee or which would have affected the vote of any single Senator who voted for it. The difficulty which he calls attention to in that bill was thoroughly and carefully considered by the members of the committee. The Constitution provides that in case of death, removal, resignation, or inability of the President and Vice-President, then certain legislative power is conferred upon Congress. It confers no authority whatever in the letter of the Constitution to provide by legislation at all for the case of the death of a President and Vice-President elect who have not yet become public officers or taken the oath. If, however, that should in the judgment of anybody be supposed to be within the legislative power, by looking at what the Constitution is supposed to have meant rather than at its letter, then unquestionably the bill covers that case, not as the Senator supposes the case of dying after the election and before the 4th of March, because if after election and before the ascertainment of the result here on the second Wednesday of February the two persons die, we find that no living person has been elected and the House of Representatives would proceed to exercise its constitutional functions. But it is true that if between the middle of February and the 4th of March the President and Vice-President elect both die, which would not be likely to happen once in five thousand years, because it is a time when of course great precautions would be taken; they would not be at the same place except at the moment of inauguration—I say if that remote and almost impossible contingency should happen within that fortnight or three weeks, it is true that the old Secretary of State would hold over under this bill to the end of the next four years. But that would not defeat the purpose of the bill, which is that the principal representative of the prevalent political opinion which had prevailed in the election should succeed and hold the office, except in those cases where in the previous election there had been a change in the politics of the country.

Mr. INGALLS. That sometimes happens.

Mr. HOAR. That has only happened eight times out of our twenty-four Presidential elections so far.

Mr. INGALLS. We hope it will happen next time.

Mr. HOAR. It would have made no difference at the second election of the first President, who held for eight years. It would have made no difference when Adams succeeded Washington. It would have made no difference when Madison succeeded Jefferson; when Monroe succeeded Madison; when Adams succeeded Monroe; when Van Buren succeeded Jackson, or when Buchanan succeeded Pierce. So the criticism which the Senator makes, and which was thoroughly considered by several Senators upon the committee, merely is that in relieving the legislation of the Government from this monstrosity which had prevailed, the possibility of imposing the Presidential office on an officer who all the time has to be presiding in the Senate or the House, and in providing this new and vast security for the life of the President of the United States which is to attend him through the whole four years, we were prevented by a difficulty absolutely insuperable from providing for a possible contingency which may happen within the space of ten days, but which will not happen once in ten thousand years. That is the whole of that criticism.

Mr. INGALLS. Mr. President, I supported the bill to which reference has been made believing it to be just in that it retained as far as possible in the hands of the party to whom the people had confided power executive functions during the constitutional term for which the President was elected; and I thought it was wise also because to that extent it removed the danger of a disputed Presidential succession, which is always so fatal to the repose and peace of this country. But still I think the criticism that I made is justified by the observations the Senator has just made. He admits that between the middle of February and the 4th of March in case of the exigency or emergency occurring which has been defined the result follows, the outgoing Secretary of State would exercise executive functions for the ensuing four

years. He justifies the bill by saying that the period is so brief, the *interim* is so short that probably it never will occur; but the fatalities of the past twenty years have familiarized the public mind with the dangers that attend this subject. The people of this country are no longer prepared to disregard death as a factor in the great dramas of political supremacy in this country, and I therefore think that in leaving this crevice, this fissure, there has been a fatal defect in the bill. It is like the little pin that bores through the castle wall, and then farewell king. Of course if a President does not die and if a Vice-President does not die, then there will be no difficulty; but inasmuch as Presidents and Vice-Presidents are mortal, and as no one can tell when fatalities may occur, the difficulty to which I have referred is one that exists, and to that extent justifies the observations that I have made.

Mr. HOAR. I now 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 one hour and twenty-four minutes spent in executive session the doors were reopened, and (at 5 o'clock and 50 minutes p. m.) the Senate adjourned.

HOUSE OF REPRESENTATIVES.

MONDAY, *February* 1, 1886.

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

The Journal of the proceedings of Friday last was read and approved.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES.

The SPEAKER laid before the House the following message from the President of the United States; which was referred to the Committee on Indian Affairs, and ordered to be printed:

To the Senate and House of Representatives:

I transmit herewith a communication of the 25th instant from the Secretary of the Interior, submitting, with accompanying papers, a draught of a proposed amendment to the first section of the act ratifying an agreement with the Crow Indians in Montana, approved March 11, 1882, requested by said Indians for the purpose of increasing the amount of the annual payments under said agreement and reducing the number thereof, in order that sufficient means may be provided for establishing them on their individual allotments. The matter is presented for the consideration and action of Congress.

GROVER CLEVELAND.

EXECUTIVE MANSION, *January* 28, 1886.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted as follows:

To Mr. SMALLS, for ten days, on account of important business.

To Mr. WARNER, of Ohio, for four days.

To Mr. IKE H. TAYLOR, indefinitely, on account of important business.

To Mr. CABELL, of West Virginia, for four days from Tuesday next, on account of important business.

To Mr. GIBSON, of West Virginia, for this day, on account of important business.

WITHDRAWAL OF PAPERS.

Mr. PETTIBONE, by unanimous consent, obtained leave to withdraw from the files of the House, without leaving copies, the papers in the case of Frank A. Page, there being no adverse report thereon.

QUESTION OF PRIVILEGE.

Mr. HANBACK. Mr. Speaker, I rise to a question of personal privilege, and ask that the paper I send to the desk be read.

The Clerk read as follows:

THE TELEPHONE SCANDAL.

The Hartford Times does not help the Democratic party by its plea in justification of the Pan-Electric Telephone stock ownership, any more than it disturbs The World by attributing its exposure and condemnation of the unfortunate business to a desire to create a sensation.

No plainer or more regrettable duty has ever been imposed upon The World than that of censuring the Attorney-General and other public men—in whose honor and integrity we have had the utmost confidence—for their association with this enterprise.

Mr. BRECKINRIDGE, of Arkansas. Mr. Speaker, I rise to a point of order.

The SPEAKER. The gentleman will state his point of order.

Mr. BRECKINRIDGE, of Arkansas. My point is that this matter the Clerk is reading does not raise a question of privilege.

The SPEAKER. The Chair does not yet know the contents of the paper. It may be that it contains some reflection upon the gentleman from Kansas [Mr. HANBACK] in his representative capacity. If so, it would be a proper basis for a question of privilege.

Mr. BRECKINRIDGE, of Arkansas. But, Mr. Speaker, ought not the gentleman first to state his question of privilege before he introduces a paper to be read?

The SPEAKER. The Chair supposes that the gentleman desires to have this paper read as the basis of his remarks. As soon as the paper is read or its substance stated the Chair can tell whether it involves a question of privilege or not.

Mr. BRECKINRIDGE, of Arkansas. But I insist, Mr. Speaker, upon my point of order, that the gentleman must first state his question of privilege. He has not stated it.

The SPEAKER. The Chair thinks the practice has been for a gentleman who rises to a question of privilege and asks to have a paper read to at least state that there is something in the paper which involves a question of that character. The Chair does not yet know what is contained in the paper which the gentleman from Kansas [Mr. HANBACK] has sent to the desk.

Mr. HANBACK. Mr. Speaker, am I entitled to have my question of privilege presented to the House now?

The SPEAKER. The Chair desires the gentleman from Kansas [Mr. HANBACK] to state whether or not there is anything in this paper which in his judgment involves a question of personal privilege on the part of that gentleman. Unless that were the rule, any gentleman might rise to a question of privilege and have anything that he chose read at the Clerk's desk.

Mr. HANBACK. Yes, Mr. Speaker, I state that there is a question of privilege involved.

The SPEAKER. Then, as the Chair understands, there is an allusion in this paper to the gentleman from Kansas [Mr. HANBACK]?

Mr. HANBACK. Yes; the article——

Several MEMBERS. Louder.

Mr. HANBACK. Mr. Speaker, I rise to a question of privilege.

The SPEAKER. The gentleman from Kansas will state what his question of privilege is.

Mr. HANBACK. The House will understand what the question is after the articles are read.

The SPEAKER. But unless the article which the gentleman from Kansas [Mr. HANBACK] has sent to the desk reflects in some way upon the gentleman himself in his representative capacity there can be no question of personal privilege involved, so far as the Chair can see.

Mr. HANBACK. Not at all; I disclaim that; but I ask that the article that I have sent up be read.

Mr. BRECKINRIDGE, of Arkansas. Mr. Speaker, the gentleman from Kansas [Mr. HANBACK] does not state that the article contains any allusion to himself.

The SPEAKER. The article, so far as read, does not appear to contain anything personal to the gentleman from Kansas.

Mr. REED, of Maine. Mr. Speaker, I do not understand that the gentleman from Kansas rises to a question of personal privilege.

The SPEAKER. The gentleman from Kansas [Mr. HANBACK] will state whether he rises to a question of personal privilege or not, and what the question is to which he does rise.

Mr. HANBACK. I state to the Speaker that the article which the Clerk has begun to read and other articles reflect upon this House, and upon that ground, as one of the members of this body, entitled to the highest privilege, I ask that the article be read.

The SPEAKER. The gentleman from Kansas states that this article, as he understands it, reflects upon the House of Representatives itself, and he raises this question not as a matter of personal privilege, but as a matter involving the privileges of the House.

Mr. HERBERT. Mr. Speaker, on this question I desire to make a suggestion to the Chair. It seems to me that the time has come when the Chair should consider whether the rule in question ought not to be more rigidly enforced. As I understand it the rule of law in analogous cases is, that when the question of the admissibility of a paper is raised the paper is submitted to the judge, and he decides, from an inspection itself, whether it be admissible or not. In that manner counsel are prevented from getting before the jury any improper matter.

Mr. REED, of Maine. Where is the jury here?

Mr. HERBERT. This is the jury—or rather the country is the jury before which the gentleman from Kansas desires——

Mr. REED, of Maine. Then your object is to prevent this from getting to the country.

Mr. HERBERT. The country is the jury before which the gentleman desires to get this matter presented in an improper manner.

Now, I suggest, Mr. Speaker, that the proper course would be, when a writing is sent up to be read, for the Speaker himself to read it. He is to judge in the first instance. If there be an appeal from his decision, then, as a matter of course, the House ought to have the document before it. But until there is an appeal from the decision of the Speaker, he and he alone should decide whether the writing or document presented raises a question of privilege or not.

If upon inspection it appears clearly to the Speaker that there is nothing in the article that constitutes matter of privilege, then the Speaker should so rule. From the paper itself this proposition must appear. If there is nothing in the paper itself to show it matter of privilege, no ingenuity can torture it into such. So I submit that the Speaker of this House ought to judge before the article is read, and without allowing it to go into the RECORD, whether or not there is a question of personal privilege presented.

Mr. DUNN. If the Speaker will allow me I would like to make one suggestion in the same line as that of the gentleman from Alabama [Mr. HERBERT] and in addition to what he has so well said. I submit that the rule on this subject should be interpreted like the rule of law in pleading fraud. It is not sufficient that a pleader shall allege

The PRESIDENT *pro tempore*. The question of printing the accompanying papers will be referred to the Committee on Printing.

COUNTING OF ELECTORAL VOTES.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 9) to fix the day for the meeting of the electors of President and Vice-President, and to provide for and regulate the counting of the votes for President and Vice-President and the decision of questions arising thereon.

Mr. EVARTS. Mr. President, I desire to present a few remarks to the Senate bearing particularly upon one topic that it seems to me, both in previous legislation and in the disposition of the matter attempted by the bill now before the Senate, has been too much overlooked. I shall favor the recommitment of the bill, with the amendments proposed, to the committee, in order that there may be a fuller examination and a more complete treatment of all the possible or probable occasions of mischief and misconstruction that may arise when the mere act of the counting of the vote is to be performed.

As my own opinions on the Constitution favor that view which has been discarded in the wisdom of Congress, to wit, the power and duty of the Vice-President to count the votes, it may be thought that I do not fairly interpret and estimate the methods that are provided for solving the difficulties which arise upon an attempt to count the votes by the two Houses of Congress; but I have a sincere desire that this matter to be treated by the two Houses shall be as well provided under circumstances of clear ascertainment and as far as may be from the immediate movement of popular or political feeling as is possible; and my experience in attending upon the discussions of the electoral count satisfies me that the greatest difficulties are from the very instant and very limited means by which any doubts are to be solved.

It will be noticed that until the votes are opened as provided under the Constitution there is no exhibition of doubt or of difficulty, of perplexity or of complication; and then you will observe that all the means at the service of the two Houses under the existing legislation on the subject is what is to be disclosed by the various and collected certificates bearing on the vote brought into the dispute. Nothing could in provision and prevision for so critical a state be more unfortunate than that the two Houses should be dependent for their information on what is to be gathered from the disclosures upon the opening of the envelopes, when all therein contained is intended to be and purports to be in pursuance only of the mere designation and security of the votes themselves. The legislation of Congress has been very meager, and quite as much as in the minds of the framers of the Constitution there have been absent from mind in legislation any of the forms and conditions and difficulties in the count that in the later experience of the Government have been exhibited.

Now, there are two quite independent topics in regard to which the Government of the United States is entitled to be certified in respect of the action of the several States, binding as to each of the States. Without intruding at all upon the independence of the States and their absolute possession of the manner and form in which they exercise this particular power, the Government of the United States has a perfect and complete right to know what the States have done; and while we have looked alone at the question of how the votes have been cast and the evidence and security that they were by the persons who had the right under the States' procedures to cast the votes, we have paid too little attention, as it seems to me, to that separate and independent right that we have to learn separately from what votes have been cast what electors have been appointed. I mean not in the sense of the men, but what States have appointed electors, and for this reason: The result of the count of the votes as produced and counted in disposing of the election of President and Vice-President must be brought not only into the ascertainment of the votes that have been properly cast and are thus to be held properly to be counted, but it is important to learn how large is the whole number and list of appointed electors under the action of the States in order for us to determine whether the count shows a failure of a majority, and thus the subsequent action of the Government is to be carried over to the House of Representatives, or whether the whole extent and comprehension of electors appointed has been reduced from what was possible in the computation of the States' collected votes when enumerated, so as to determine whether by the reduction of the apparent electoral colleges by the failure of appointments or the ascertainment of appointments there may be a reduction in the computation of whether a majority has been obtained by this or that candidate.

We have ready at hand, in the experience of the electoral colleges and electoral votes and the electoral count in 1876, an illustration of how important this might have become. There were 3 votes lawfully to be cast by Oregon. If those 3 votes were rejected under the provisions of the pending bill, or under the existing arrangement made by Congress for the count, it would have been apparent that President Hayes would have failed of a majority of the whole electoral college, and apparently therefore the election would have gone to the House of Representatives, as Mr. Tilden would have failed of a majority as well. But supposing the House of Representatives had been Republican, and if the election had gone there the Republican candidate would have been chosen by the House. But suppose that the 3 votes of Oregon had been rejected, and rejected upon the ground that electors had not been appointed—not that you could find in the actual circumstance the evidence which would justify that conclusion, but in the supposable circumstance that that was and should have been the rightful conclusion of rejection—then you would have seen that, having reduced by 3 the whole body of electoral votes to be computed and divided, Mr. Tilden having 184 votes would have been elected, because he would have had a majority by 184 of the whole electoral list reduced by 3.

How would you have had, and how could you have had, under the provisions of this bill, or under the provisions of the electoral count that were provided for that immediate situation, a clear and ready ascertainment as to whether this rejection of the votes was on the failure of appointments of electors or the regularity and the sufficiency of the vote? Happily in that case there was no difference as to the result, as the House was Democratic and he was the next candidate in the failure of Mr. Hayes's election. But in the opposite result I do not see that you have any adequate provision or materials before you for determining, when you have nothing but the question of counting the votes, how you have an ascertainment that is satisfactory to the mind of the two Houses and of the public on which ground a rejection takes place, and I know no more critical, no more embarrassing situation under our Constitution than a doubt produced in such a narrow state of votes as to whether the House can elect, or whether the next and inferior candidate is elected by his own right by having a majority of the reduced electoral colleges.

Nor can I find that in the inclosures of the envelopes which contain the votes would there naturally, certainly not necessarily, be produced the means upon which there should be so clear, so peremptory an ascertainment of the ground on which the votes were rejected as should satisfy the heated condition of Congress and the public mind on such a question.

In my experience, therefore, in watching and attending to the conduct of the vote of the electoral colleges, I have felt to my own satisfaction that the principal deficiencies and the principal obscurities for the ascertainment, whoever counted the votes, as to how they should be counted, grew out of the want of any provision in due time and by due certainty to ascertain who had been elected, or appointed as the phrase in the Constitution is, electors. Hence I have thought it was worthy the attention of the Senate and of the committee that has had charge of this business that that should be attended to, and that thus we could in advance have collected from the different States what this Government had a right to ask for and obtain—the results of the elections or appointments as soon as might be after the ascertainment under the laws of the States the results should have been reached; and that these thus should be separated in time, as well as in the publicity of the declaration, the completeness, and the security of this ascertainment, whether you call it canvass or by whatever scrutiny the States should propose.

In that view I have thought that a section should be added here which would make it the duty of the executive of each State, as soon as practicable after the final act of the State in the electoral appointment should have been ascertained by and under and in pursuance of the laws of that State, under the seal of State to communicate to this Government, the Secretary of State or the President of the Senate—that may be immaterial—the result of that process of the State by which it had reached the result of the appointment according to its own laws; and that this should contain and plainly set forth as the result and declaration of each canvass, that is, the canvass or ascertainment of each State, who had been appointed and what votes had been given or cast for every person voted for for that place. This is neither more nor less than is required for the security of elections in our own States. I presume without an exception every State provides not only for a competent and adequate scrutiny into the election and a simultaneous ascertainment of the result, but an open and public declaration under the authority of high official duty of the result.

I am satisfied, Mr. President, if this preliminary caution and security were made use of, the opportunities for doubt as you approach the mere opening of the votes and the hasty and unsatisfactory scrutiny of the mere contents of those opened envelopes would all disappear; for we should have, under as high a public authority as could be commanded and promptly after the final act of the State in the process of elections, this declaration communicated to this Government and made public by this Government, as it might and should properly do, so that at a period dating not long after the election, the date for which is prescribed by the acts of Congress, we should have published to the whole world what was declared by each State as the result, and not merely a certificate of a conclusion, but a statement of the final act of election itself—that is, the canvass and declaration of the polls.

Besides this provision, which I think would forestall almost all possible discussion that could be fairly wrested by party feeling from what should be plain and clear, I would require that this same statement should be furnished in triplicate by the governor to the electors, and that they should include it in their returns that they now make of their votes and of the list which the governor has given them of those who

are appointed electors, so that then presently before the two Houses of Congress, as there would have been before the Vice-President if he had been intrusted with the count, by this provision of law there should be the means of confronting either the Vice-President or the House or the Houses who count and certify this certainty of knowledge on the subject. Perhaps, then, it would be considered entirely right that no vote that was communicated under these sanctions and with this ascertainment could properly be challenged by either House or brought into question unless both Houses should concur in some grave, some *post hac* occurrence that should disparage the absolute control given to this ascertainment.

Looking at the bill in all favor, as intended to remedy difficulties that exist, I think this matter should be attended to, and I am quite sure that in the apprehension of the public mind such a timely and such a prudent provision in regard to the facts which lie at the bottom of the right of the electors to vote would be not only secure, but would be seen to be so.

I confess a great repugnance to seeing the vote of a State rejected upon a mere difference of opinion between the two Houses, a rejection for the consequence of which nothing is necessary but that one House should make an objection and insist upon it, proposing, presenting for the public judgment no action of its own, but simply on its mere will interposing objection, not voting that the other certificate was entitled to present the votes, but simply each objecting as one objecting to these competing votes, so that the State falls absolutely and the immense rights that other States may have dependent upon that consequence fall under the mere political will of one House of Congress to make its objection.

All feel, I think, that it is an undesirable situation that by mere negation, by mere inability to agree, and without ascertainment of grounds or reasons, the vote goes out. All, I think, see that to be an inconvenience, and I have been disposed to think that after there had been developed this disparity in views between the two Houses, which was insisted upon, the proposition of the Senator from Ohio might be admitted, so that there might be an appeal at least to a determination which votes should be received; but I must confess that upon further consideration and under the light that has been presented in the debate, this collection of opinions of the members of the two Houses would, in my judgment, be wholly an unconstitutional assemblage and vote. In the Constitution, or in the conception of the political government which is deposited in Congress, I can find no ground to support this extra assemblage of the two Houses voting per capita.

I can not look with any complacency upon a reference to the Supreme Court or any judicial tribunal. I must regard, as I do sincerely, the whole transaction from the beginning to the end, and the declaration of the result, a political transaction to be governed by such moderation and duty and faculties as are reposed in those who fill the political stations that are to act upon the great transaction.

I do not look with any complacency upon the opening, by the second section of the bill, of judicial proceedings in the State below to intercept and interpret or suppress the vote of a State. I have regarded, and in spite of all that I have heard said on the subject I must still regard, that the framers of the Constitution looked with extreme solicitude upon the principal fact and result that a President should be chosen. They were indifferent as between parties or as between the nicety and certainty of results of justice, but their chief concern was that there should be a President chosen, and that the progress from the first act of voting up to the final declaration should be as little impeded and as little interrupted as possible. Why should they not have felt so, when they knew in all the experience of the mother country and of the western nations, that when birth provided the succession, simple as that method might be, a disputed succession as to which was the true king that was to appear, made the misery, the suffering, and the disasters in every form of the nation; and when we were attempting a new method that was to derive from the large vote of the great people this designation they felt that the first duty and that the first execution of their duty in that behalf was that the process should go on and that there should be a result.

I therefore must agree in the motion which has been made that the bill, with the amendments now proposed, should be sent back to the committee for a more accurate settlement of this great dispute. We are not under any influence from what has been said as to any oversight in the circumspection and astuteness with which the succession bill was provided, for I think that by all intelligent as to facts and conditions under which any bill by Congress can become a law under the restrictions of the Constitution, it will be found that this imagination that the framers of the succession bill had not provided for the little space between the electoral count and the 4th of March, their circumspection, and their astuteness, and their close attention showed that if there be that gap of misfortune, it is a misfortune that no power by the Constitution has been given to the two Houses of Congress to fill.

But it has been suggested to me, to me unfamiliar with the course of business here, that such a recommittal would be equivalent to reducing, if not destroying, the opportunities of the bill passing through the Senate at this session. I should regret any such consequence, and if it were necessary to avoid such a consequence, that the view I might submit in the amendment I have suggested, in common with those submitted by the Senator from Ohio and the Senator from Massachusetts, could be fairly, and fully, and accurately debated and settled in this body, I should desire that a committal should not be made necessary; but my own judgment of it is that if there be any value in the suggestions that I have made, and if the difficulties that are now felt as to the text as the bill reads without amendments, and doubt as to the proposed amendments, are really worthy of attention, the only true opportunity for an accurate adjustment and final and full satisfaction of the best course under the Constitution we can take will be reached only by a recommittal.

Mr. WILSON, of Iowa. Mr. President, defects in the Constitution of the United Statescan not be remedied by acts of Congress. The wisdom of the men who framed it was not equal to the task of formulating a perfect instrument. Fifteen articles have been added to it in the form of amendments. It is claimed that time and the peculiar political conditions which attend the affairs of the nation have discovered another defect. It is proposed to apply a remedy in the present instance by act of Congress. But this is not the method ordained by the Constitution. The bill we are now considering has not, in my judgment, the sanction of the Constitution. The reasons which support my judgment I will briefly state.

Article II of the Constitution defines and establishes the executive power and provides for the election of President and Vice-President of the United States. In the third paragraph of section 1 the mode of election was provided. It also prescribed the method by which the result of the election should be ascertained. In this respect it declared relative to the electors chosen by the respective States that—

> They shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of Government of the United States, directed to the President of the Senate.

So far this is definite and well, but it does not determine a result. This must be provided for, and hence the paragraph provided immediately to declare how and by whom the result should be ascertained. In this respect it said:

> The President of the Senate shall, in the presence of the Senate and House of Representatives, open all of the certificates, and the vote shall then be counted.

What does this language mean? How can we better answer this question than by going back to the time of the adoption of the Constitution and getting our data from the acts of the men who first started our Government on its course? Many of the men who composed the first Congress of the United States had participated in the deliberations of the body which framed the Constitution or had been members of the conventions of the several States by which the instrument had been considered and adopted. Surely we may safely consult them. Let us take this prudent course and see what the result will be.

The first public concurrent action of the two Houses of Congress brought there men to the duty of defining their understanding of the meaning of the Constitution in respect of its dealing with the ascertainment of the result of an election of President and Vice-President. It does not seem to have occurred to them that the problem was one of difficulty. In the simplest and most matter-of-fact way they entered upon their duty and discharged it. On pages 16 and 17 of volume 1 of the Annals of Congress it appears that on the 6th day of April, 1789, in the first session of the first Congress, the Senate took action, as follows, namely:

> Richard Henry Lee, of Virginia, then appearing, took his seat, and formed a quorum of the whole Senators of the United States.
>
> The credentials of the members present being read and ordered to be filed, the Senate proceeded, by ballot, to the choice of a President for the sole purpose of opening and counting the votes for President of the United States. John Langdon was elected.
>
> *Ordered*, That Mr. Ellsworth inform the House of Representatives that a quorum of the Senate is formed; that a President is elected for the sole purpose of opening the certificates and counting the votes of the electors of the several States in the choice of a President and Vice-President of the United States, and that the Senate is now ready, in the Senate Chamber, to proceed, in the presence of the House, to discharge that duty; and that the Senate have appointed one of their members to sit at the Clerk's table to make a list of the votes as they shall be declared, submitting to the wisdom of the House to appoint one or more of their members for a like purpose.

The House of Representatives, on being notified of this action by the Senate, adopted in response thereto a resolution as follows, namely:

> *Resolved*, That Mr. Speaker, attended by the House, do now withdraw to the Senate Chamber, for the purpose expressed in the message from the Senate; and that Mr. Parker and Mr. Heister be appointed, on the part of the House, to sit at the Clerk's table with the member of the Senate, and make a list of the votes as they shall be declared.
>
> Mr. Ellsworth reported that he had delivered the message; and Mr. Boudinot, from the House of Representatives, informed the Senate that the House is ready forthwith to meet them, to attend the opening and counting of the votes of the electors of the President and Vice-President of the United States.

And then it is recorded that—

> The Speaker and the members of the House of Representatives attended in the Senate Chamber; and the President elected for the purpose of counting the votes declared that the Senate and House of Representatives had met, and that he, in their presence, had opened and counted the votes of the electors for President and Vice-President of the United States.

These proceedings clearly declare the construction which the Senators and Representatives of the First Congress put upon the provision of the

Constitution relative to the opening and counting of the votes of the electors of the several States in the matter of the election of President and Vice-President of the United States. Not by discussion, but by action, they pronounced their construction of the Constitution, and we can not mistake their meaning. They did not hold that the President of the Senate was to open the votes, and that some other officer, or person, or body was to count them and declare the result. The President of the Senate on that occasion elected was assigned to a definite duty; that duty was to open and count the votes delivered to him. It would seem that there can be no doubt as to the opinion held by the members of the First Congress on this subject. They proclaimed by their action that the duty to open the votes and the power to count them and to declare the result were devolved on the President of the Senate.

Both Kent and Story entertained this view of the subject. The former expressed his view in his Commentaries in this language:

The Constitution does not expressly declare by whom the votes are to be counted and the result declared. In the case of questionable votes, and a closely contested election, this power may be all-important; and I presume in the absence of all legislative provision on the subject that the President of the Senate counts the votes and determines the result, and that the two Houses are present only as spectators to witness the transaction and to act only if no choice be made by the electors.

And Story, in his Commentaries on the Constitution, says:

In the original plan, as well as in the amendment, no provision is made for the discussion or decision of any questions which may arise as to the regularity and authenticity of the returns of the electoral votes, or the right of the persons who gave the votes, or the manner or the circumstance in which they ought to be counted. It seems to have been taken for granted that no question could ever arise on the subject, and that nothing more was necessary than to open the certificates, which were produced in the presence of both Houses, and to count the number and names as returned.

The precedent established by the first Congress, as I have quoted it, and the opinions of the two learned commentators cited, are even-tempered and wholly non-partisan. No men were more careful in giving expression to opinions relative to the true meaning of the Constitution than those who gave it form and participated in its adoption. They were fresh from their labors when the first precedent was established, and no commentators on our Constitution have been more scrupulously careful than Kent and Story. When such authorities all concur we will not go widely wrong by accepting their conclusions.

It may be said that Kent intimates that legislation may be enacted relative to the counting of the electoral votes, inasmuch as he says in the quotation I have made from him that—

I presume in the absence of all legislative provision on the subject that the President of the Senate counts the votes and determines the result.

But he could not have meant by this that a power vested by the Constitution could be divested by legislative action. The most that can be claimed from this expression is, when taken in connection with his suggestion relative to questionable votes and a closely contested election, that he saw in the existing provision of our Constitution a danger point in our system. In this view I can agree, and I would be glad to have a change of the Constitution in this regard effected, but this can not be reached by an act of Congress. And if, in response to this statement, it be asked, Have the Senate and House of Representatives no power whatever in the premises, and can they not legislate on the subject? my answer is, To regulate the exercise of the power, yes; to abridge it, no. Section 8 of Article I of the Constitution says that Congress shall have power—

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States or in any department or officer thereof.

Here is a delegation of power to provide for carrying into effect the power to open and count the votes of the electors lodged in the President of the Senate. But it does not confer on Congress the power to assume unto itself the duty which the Constitution imposes on that officer. The Constitution says that—

The executive power shall be vested in a President of the United States of America.

But Congress must "make all laws which may be necessary and proper for carrying into execution" this power. And of another great power the Constitution says:

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

This power is to be provided for in the matter of its execution by necessary and proper legislation enacted by Congress. But in neither case can Congress take upon itself any of the power granted to the executive and judicial departments of the Government; nor can Congress by neglecting to legislate draw unto itself any part of these powers, or of the power conferred by the Constitution on any officer of the Government. If Congress had failed to make laws necessary and proper for carrying into effect the executive power, would such failure divest the President of that power or relieve him from his obligation to execute it as best he may in the absence of legislation? Certainly not; for this would lead to the disintegration of the Government. The President would have great difficulty in the execution of his office in the absence of legislation providing for its administration, and in many respects he could not act at all; but the executive power would still be his. Nor can he be divested of any part of his power by legislation. Neither action nor inaction by Congress can change the constitutional lodgment of executive power from the President to itself, or to any other department or officer of the Government. And the same observation applies to the judicial power and to every other power, whether vested in a department or officer of the Government. And it applies with as much force to the power given to the President of the Senate to open and count the electoral votes cast for President and Vice-President as to any other power or duty defined by the Constitution.

Mr. President, the Constitution provides in the matter of the election of President and Vice-President that—

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors may, under this provision, be appointed by the Legislature itself, or that department of the State government may, unless prohibited by its own constitution, provide for the election of electors by general ticket, or by districts, or a part by one mode and a part by some other. The entire matter of the appointment or election of the electors is committed to the several States. When so appointed or elected, the duties of electors are prescribed by the Constitution. Congress has no power over the appointment of the electors, nor has it any to interfere with their constitutionally prescribed duties. The duties thus protected against Congressional or other interference are to vote, list their votes, sign and certify the lists of votes, and transmit them sealed to the seat of Government of the United States, directed to the President of the Senate; and when they have discharged these duties, there is nothing more to be done in the matter of the election of a President but to open and count the votes thus listed, certified, and returned in manner prescribed by the Constitution, and that is, in my judgment, to be done by the President of the Senate, in the presence of the two Houses of Congress, unless it appears from the count so made that the electors have failed to elect a President by a majority of their votes so cast, returned, open, and counted. In case of such failure, and—

If no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, a President. * * * And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the 4th day of March next following, then the Vice-President shall act as President.

And a failure of the electors to elect a Vice-President confers, under the Constitution, the power on the Senate to elect that officer. Can we conclude that the framers of our Constitution, when they conferred on the respective Houses of Congress these extraordinary powers, intended to invest them with the still more extraordinary power of rejecting the votes of electors appointed by the several States, and thereby creating by themselves and for themselves the contingency which alone gives them the right and power to elect a President and Vice-President? The mere statement of such a proposition is its own refutation. And if no such power rests with the two Houses for concurrent action, how much more preposterous does it seem to be to claim that it rests with either House alone, and especially with the House of Representatives, with which body the power to elect a President abides in the event of a failure of the electors to elect?

Such a doctrine would stand as a perpetual menace to the peace of this country. It would establish an ever-present temptation to Congress to intermeddle with the elections of Presidents. When the framers of the Constitution expressly prohibited Senators and Representatives from appointment as electors, they clearly indicated their purpose to exclude them from all power in or over the matter of the election of a President by the electors appointed by the States. This was the understanding which the members of the First Congress had of the Constitution, as is evidenced by their proceedings in the ascertainment of the result of the first Presidential election. For a long period of time the practice then adopted was followed without substantial change. All through the period when the minds most active in the formation of our Constitution, and those of forceful action in the early affairs of our governmental movements, controlled or influenced Congress with respect to the ascertainment of the results of Presidential elections, the precedent of the First Congress was in all substantial respects followed. Our Constitution in this regard may not be in the best form. But we can not change it by an act of Congress, nor by such act confer power on Congress not given by the Constitution.

It is no new thing to find that our Constitution needs amendment. Fifteen articles of amendments testify to this fact. If we have discovered a defect in the respect of which the pending bill treats, it were better for us to do what has been done fifteen times heretofore, provide for an amendment of the Constitution in manner and form as it points out, rather than resort to the doubtful expedient now before us.

Mr. TELLER. Mr. President, there is a great deal of force in what the Senator from Iowa [Mr. WILSON] has said with reference to the precedents of the early fathers of the Republic and the founders of the Constitution. The question I believe has been very thoroughly discussed from time to time in the various debates upon the subject during the last fifteen years, and notably it was fully discussed in 1876

and 1877. If this is a plain provision of the Constitution, no one I suppose will deny the proposition of the Senator from Iowa that Congress can not change it. It must be admitted if the Constitution of the United States has provided for the whole subject, there it must be left.

It is apparent that the fathers of the Constitution, at least those who sat in the first Congresses, did not think that the Constitution was self-executing so far as not to require any legislation, because in 1792 they legislated upon this subject. Some of the provisions are in the present statute. For instance:

It shall be the duty of the executive of each State to cause three lists of the names of the electors of such State to be made and certified, and to be delivered to the electors on or before the day on which they are required by the preceding section to meet.

That provision has been continued to the present day, and it is continued in substance in this bill. In 1804 Congress, under the new twelfth amendment to the Constitution, again legislated on this subject, and my attention was called by the Senator from Alabama [Mr. MORGAN] a few moments ago to the difference in phraseology of the two acts. In 1804 the statute was made to read as follows:

But those certificates only of votes given for President and Vice-President of the United States shall be opened by the President of the Senate, for the purpose of being counted, which shall contain the list or lists of votes given in conformity with the Constitution, as in force on the day fixed by law for the meeting of the electors, by whom the said votes shall have been given.

SEC. 3. *And be it further enacted*, That whenever, by the provisions of the second section of this act, it shall be the duty of the electors for any State to vote in conformity, both with the Constitution and of the proposed amendment thereto, the executive authority of such State shall cause six lists of the names of the electors for the State to be made and certified, and to be delivered to the said electors on or before the day fixed by law for them to meet and vote for President and Vice-President, and the said electors shall inclose one of the said lists in each of the certificates by them made and sealed, in conformity with the provisions of this act and of the act to which this is a supplement.

The authority, or rather the command, if command can be made upon the State executive by Congress, still exists that they shall make these certificates. I need not go into any details as to how the certificates reach the presiding officer of the Senate. The fathers of the Republic assumed in the Constitution and in the subsequent legislation that there would be but one set of returns, that the officer who had the duty imposed upon him of opening and counting, if it is to be insisted upon that he was to count, had only to tabulate the vote. Later it was discovered that controversies might arise. We all recollect that in 1876 from three different States at least, if not from more, there were duplicate certificates presented to the presiding officer. In one State the governor had certified to the appointment of two electors of one political faith and one of another. From two States different officers claiming to be the executive officers of the State had certified different lists of electors to the presiding officer of the Senate. So there were presented both phases of trouble. Here was a governor who assumed to declare for the State who were its electors. That presented one question to be examined, and a different question from that of a dual State government. Then came from South Carolina and Louisiana duplicate certificates presenting different electors, signed by different officers and represented by a different State government.

The question presented in 1877 to the Senate was whether the presiding officer of this body could determine for himself, with the two bodies looking on, incompetent to challenge the correctness of his verdict, who were the electors of the State of Louisiana, who were the electors of the State of South Carolina, or who were the electors of Oregon. Not a very strong argument can be drawn from the condition of the public mind at that time, but it is morally certain that the two Houses would not have sat here in joint convention and allowed the then Senator from Michigan, who was the presiding officer, to count that vote and determine for them who were the electors from Louisana and who were the electors from South Carolina. We had reached a point in the construction of the Constitution when it was morally impossible to have it construed in that way without bringing on anarchy, bloodshed, and war. I believe on that occasion the then presiding officer was of the opinion (in fact I may say I know he was of the opinion) that the power existed with him, if he saw fit to exercise it, to determine between the votes sent up from Florida, South Carolina, and Louisiana, which was and which was not the vote of each State.

Mr. HOAR. In the absence of an agreement of the two Houses.

Mr. TELLER. In the absence, of course, of an agreement of the two Houses. But in this body there were only found seventeen men who were in favor of leaving the question without legislation. All who opposed the bill, which was called the electoral commission bill, mustered in the Senate only seventeen. Some opposed it upon one ground and some upon another, but the great majority of the Senate then expressed their opinion that that power was not lodged in the presiding officer of the Senate, because if it was lodged there by the Constitution they had not the power to take it away, yet they voted that they would take it away and intrust it to a tribunal to be established by an act of Congress.

There has been, then, upon this question at the most important political period of our history a legislative construction of both branches of Congress with great unanimity, and I do not think it is worth while now to discuss the existence of the power in the presiding officer of the Senate to count the votes. I heard a Senator rise and express his astonishment that it should be proposed to leave to the governor of a State the opportunity, as he said, of determining for himself, to the exclusion of the will of the State, what was the vote of the State. Much less ought it to be left to a man who is not responsible at all to the State that he is perhaps ready to disfranchise a State to which he is not responsible in any manner or form, unless it is plainly provided in the Constitution that that power shall there be lodged.

No very potent and powerful argument can be drawn from the act of the first joint convention, because there were none of these grave questions then presenting themselves, any more than there were in February last when the presiding officer of the Senate announced to this body that he would decline to settle any controversy if controversies had arisen. No controversy did arise; no controversies may arise; we may go on as we have for years to come, yet we recollect that in 1856 a controversy arose that under some circumstances might have caused difficulty, which fortunately, however, it did not. I think, without going into any extensive discussion of the case, it must be assumed that we have reached a point in our history now where legislation is demanded by the judgment of both Houses of Congress and demanded by the judgment of the country.

For fifteen years at least this matter has been presented to the public, and if there ever was very much of a theory among the people that the presiding officer of the Senate could act judicially and determine who were and who were not the electors in a controversy, I believe that has at last been done away with. The electoral system proceeds upon the theory that the State is to be heard. It is the States that elect the President of the United States, and not the people of the States nor the people of the General Government. By a departure from the original idea we have, it is true, adopted a system of nominating the candidates in a national convention and putting their names at the heads of our tickets and apparently electing them by a popular vote; and we sometimes say that such a President lacked a majority of the popular vote, as if the popular vote was at all necessary to his success or to his credit when he sits in the Presidential chair.

It is the action of the States, and so careful were the fathers of the Republic to protect the States, that when by an accident or by any circumstance the election does not take place they empowered the House of Representatives to elect a President, and then they limited the votes to the number of States. Delaware with its one Representative stands equal in all respects in the House of Representatives in that kind of a contest with New York with its thirty-four Representatives. New York and Delaware vote equally in every respect when a President is elected by the House.

Now, the only thing to be determined is what is the vote of the State. When the Constitution has, *ex industria*, put everywhere the idea that the State is to be heard and the State only, to say we may not legislate in such a way as to aid in carrying out that idea is to assert that the Constitution is self-interpreting and self-enforcing, which it is not, as we all know, in scarcely any of its provisions.

The States must be heard, and I deny the right of either House, or both Houses of Congress, acting together or acting separately, to disfranchise a State when the State shall have sent its vote here in accordance with law. Under the bill a State may provide a tribunal that may inquire into any controversy that arises in the State. If the State fails so to do, let the amendment proposed by the Senator from Massachusetts be adopted; and then the governor is the ultimate tribunal whom we have declared we will recognize, and the only tribunal we will recognize as determining the question what is or what is not the vote of the State.

Where can you leave that, in the absence of a judicial inquiry, better than with the governor of a State? I know in times of high partisan excitement there may be danger that the governor of a State will outrage the people of his State by not expressing the voice that they have expressed at the polls; but it is much safer to leave it with him, who is answerable to the people for any outrage he may commit, than to intrust it to hands foreign to the State and having no connection with the State.

It was said here the other day by a number of Senators that they would be glad to see the Supreme Court of the United States intrusted with this power. I deny the right of the General Government to settle this question by the Supreme Court. It is the action of the State, and the State has not consented and does not consent that a tribunal foreign to it shall determine that question. It will determine the question for itself, and when it has determined it there is not a power anywhere to interfere with that action of the State.

Mr. President, the bill is not perfect. The bill may have provisions that I do not quite like. The only thing it lacks is that it does not recognize quite to the full extent I desire the power and control of the State. But there may be, and possibly will be, times when it may be necessary to determine what the State has settled, or rather, to put it more properly, to determine which is the State, whether it is the people who come here represented by one man as governor or another, when there is a dual State government. It is then, and then only, under the bill as I understand, when it shall have been properly amended as proposed, that there can be any inquiry at all; and because the bill

transmits, and remits, and leaves with the State so much and so fully this question, I am in favor of it.

It was said here the other day that it would be better for the two Houses to join together and that the numerical vote should be united, and that the majority, Senators counting as Representatives and Representatives as Senators, should determine all questions of this kind. That is to abandon the whole electoral theory, in my judgment. It is to abandon the whole theory of our Government that the States are to participate in this election as States and not as a portion of the American people in general convention met. The State of New York, with its great vote, would outvote nine of the smaller States who stand upon this floor with eighteen Senators, and a very large control at least of this body would sink into oblivion, I may say, when they were joined in with the four hundred and one that would compose the joint convention, and, as was said a day or two ago, with the five hundred who must soon be put into the other Chamber with the admission of new States and the increase of population.

The whole electoral theory, I wish to repeat, goes upon the idea that the State is to be heard, and all talk about remitting this question to outside tribunals, whether the Supreme Court or any other body, is a departure from the true spirit of the Constitution. The real and potent and urgent objection made to the tribunal of 1877 was that it remitted to a tribunal outside of a State the questions that ought to be settled in the State.

Mr. CALL. Mr. President, it seems to me that the bill has some very great merits and also some defects. The twelfth article of amendment of the Constitution provides that:

> The electors shall meet in their respective States and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves, and they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed.

It is quite evident that there are questions raised by these several statements of the Constitution. What certificates shall be counted? The certificates of the electors chosen by the States, electors who shall not be Senators or Representatives or holding any office of honor, trust, or profit under the United States. These are all questions which must be decided by some one. Who is that to be? The Constitution does not declare. It says "the votes shall then be counted," and yet what are and what are not votes depends upon the decision of who are the electors, who are persons not holding offices of honor, trust, or profit under the United States. This act of judgment is an act of election, and upon it depends who is the President of the United States.

It is quite manifest that there must be some decision by some authority. It is insisted by the argument of some Senators that it inheres in the authority of the President of the Senate to open the certificates. But that question must be decided not by an inference, but by the genius and spirit of our institutions. It must be affirmed that it is more consistent with the theory of government established in the Constitution that one person shall absolutely decide this question than that the representatives of the people shall do it, than that the two Houses of Congress shall do it. That is the affirmation alone upon which this exercise of power by the President of the Senate can be justified. It is by the argument, if true, that the decision by one person as to who shall be the President and Vice-President of the United States is more in accordance with the theory of a popular representative government than a decision by the representatives of the people themselves.

But the argument fails in another respect. The Constitution provides that the House of Representatives, acting by States, shall, in the contingency that no person has received a majority of votes, elect the President of the United States by States. Here, as was affirmed by the honorable Senator from Ohio the other day, rests I think a great determining fact in the argument. It is proposed to remit the decision to a tribunal not vested with power, as is the argument in favor of the President of the Senate by inference, from the fact of his having the votes in his hands and being required to count such votes as have been properly cast, for that is the inference; and the certificates, it is said, come to the President of the Senate; no certificates shall be counted but those of the electors, and he opens them, and the choice of opening them rests in his hands. But the argument in favor of the House of Representatives is that the Constitution vests in them the power of making an election, not when the President of the Senate, or the Senate, or the two Houses shall declare that an election has failed, but when the fact is that it has failed, no matter who has declared or certified to the contrary.

The argument which is made to vest this power in the President of the Senate, that it carries with it the function of judgment and deciding when it is to be exercised, manifestly vests it in the House of Representatives. The House of Representatives are to perform a constitutional act. When? Not when everybody has declared and certified that they shall do it, but when an election has failed for the want of a majority of votes, let the certificates be as they may. In that contingency, both by the letter and the spirit of the Constitution, that function is to be exercised.

Now, the bill provides for the exercise of this act of judgment, which act of judgment is an election, and provides, I think, wisely for it, but it meets with this difficulty: The power of excluding the vote of a State, of sitting in judgment upon it, is vested in the two Houses. The vote of a State shall not be rejected without the concurrence of the two Houses. Where there is a question and an objection, the vote shall not be counted without the concurrence of the two Houses. This is vesting the absolute power of election in the discretion of either House in the contingency where the vote of a State not counted would make the election of a different person, would constitute a majority of the whole number, or its withdrawal would prevent an election.

There can be no question that by this act of judgment which requires the concurrence of both Houses, in the contingency where there is not an election if the vote be not counted, you vest the power absolutely of making an election, not in the House of Representatives, the constitutional body provided and vested with that power, but in either House of Congress choosing to object to the counting of that vote, for it can not be counted without the concurrence of both.

The bill I think a wise one in its main provisions, and the Senator from Massachusetts [Mr. HOAR] who reports it, and has defended it with ability, is entitled to high commendation for it.

But I think that in the respect mentioned there is a defect in this proposed law. The act of judgment of this body changes the power of the House of Representatives, if it were law and possible to do it. It assumes the power to do it. It changes the power of that body and restricts it by a bare majority from exercising the right to make an election in their judgment and discretion.

Mr. President, I do not know that it will affect the result at all, for I have observed that when a committee reports a bill it is very difficult and but rarely the case that in any of its essential and important provisions a change can be made without the approval of the committee; but it seems to me that the bill should be amended, and I had prepared an amendment to the effect that when by this exercise of judgment by the two Houses, by this non-concurrence of the two Houses, by this objection on the part of either House to the counting of the vote of a State, the majority required by the Constitution of the whole number was taken away, or when by not counting the vote of the State an election of a different person than that who would be elected if the vote were counted should be had—in those two contingencies it shall be declared that there was no election, and the House of Representatives shall make the election as required by the Constitution. It has been urged in objection to that that it would be an invitation, placing it in the power of the House of Representatives to bring about that result; but the bill does that already. It is by the bill in the power of either House in the contingency mentioned. Wherever the failure to count the vote of a State would prevent a majority of the whole number from being cast, the bill lets either House non-concurring bring about the result.

Then what tribunal is so appropriate to make the election as that tribunal which by the Constitution is vested with the power to decide when a majority of the whole number of votes has or has not been cast, for it is evidently without limitation in the Constitution that that body is to exercise the power, and, exercising the power, can do it only upon its own motion, its own sovereign legislative power vested in it by the Constitution. It alone can decide for itself. The Senate might decide that a majority of the whole number of votes has not been cast, the President of the Senate might so decide, the Supreme Court might so decide, but by the nature of the sovereign power vested in the popular branch of Congress, the House of Representatives, by the very theory of legislative government and independence in the two Houses—the House alone can decide and act upon its own decision that a majority of the whole number of votes has not been cast.

I think I shall vote for the bill as it stands, because it refers it to the States to decide for themselves who are chosen electors, and gives to the two Houses the right and duty only of deciding that the State has decided who are chosen, but I think the bill would be greatly improved by the amendment I propose.

What tribunal, then, so appropriate in respect to the character of our Government as the members of the House of Representatives, elected by the people, voting as States and not by numerical majority? What tribunal other than the House of Representatives can in accordance with the whole spirit and genius of representative government make that decision and act when the failure to count the vote of a State, however proper and wise and justified by circumstance it may be, will produce the contingency mentioned in the Constitution, the failure to obtain a majority of the whole number of votes cast or make an election where there was none?

I do not know that it is in order for me now to offer the amendment, as I understand that the bill stands upon a motion to recommit it.

The PRESIDENT *pro tempore*. The question is upon the recommitment of the bill to the Committee on Privileges and Elections.

Mr. HOAR. I wish simply to point out to the Senate that a vote to recommit the bill is a vote against legislation on the subject. No Senator who has any experience in this body will doubt the truth of what I say, that the bill is in as good a situation for action by the Senate itself

as any measure that has come before it in recent years or as any measure that can come before it. I suppose it is unquestionably true, as the history of our recent legislation will show, that any large public measure likely to excite considerable diversity of opinion and considerable debate, which is reported in either House after the 1st of March, at the first session of any Congress, has not one chance in twenty of passing through both Houses by the end of the second session of that Congress.

As suggested by my honorable friend from New York, here is a bill not only having had the advantage three times of full discussion in the Senate itself, not only having had the advantage more than three times of being carefully matured and considered in committees heretofore, but referred to a committee of which my honorable friend and, I think, my honorable friend from Ohio who sits in the chair also at the time the bill was considered and reported, were both members. Having the fullest opportunity there to suggest their constitutional difficulties and constitutional arguments and propose amendments, the bill goes through the committee without any suggestion from any quarter, and it stands upon the docket of the Senate for six or eight weeks, its provisions well known to the whole body and attracting public interest, and now has been for six or eight days—I do not remember the exact number—before the Senate for debate, laid aside once or twice that other measures might be taken up and considered.

It is true, as happens I suppose in ninety-nine cases out of every hundred of bills of any importance, one amendment has been suggested in the Senate besides that amendment, which suggests a wholly different scheme, offered by the present occupant of the chair—one amendment by the friends of the bill—but certainly if such an occurrence could be regarded as a ground for recommitting a bill, we never should reach any point of practical legislation.

Now, I wish to say one word upon the suggestion of the distinguished Senator from New York. He thinks that there should be added to the bill a provision for a certificate made in advance of the vote by the electors of a State from the executive or other State authority sent here of the number of electors appointed and the persons I suppose whom that officer finds to be appointed—the act of the State.

Mr. EVARTS. And of all the votes cast.

Mr. HOAR. And of all the votes cast in the canvass. It seems to me that one sufficient answer to that suggestion is that it is a departure, a clear and fundamental departure, from the method provided and devised by the Constitution itself. If that certificate is a certificate upon which the counting power, wherever it may be lodged, is to act, by which it is to be in any respect governed or guided or aided in declaring the result of a Presidential election, it is in conflict, if not with the letter, certainly with the spirit and design, of the Constitution itself; for whatever may be left in obscurity, it is most clearly expressed there that the certificates upon which the body, the counting power, is to act, are to be made up by the persons acting rightfully, or claiming to act rightfully, as electors, and kept sealed, kept from the public view, from the time of the electoral vote until they are to be opened and laid before the body by the President of the Senate in the presence of the two Houses.

These certificates "they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate." The President of the Senate is prohibited even from opening them, or from having any official knowledge of their contents, until in the presence of the Senate and House of Representatives he is to open them, "and the votes shall then be counted." It is manifest, as it seems to me, that the constitutional purpose was that the action of the counting power should be upon the certificates sealed up till that time and then opened and laid before them, communicated by the President of the Senate.

Practically, of course, if it is desired, whenever the two Houses, or any other public officer, act upon this question, such preparation for that action as may be deemed necessary will be easy enough without this formal forwarding of the certificate from the executive or other public officer of the State. Of course the public know who claim to be electors; they know if there is a contest between two bodies in a State; they know what body the governor has certified; they know how that body of electors has voted; and the whole thing is practically, for all purposes of preparation or investigation or study, in the knowledge of any public officer or of either House of Congress who have to act upon the subject.

So I do not see myself the advantage of recommitting to the committee this bill for the purpose of seeing whether such a provision may be ingrafted upon it, but I should rather prefer that the Senator from New York would prepare his amendment and submit it in the Senate. The Senators are constitutional lawyers, and can deal with such a question as they do with other questions much more difficult than this.

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

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

Mr. EVARTS. My friend the Senator from Massachusetts has seemed to think that the public knowledge which grows out of the publicity of elections is a basis that can at least instruct the minds of the two Houses of Congress when they are called upon to determine as to who are the appointed electors and who are not. My desire is that the distinct and authentic action of the State should be directed to that particular point as distinguishable from the voting act of the electors themselves. Nor, I am persuaded, will a careful attention to the text of the Constitution show that this inspection of the result of the elections in appointing electors is a departure from any of the pursuit that has heretofore followed only a scrutiny of the votes themselves.

My objection is, that being entitled to know what has been the result of an election appointing electors as soon as it may be after it is completed, and entirely unconnected with the question how they will vote, entirely unconnected with the question how, when their votes are compared with the votes that the electors of other States have cast, the result will be affected, we shall have this deliberate collective electoral college certified to us in the most deliberate form not only of a governor's conclusion, but of his certificate to us as to how the final act of the State has shown itself in the canvass of the votes.

Mr. President, I deprecated entirely any disposition to delay the consideration of the bill. I do not myself see why the Committee on Privileges and Elections may not have an opportunity at a single session or at a session embraced within a week to dispose of these amendments which are now suggested and which are recognized, as I suppose, as important amendments. I do not know whether it is in order, but I have sent up to the Secretary of the Senate a proposed amendment which I have draughted since I came into the Senate Chamber, and if it may now be properly read as a part of the information which is presented with my observations, I ask that it may be read.

The PRESIDENT *pro tempore*. The proposed amendment will be read.

The CHIEF CLERK. Add as a new section:

It shall be the duty of the executive of each State, as soon as practicable after the conclusion of the appointment of electors in such State by the final ascertainment, under and in pursuance of the laws of such State providing for such ascertainment, to communicate under the seal of State to the Secretary of State of the United States a certificate of the result of such ascertainment of the electors appointed, setting forth the names of such electors and the canvass or other ascertainment under the laws of such State of the number of votes given or cast for each person for whose appointment any and all votes have been given or cast. And it shall also, thereupon, be the duty of the executive of each State to deliver to the electors of such State the same certificate in triplicate under the seal of the State, and such certificates shall be inclosed and transmitted by the electors with and at the same time and in the same manner as is provided by law for transmitting by such electors to the seat of Government the lists of all persons voted for as President and of all persons voted for as Vice-President.

The PRESIDENT *pro tempore*. The amendment is not now in order.

Mr. EDMUNDS. I believe the pending question is on the motion to recommit.

The PRESIDENT *pro tempore*. That is the pending motion.

Mr. EDMUNDS. I wish to say, Mr. President, that I do not see in respect of the amendment proposed by the Senator from New York any necessity of a recommittal. The amendment is entirely apart from the difficult aspects of the subject, and that is how to bring the thing down to the nearest point of a final conclusion between two canvassing boards of votes.

This amendment, as it now strikes me, is one that I should entirely favor in substance. I should rather prefer that this certificate from the governor of the State should be sent to the President of the Senate, to whom the electoral votes are to be sent, which is a mere matter of method of course, than be sent to the Secretary of State; and I should prefer to have added to my friend's amendment a provision that this certificate should be opened by the President of the Senate and kept on public file so that every Senator and every member of the House of Representatives, both of whom are in the end to take into consideration in some way and for some effect all these things, should have access to it at all times, so that the two Houses of Congress would be informed as to who it appeared from this certificate of the governor had been elected electors in the particular State and in all the States and who it appeared if a tribunal in that State—which is the great security, after all—had decided, if there was any doubt or dispute, was the true electoral college of that State. That would enable the two Houses of Congress to be advised in advance of the state of the official circumstances that had taken place in that State.

So, as it strikes me now, I think the idea is an extremely valuable one, but I do not see that it would be necessary to create the delay which would necessarily follow from a recommittal to send the bill back to the committee in order that such an amendment might be framed, because the amendment even in my view is almost perfect as it now stands. I hope, therefore, that the bill will not be recommitted. All the other aspects of the question have been discussed and discussed and rediscussed over and over again, and every Senator is just as well prepared to state his conclusion in his vote on the present occasion—I do not mean at this moment, but while the matter is under discussion—as he could be after a recommittal and a rereport by the committee.

Mr. SAULSBURY. Mr. President, as a member of the Committee on Privileges and Elections I consented to the bill being reported to the Senate for the purpose of its being considered, and not because the provisions of the bill commended themselves to me very strongly. I believe I have been a member of that committee for eight or ten years, and we have several times had this very question before the committee and every time the difficulty seemed to be irremovable.

It strikes me that the bill of the committee does invite action on the

part of the governor of a State, who knows the politics of the courts of the State to whom the question is to be submitted, which may lead to trouble. It may invite contest and objection before the courts. So it seems to me the amendment offered by the Senator from Ohio, the present occupant of the chair, invites antagonism by the House of Representatives in order that they may control. I should be glad, therefore, to see if the committee can devise a plan that will remove these difficulties out of our road. I am not certain that it can be done. I confess that I can at present see no way whereby we can relieve this question from embarrassment, but we ought to do the very best we can. A little delay will not hurt the matter; on the contrary, it may aid it. I shall, therefore, though I am a member of the committee from which the bill was reported, vote to refer the bill back to the committee to see if, upon further reflection and further deliberation, we can not devise some means that may at any rate remove as far as possible the difficulties in the case.

I should like to vote for a bill which has come from a committee of which I am a member; but my honest conviction is that this bill is not in the shape it ought to be, neither would it be exactly in the shape it ought to be if the amendment of the Senator from Ohio was adopted. I therefore hope that the bill with all these amendments will go to the committee to see if they can not devise some plan to relieve the question of its present embarrassments.

Mr. FRYE. I ask unanimous consent that the amendment offered by the Senator from New York and the amendment offered by the Senator from Florida may be considered as pending and may be printed, so that if this bill should be recommitted these proposed amendments may go with the bill.

The PRESIDENT *pro tempore*. The Senator from Florida has not sent up his amendment.

Mr. CALL. I will send it up now.

The PRESIDENT *pro tempore*. The Senator from Maine asks unanimous consent of the Senate that the amendments proposed by the Senator from Florida and the Senator from New York be considered as pending and that they be printed. If there is no objection that order will be made.

Mr. GEORGE. Mr. President, I shall vote for the motion to refer. As a member of the committee that reported the bill I was unable to give my assent to it. I had difficulties in committee which were not removed by the discussions there. I have listened very carefully and attentively to the very able and instructive discussion in the Senate, and I confess that the difficulties which I had have not been removed. There are some questions involved in the bill that I should like to have considered in committee more deliberately and more carefully than they have been. The main question which I should like to have considered, and which was not considered at all in the committee, is raised by the amendment offered by the Senator from Ohio who now occupies the chair. I have given the matter of that amendment as careful consideration as I am capable of, and while I have reached no conclusion which I am willing to stand by without further consideration, I am bound to say that the inclination of my mind is that the constitutional mode, the mode prescribed in the Constitution itself for determining all questions connected with the counting of the votes, is the joint assemblage of the two Houses of Congress, in whose presence the Constitution requires the count to be made.

I have listened very carefully to the arguments urged against that view, but they have not removed the inclination which exists in my mind to the conclusion that this joint body, the Senate and House of Representatives, called together in pursuance of the Constitution itself, is the body which the Constitution intended to supervise, control the count, and decide all questions connected with it. I have not been able to see what office or what function this joint body performs unless that function is accorded to it. Certainly the Constitution of the United States would not contain a provision providing—and that is the only instance in which it does provide for anything of that sort—for the extraordinary thing of convening the two Houses together with no function devolved upon them to perform. Certainly, sir, it appears to me that they were not by the Constitution summoned together as mere spectators; and accordingly any theory that may be propounded which denies to them, thus assembled together, the power to adjudicate upon all questions that may be raised with reference to the count is unreasonable. Their assemblage together is otherwise of no force whatever.

It will not do to say that they come together as witnesses merely. In one sense they are witnesses; in the sense that I may say or any one may say that he witnesses fireworks or any other transaction; but in a legal and constitutional sense, being called together for the purpose of attesting a fact, there is no mode in which the two Houses can attest anything.

Then again, Mr. President, the legal idea of a witness is that he is to be called upon before some legal court to give testimony in relation to a fact. If we come here under this clause of the Constitution and merely look at what is being done by other persons, if we have no jurisdiction, if we have no power to settle anything or to do anything, then there is no tribunal before which these two bodies can give any testimony in relation to any fact that may transpire here.

I am led further to conclude that that is possibly the correct construction of the Constitution by this fact. The Constitution certainly intended that the electoral votes should be counted. It did not intend that a part of them should be rejected on account of a difference between any persons connected with the counting. The command of the Constitution is that "the votes shall then be counted." If the duty of ascertaining what votes are to be counted is to be referred to the separate action of each one of the two Houses of Congress, it may result, and probably will result, in no determination at all. The Senate may affirm that one set of electors are elected; the House may affirm that another set are elected. Under that view, then, there is no determination, no settlement of the important and essential fact as to what particular votes from any particular State shall be counted. The settlement of that question is judicial in its nature; it is not legislative. It is the ascertainment of what the law is and of what the fact is.

The office of a legislator is to determine what shall be, it is to make a rule for future action. The office of a court is to determine whether a certain fact exists.

It being thus, I think, very clearly shown that whoever does determine what votes shall be counted performs a judicial act, then I say it is a solecism in legal language, it is a constitutional absurdity, to assert that the Constitution has organized for the determination of a fact, an essential fact, too, for the operation of the Government, two distinct bodies, which may and probably will never agree about the matter. It is not known, so far as my observation extends, that any court has been organized for the purpose of determining a fact, or I might put it in another way, that two courts have been organized for the purpose of ascertaining the same fact. It is not like the case of a simple court, composed of an even number of persons, who may divide equally, because there at least the members of that court have the opportunity of consultation, of argument, and of discussion with each other; but here, under the theory of this bill, if the two Houses, each acting separately for itself, are to determine the question, then we have this, I say, unprecedented and unparalleled fact in Anglo-Saxon usage, that on a grave question involving the peace of the country, a question which must be settled, which can not be evaded or postponed, which must be settled in some way, the framers of the Constitution have so ordained and provided that that question may not by any possibility ever be decided.

Now, sir, for the purpose of having these questions and some others connected with this matter more deliberately and more carefully considered, and not for the purpose, as my friend from Massachusetts appears to think, of postponing or of preventing any action by this Congress on this subject during the present session, I shall vote to recommit the bill and pending amendments to the proper committee.

Mr. MORGAN. Mr. President, I think it is to be regretted that members of the committee did not ascertain when they brought in this bill that they did not understand it. We might thereby have saved ourselves a great deal of trouble and time in debating it. Three members of this committee have avowed on the floor that they are very undecided about the bill which has been reported here. There being no dissenting report, no adverse report on the bill, I had taken it for granted that the bill came with the approval of the entire committee; but it seems to be otherwise.

I believe the Senate is now prepared to vote on this bill, notwithstanding some members of the committee have not made up their minds, and for that reason I am opposed to its being recommitted. We have had the subject under debate here for years and years together. It came into the Senate very soon after I had the honor of appearing here, and it has been a topic of debate at almost every session of Congress from that time to this, and I doubt the ability of any gentleman on this floor to add any new light, whether drawn from history, from experience, from logic, reasoning, or from any other source, upon the subject; and I hope that the committee will allow the Senate to vote upon the bill. After they have taken it back, I do know that they are going to resolve their doubts in the committee-room. Debate can progress here until the doubts of these gentlemen on the committee are resolved, or if not resolved they can decline to vote. I believe the Senate ought to make progress with this bill and act upon it.

Mr. EDMUNDS. I only wish at this time to submit a single observation in reply to my distinguished friend from Mississippi [Mr. GEORGE]. I would not wish his persuasive argument in favor of the two Houses, or the members of the two Houses as I understand him to mean, consolidated, acting in a judicial capacity upon a question of this kind, to go without a word of reply.

The Constitution of the United States declares in emphatic and unmistakable language that "the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish;" so that it seems to be clear, if language is worth anything in the Constitution of our fathers, that the makers of the Constitution did not intend to repose either in the executive department or in the two Houses of Congress any judicial power, except as you might say when each House considers the election of its members or where it is authorized to consider the conduct of its members and expel them, where they act in a certain sense in a judicial capacity and except in respect of the judicial aspect in which the Senate

acts on the trial of impeachments. Those are special exceptions, special clauses specially named, so that it seems to be a clear inference which every lawyer will understand, a conclusive inference, that no judicial power is invested in either or both Houses of Congress that is not especially named and imputed to them as such and in terms.

I agree entirely with my distinguished friend that this act of receiving and counting these votes is not a legislative act, and I say with equal emphasis that, in my opinion, it is not a judicial act, because the Constitution of the United States has not imputed any such judicial power to either or both of the Houses. It is an administrative act, the same sort of administrative act that every State which existed at the time of the formation of the Constitution imputed to its executive and election officers in the canvassing and return of votes and in the final ascertainment of them by some body, for the institution of every officer of a State from a justice of the peace or an overseer of the poor up at least to its governor. In the State of Wisconsin it has been held by its supreme court—I do not remember any other State where the question has been brought into judicial determination—that the final action, in respect of the election of a governor in that State, of whatever authority was appointed by its constitution to take the last steps of canvassing, was not a judicial, but an administrative, action, subject to review, as the rights of every other man are who claims an office there and everywhere in our States, by the judicial tribunals appointed to try judicial contests in a judicial way.

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

Mr. HARRISON. Let us take the vote first.

Mr. EDMUNDS. Very well; I withdraw the motion.

Several SENATORS. No; let the bill go over.

The PRESIDENT *pro tempore*. The question is on the motion to recommit the bill to the Committee on Privileges and Elections, on which motion the Senator from Massachusetts [Mr. HOAR] calls for the yeas and nays.

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

Mr. FRYE (when his name was called). I am paired with the Senator from Maryland [Mr. GORMAN] on all political questions. I hardly understand this to be a political question, and therefore feel at liberty to vote.

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

Mr. TELLER (when his name was called). I am paired with the Senator from Kentucky [Mr. BLACKBURN]. As I do not know how he would vote, I withhold my vote. If I were at liberty to vote, I should vote "nay."

The roll-call was concluded.

Mr. DOLPH. I am paired with the Senator from Georgia [Mr. BROWN] on political questions. I do not know how he would vote on this bill, and as it may have some political significance, I withhold my vote. I should vote "nay" if I voted at all.

Mr. ALDRICH. I am paired with the Senator from West Virginia [Mr. CAMDEN] on political questions, but I have the consent of his colleague [Mr. KENNA] to vote on this question.

Mr. ALLISON (after having voted in the negative). I am paired with the Senator from Missouri [Mr. COCKRELL]. I do not know how he would vote on this question, so I withdraw my vote. If he were present, I should vote "nay."

Mr. CULLOM. The Senator from Pennsylvania [Mr. MITCHELL] is absent, and I have taken the liberty of pairing him with the Senator from Delaware [Mr. GRAY] with his colleague's consent.

Mr. BLAIR. My colleague [Mr. PIKE] is absent on account of sickness, and I believe is paired.

The result was announced—yeas 30, nays 22; as follows:

YEAS—30.

Aldrich,	George,	Miller of N. Y.,	Sewell,
Butler,	Hampton,	Mitchell of Oreg.,	Sherman,
Call,	Harrison,	Palmer,	Spooner,
Colquitt,	Ingalls,	Payne,	Vance,
Conger,	Jones of Nevada,	Ransom,	Walthall,
Cullom,	Kenna,	Riddleberger,	Wilson of Iowa.
Eustis,	Manderson,	Sabin,	
Evarts,	Maxey,	Saulsbury,	

NAYS—22.

Beck,	Dawes,	Jackson,	Platt,
Berry,	Edmunds,	Jones of Arkansas,	Pugh,
Blair,	Frye,	Logan,	Van Wyck,
Cameron,	Harris,	McMillan,	Wilson of Md.
Chace,	Hawley,	Morgan,	
Coke,	Hoar,	Morrill,	

ABSENT—24.

Allison,	Dolph,	Jones of Florida,	Plumb,
Blackburn,	Fair,	McPherson,	Sawyer,
Bowen,	Gibson,	Mahone,	Stanford,
Brown,	Gorman,	Miller of Cal.,	Teller,
Camden,	Gray,	Mitchell of Pa.,	Vest,
Cockrell,	Hale,	Pike,	Voorhees.

So the motion to recommit was agreed to.

DEATH OF VICE-PRESIDENT HENDRICKS.

A message from the House of Representatives, by Mr. CLARK, its Clerk, announced that the House had passed the following resolutions:

Resolved, That the House has received with profound sorrow the intelligence of the death of Thomas A. Hendricks, late Vice-President of the United States.

Resolved, That the business of the House be suspended in order that the eminent public services and the private virtues of the deceased may be appropriately commemorated.

Resolved, That the Clerk of the House be directed to communicate these resolutions to the Senate.

ADMISSION OF DAKOTA.

Mr. HARRISON. I ask the Chair to lay before the Senate what I understand to be the regular order of business, the bill for the admission of Dakota.

The PRESIDENT *pro tempore*. The bill in regard to Dakota will be stated by its title.

The CHIEF CLERK. A bill (S. 967) to provide for the admission of the State of Dakota into the Union and for the organization of the Territory of Lincoln.

Mr. EDMUNDS. Is that bill up?

The PRESIDENT *pro tempore*. The Senator from Indiana calls it up.

Mr. EDMUNDS. Is it now before the Senate?

The PRESIDENT *pro tempore*. The Senator from Indiana moves that the Senate proceed to the consideration of the Dakota bill.

The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 967) to provide for the admission of the State of Dakota into the Union and for the organization of the Territory of Lincoln.

Mr. LOGAN. Mr. President——

The PRESIDENT *pro tempore*. The Senator from Illinois is entitled to the floor.

Mr. COCKRELL. My colleague [Mr. VEST], who is detained at home by sickness, has requested me to offer an amendment to this bill in the nature of a substitute, which I ask may be printed.

The PRESIDENT *pro tempore*. The proposed amendment will be printed.

Mr. EDMUNDS. The Senator from Illinois having the floor on the bill, 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 fifty-five minutes spent in executive session the doors were reopened, and (at 5 o'clock and 32 minutes p. m.) the Senate adjourned.

EXECUTIVE NOMINATIONS.

Executive nominations received the 2d day of February, 1886.

TERRITORIAL JUDGE.

Samuel Thompson Corn, of Illinois, to be associate justice of the supreme court of the Territory of Wyoming, *vice* Samuel C. Parks, term expired.

CONFIRMATIONS.

Executive nominations confirmed by the Senate, February 2, 1886.

TERRITORIAL JUDGE.

James D. Brinker, of Missouri, to be chief-justice of the supreme court of the Territory of New Mexico.

FIRST ASSISTANT ENGINEERS IN THE REVENUE SERVICE.

Engineer Charles W. Beckwith, of Connecticut, to be a first assistant engineer in the revenue service of the United States.

Engineer Oliver P. Remick, of Maine, to be a first assistant engineer in the revenue service of the United States.

Engineer David McC. French, of Virginia, to be a first assistant engineer in the revenue service of the United States.

Engineer Charles F. Coffin, of Maryland, to be a first assistant engineer in the revenue service of the United States.

SECOND ASSISTANT ENGINEERS IN THE REVENUE SERVICE.

Engineer Richard W. Champlain, of Pennsylvania, to be a second assistant engineer in the revenue service of the United States.

Engineer Wilmer Church, of New York, to be a second assistant engineer in the revenue service of the United States.

Engineer Herbert W. Spear, of Massachusetts, to be a second assistant engineer in the revenue service of the United States.

Engineer Philip Litting, of Maryland, to be a second assistant engineer in the revenue service of the United States.

Engineer Harry L. Boyd, of Maryland, to be a second assistant engineer in the revenue service of the United States.

Engineer Robert B. Higgins, of Maryland, to be a second assistant engineer in the revenue service of the United States.

FIRST LIEUTENANTS IN THE REVENUE SERVICE.

Lieut. John W. Howison, of Pennsylvania, to be a first lieutenant in the revenue service of the United States.

2/25

Statement of United States notes redeemed in gold coin from January 1, 1879, to December 31, 1885, under act of January 14, 1875.

From—	To—	Amount.
January 1, 1879	June 30, 1879	$7,976,698
July 1, 1879	June 30, 1880	3,780,638
July 1, 1880	June 30, 1881	271,750
July 1, 1881	June 30, 1882	40,000
July 1, 1882	June 30, 1883	
July 1, 1883	June 30, 1884	590,000
July 1, 1884	June 30, 1885	2,222,000
July 1, 1885	December 31, 1885	925,400
Total		15,806,486

UNITED STATES TREASURER'S OFFICE, *February* 24, 1886.

PETITIONS AND MEMORIALS.

The PRESIDENT *pro tempore* presented a petition of Knights of Labor of Wadsworth, Ohio, praying for the passage of the bill relative to the increase of wages in the Government Printing Office; which was referred to the Committee on Printing.

Mr. MAXEY presented a petition of Local Assembly No. 4433, Knights of Labor, of Gordon, Tex., and a petition of Local Assembly No. 4481, Knights of Labor, of Nugent, Tex., praying for the organization of a Territorial form of government over the Indian Territory, &c.; which were referred to the Committee on Indian Affairs.

Mr. HARRIS. At the request of a member of the bar of this city I present the petition of Charles E. Creecy, making a claim for compensation for property taken and used by the United States authorities for public purposes. I know nothing of the merits. I move that the petition be referred to the Committee on Claims.

The motion was agreed to.

Mr. CULLOM presented a petition of Local Assembly No. 1799 of the Knights of Labor, of Bushnell, Ill.; a petition of Local Assembly No. 1420 of the Knights of Labor, of Peru, Ill.; a petition of Local Assembly No. 1957 of the Knights of Labor, of Rock Island, Ill.; a petition of Golden Rule Assembly No. 3444 of the Knights of Labor, of Colchester, Ill.; a petition of Local Assembly No. 2511 of the Knights of Labor, of Pekin, Ill; a petition of Local Assembly No. 3643 of the Knights of Labor, of Staunton, Ill., and a petition of Local Assembly No. 2819 of the Knights of Labor, of Lincoln, Ill., praying for the construction of the Hennepin Canal; which were referred to the Committee on Commerce.

He also presented a petition of Local Assembly No. 2511, Knights of Labor, of Pekin, Ill., and a petition of Local Assembly No. 3643, Knights of Labor, of Staunton, Ill., praying for the opening to settlement of public and unoccupied lands in the Indian Territory and the organization of a Territorial form of government therein; which were referred to the Committee on Indian Affairs.

Mr. CONGER presented the petition of Andrew F. Schafer, chairman of a committee of Knights of Labor, and other citizens of Ionia, Mich., praying for the passage of the bill restoring the rates of wages in the Government Printing Office; which was referred to the Committee on Printing.

He also presented a petition of District Assembly No. 83 of the Knights of Labor, of Manistee, Mich., praying for the opening of the Indian Territory for homestead settlement and the organization of a Territorial government therein; which was referred to the Committee on Indian Affairs.

Mr. DOLPH. I present a petition of the Board of Trade of Portland, Oreg., praying for the passage of Senate bill No. 1111, which proposes to set apart from the public domain in the State of Oregon as a public park for the benefit of the people of the United States certain townships known as the Crater Lake Park. I move that the petition be referred to the Committee on Public Lands.

The motion was agreed to.

Mr. MANDERSON presented a petition of the Board of Trade of Chadron, Nebr., praying for the passage of the bill (H. R. 1448) to create two additional land districts in Nebraska; which was referred to the Committee on Public Lands.

Mr. HARRISON presented a petition of the Indiana Furniture Manufacturing Company and other manufacturing establishments in Indiana, praying Congress to pass the bill (H. R. 615) to relieve commercial travelers from license taxes in the District of Columbia; which was referred to the Committee on Commerce.

Mr. INGALLS presented a petition of the managers of the Saint Ann's Infant Asylum of the city of Washington, praying for an increase of the appropriation for that institution; which was referred to the Committee on Appropriations.

He also presented a memorial of Local Assembly No. 1800, Knights of Labor, of Topeka, Kans., remonstrating against the passage of the pending bills upon pilots and pilotage; which was referred to the Committee on Commerce.

Mr. PLUMB. I present three several petitions, signed by ex-Union soldiers residing in the State of Kansas, praying for the passage of the bill to equalize the pay of ex-Union soldiers and sailors with the pay of holders of national securities, the effect of which is to pay the soldiers and sailors the difference between the value of specie and depreciated greenback currency at the date they received their pay. I move that the petitions be referred to the Committee on Military Affairs.

The motion was agreed to.

Mr. WILSON, of Iowa, presented the petition of Rev. Robert Edgar and 342 representative citizens of Scott, Jones, Clinton, Muscatine, and Cedar Counties, Iowa, and the petition of Rev. L. Jean and 273 other representative citizens of Boone, Cerro Gordo, Hamilton, and Hardin Counties, Iowa, praying for the enactment of a law requiring scientific temperance instruction in the public schools of the District of Columbia, in the Territories, and in the Military and Naval Academies, the Indian and colored schools, supported wholly or in part by money from the national Treasury; which were ordered to lie on the table.

He also presented the petition of L. T. Gates and 64 other citizens of Iowa, praying for the passage of an act of absolute forfeiture of the unearned lands within the limits of the grant to the Sioux City and Saint Paul Railroad Company; which was ordered to lie on the table.

He also presented the petition of E. E. Herrick and 14 others, citizens of Cherokee, Iowa, praying for the passage of a joint resolution submitting to the States an amendment to the Constitution of the United States securing the right of suffrage to women on equal terms with men in all of the States and Territories; which was ordered to lie on the table.

He also presented resolutions adopted by the Abe Lincoln Post, No. 29, of the Grand Army of the Republic, at Council Bluffs, Iowa, favoring the immediate passage of a bill prohibiting the exhibition at the national capital and elsewhere in the country of a certain panorama of the battle of Bull Run; which was referred to the Committee on Military Affairs.

Mr. COCKRELL. I present a petition of citizens of Saint Louis, in the State of Missouri, earnestly praying Congress to pass a joint resolution at this session submitting to the several State Legislatures a proposition to so amend the national Constitution as to protect the women of the United States of all the States and Territories in the enjoyment of the right of suffrage on equal terms with men. The petition is signed by Mrs. Amanda E. Dickinson, president of the Missouri Woman's Suffrage Association; Mrs. Penelope Allen, vice-president; Mrs. Charlotte A. Cleveland, chairman of the executive committee; Dr. W. G. Eliot, and others. Inasmuch as the bill on this subject has been reported from the Committee on Woman Suffrage, I move that the petition lie on the table.

The motion was agreed to.

Mr. LOGAN presented petitions of Knights of Labor of Edwards Station, Rock Island, Bushnell, and Lincoln, Ill., praying for the construction of the Hennepin Canal; which were referred to the Committee on Commerce.

He also presented a petition of attorneys of Macomb, Ill., praying that McDonough County be stricken from the bill which proposes to place that county in a judicial district with Peoria as the place for holding Federal courts; which was referred to the Committee on the Judiciary.

REPORTS OF COMMITTEES.

Mr. DAWES, from the Committee on Indian Affairs, to whom was referred the bill (S. 1577) to amend the third section of an act entitled "An act to provide for the sale of the Sac and Fox and Iowa Indian reservations in the States of Nebraska and Kansas, and for other purposes," approved March 3, 1885, reported it with amendments.

He also, from the same committee, to whom was referred the bill (S. 55) to authorize the sale of timber on certain lands reserved for the use of the Menomonee tribe of Indians, in the State of Wisconsin, reported it with an amendment.

Mr. HOAR. I am directed by the Committee on Privileges and Elections, to whom was recommitted the bill (S. 9) to fix the day for the meeting of the electors of President and Vice-President and to provide for and regulate the counting of the votes for President and Vice-President, and the decision of questions arising thereon, to report it back with an amendment in the nature of a substitute. The substance of the original bill is retained unchanged, but there are certain amendments which meet the ideas suggested by the Senator from New York [Mr. EVARTS] in debate, and it has been found convenient to make the report of the bill with the amendments incorporated. I wish to have the substitute printed in a fashion which will show the proposed changes from the original bill.

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

Mr. HOAR. I suppose from my knowledge of the views of the Senate, from the debate which has taken place, that the bill will not give rise to much debate hereafter. Senators, I think, thoroughly understand it, and their views will be found to be pretty well fixed upon it. I shall give notice, therefore, that at a very early day I propose to call it up and have it disposed of, either by laying aside informally the then pending order or at some time when the Senate is not engaged on other business.

Mr. FRYE, from the Committee on Commerce, to whom was referred

Mr. HOAR. I have not read the bill, and I introduce it by request; but it comes from a source which satisfies me that it is a bill deserving of attention. I move its reference to the Committee on Territories.

The motion was agreed to.

Mr. HOAR. I introduce from the same source, also by request, another bill.

The bill (S. 1907) to facilitate the settlement and develop the resources of the Territory of Alaska, and to open an overland commercial route between the United States, Asiatic Russia, and Japan, was read twice by its title, and referred to the Committee on Foreign Relations.

HOUSE BILLS REFERRED.

The bill (H. R. 4083) to empower the Commissioner of Agriculture to transfer a certain appropriation was read twice by its title, and referred to the Committee on Appropriations.

The bill (H. R. 6661) to provide for closing up the business and paying the expenses of the Court of Commissioners of Alabama Claims, and for other purposes, was read twice by its title, and referred to the Committee on the Judiciary.

TIMBER DEPREDATIONS.

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

Resolved, That the Committee on Public Lands be directed to examine the nature and extent of the alleged use and destruction of timber on the public lands adjoining the line of the Northern Pacific Railroad, particularly by the Montana Improvement Company; also by what authority they take said timber, and what, if any, additional legislation is necessary to protect timber on the public domain, with power to send for persons and papers.

INTERSTATE COMMERCE.

Mr. CULLOM. I move that the bill (S. 1532) to regulate commerce be made a special order for Tuesday, March 30. It is an important bill, and I think that justice to the public requires it to be considered as soon as possible.

The PRESIDENT *pro tempore*. Is there objection to the present consideration of the motion?

Mr. HOAR. I have no objection, but I desire to be heard on the question.

Mr. PLUMB. I object.

The PRESIDENT *pro tempore*. The Senator from Kansas objects.

Mr. CULLOM. May I inquire of the Senator from Kansas if he rose to object to the motion I made in relation to the bill to regulate commerce?

Mr. PLUMB. I did.

The PRESIDENT *pro tempore*. The motion will be entered on the record in the form of a resolution for consideration to-morrow. It goes over under objection.

ORDER OF BUSINESS.

The PRESIDENT *pro tempore*. The morning business is now closed. Under the order of the Senate yesterday the Chair lays before the Senate the bill (S. 9) to fix the day for the meeting of the electors of President and Vice-President, and to provide for and regulate the counting of the votes for President and Vice-President and the decision of questions arising thereon. The Senator from Massachusetts [Mr. HOAR] has the floor upon the bill.

Mr. VAN WYCK. Will the Senator from Massachusetts yield one moment that I may ask to place on its passage Senate bill 1127, a pension bill to correct the name of a soldier in an act that was passed at the last session of Congress? It is a bill introduced by the Senator from Kansas [Mr. PLUMB] and reported by the Senator from New Hampshire [Mr. BLAIR] on behalf of the chairman of the committee; and as the Senator from New Hampshire is not now present, I ask that the Senate put the bill on its passage. It is No. 208 in the Order of Business.

Mr. HOAR. I will yield for that motion, the pending bill being laid aside informally.

The PRESIDENT *pro tempore*. The Senator from Nebraska, with the consent of the Senator from Massachusetts, moves that the Senate proceed to the consideration of the bill (S. 1127) to amend and correct the act approved March 3, 1885, granting a pension to Sarah Hague.

The motion was agreed to.

SARAH HAGUE.

The Senate, as in Committee of the Whole, proceeded to consider the bill (S. 1127) to amend and correct the act approved March 3, 1885, granting a pension to Sarah Hague. It proposes to amend and correct the act approved March 3, 1885, granting a pension to Sarah Hague, so as to read:

That the Secretary of the Interior be, and he is hereby, authorized and directed to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Sarah Hague, dependent mother of William Hague, late of Company L, Sixth New York Heavy Artillery.

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

COUNTING OF ELECTORAL VOTES.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 9) to fix the day for the meeting of the electors of President and Vice-President, and to provide for and regulate the counting of the votes for President and Vice-President and the decision of questions arising thereon.

Mr. HOAR. Mr. President, the Senator from Mississippi [Mr. GEORGE] yesterday asked a question as to the significance of a verbal amendment then made substituting the word "authority" for "tribunal" in several places where the latter occurred in the original draught of this bill, which question I undertook to answer this morning. I wish to take a minute or two only in regard to the bill as it now stands.

The present condition of the law in regard to the counting of the vote for President and Vice-President would render it almost impossible to accomplish that result in case of any difference of opinion between the two branches, and indeed in case of any serious question which might arise, without some special legislation or the adoption of some special rule at the time of ascertaining the result of any particular election. In other words, we have been compelled, for the last four or five Presidential elections, in one or two cases to adopt a standing joint rule, which was abrogated by the refusal of one House or the other to submit to its authority; or in one case by a statute passed in 1877; and in the two cases since 1876, by a special joint rule or order adopted to apply to the particular and special case. Now, every Senator will admit that this condition of things constitutes a great and serious public danger, and that we should be absolutely false to our official obligations if we did not endeavor to remedy it and to provide against the danger.

This bill fails to provide for a decision of the case and the admission of the electoral vote of a State where there are two rival State governments and those rival State governments present two competing sets of electors for the counting of their votes; and everybody who knows the present condition of the public opinion, the opinion of the two Houses, knows that it is impossible to provide in the present condition of opinion for a common arbiter between these two branches in that case. That is not provided for now. If the next Presidential election occur without any new law or new rule, and in any State in the country there be two State governments and an existing civil war or a conflict between these two competing governments not amounting to war, and the two Houses of Congress so differ in political opinion that one favors the claim of one State government and the other of the other, there is no method now by which the electors representing either of those governments can be counted in making up the result.

So then the criticism on this bill that it does not provide for that case by settling between those two claimants which of the two is the lawful State government, is a criticism on the existing condition of the law. It is one which, in the present condition of political sentiment in Congress, it is utterly impossible to deal with; and it seems to me that no just criticism can be made upon the present bill, because it improves upon the existing condition of things in all other respects and removes and provides for all other possible and conceivable dangers.

The bill provides that in case there be but one return from a State, that return shall not be rejected without the concurrence of both Houses of Congress. In case the State itself has provided by its own law an instrumentality for the final determination of all such questions, by a law passed more than six days before the assembling of its electoral college, the decision of the State is to be taken as valid in all cases. So I believe that this bill will remove from the public all dangers which are likely to arise in this country for generations in regard to the peaceful and proper determining of the result of the Presidential elections.

When the bill was up before, it was criticised by the Senator from New York [Mr. EVARTS] as seeming by its phraseology, using the words "tribunal" and "court," to invite a judicial interference with what, in the judgment of that Senator, should be a political process. The bill has been changed in that particular by substituting the language of the second section, that when the State shall have provided for the final determination of any controversy or contest by judicial or other methods of procedure, its decision shall be final, then instead of using the word "tribunal," as before, using the word "authority" for the State functionaries who are to settle this question. It is supposed that the criticism has been met by that modification.

That is the only substantial change in the bill, except that the bill also as now drafted provides that the executive of the State shall immediately after the canvass or final ascertainment of the election of electors in accordance with the laws of the State, transmit that canvass and final ascertainment to the Secretary of State to be published in some newspaper by him designated, and also that a copy of that certificate shall be sent with the electoral vote by the electors in the way now provided by law to the President of the Senate.

I have stated all the change which has been made in the bill, and I hope it will meet the nearly unanimous approbation of this body.

Mr. GEORGE. I desire to ask the Senator from Massachusetts a question before he takes his seat, and that is, if this bill makes any provision for a case where the executive of a State being opposed in political feeling and sentiment to the electors as they may have been elected shall fail or refuse to make the certificate required at his hands? In a case of that sort, I ask if any provision has been made for determining the vote of the State? Without the certificate of the governor how can the vote of the State be ascertained and counted?

Mr. HOAR. I suppose that no law can make provision for the fail-

ure of public officers to perform their duty in all cases. I believe Mr. Webster once stated in an important debate that if the members-elect of the United States Senate should refuse to assemble there was no earthly provision which would prevent the Republic from going to pieces; and so if the States and the people refuse to perform their duty. The Constitution itself provides for the sending of the electoral votes to the President of the Senate; and the old act of Congress of 1792 passed soon after the first inauguration of the Government made no provision for the case of the supreme executive authority of a State refusing to give the electors certificates of their election, or of the proper State officers refusing to send those evidences here. I suppose if the governor of a State or the officer to whom that function is committed were to refuse to perform his duty, or if the electors of a State were to refuse to send their votes after they had cast them to the President of the Senate, those are cases not now provided for, through which the State might lose its vote. At any rate we can not undertake to go through the list of all the officers and provide against a neglect of all of them. Suppose the President of the Senate should burn up the votes after they were conveyed to him and before they were to be opened. You can conceive at every step in a republican government the possibility of some person on whose conscientious and faithful discharge of official duty the going on of the Government in an orderly manner depends refusing to perform his duty. No legislation can provide for such cases in advance.

Mr. GEORGE. Mr. President, as a member of the Committee on Privileges and Elections that reported this bill, I was unable to concur in the conclusions at which that committee arrived.

There are some valuable provisions in this bill, and among them is the provision which prescribes the mode and manner in which the actions of the States shall be certified to Congress. Another is the effect given to a determination made in pursuance of the law of the State as to who were legally and constitutionally appointed electors. But there are some very grave omissions in this bill, and among them is the one to which I have just called the attention of the Senator from Massachusetts.

There is no provision in this bill for the case of a recusancy on the part of an executive officer of a State to make the proper certificates by which we can have the vote of that State ascertained and counted, according to our duty under the Constitution; and it is no answer to that to say, as the Senator from Massachusetts has said, that there are cases in which we can not provide for a dereliction of duty on the part of officers charged with duties under the Constitution. It is not beyond the competency of Congress to make provision for the ascertainment of the vote of a particular State or any State on a Presidential election, whether the governor of that State shall perform his duty or not. It is within the competency of Congress to provide other means to ascertain how the vote of that State was cast, notwithstanding the dereliction on the part of the governor.

Another great omission is the leaving unsettled the question raised by an amendment offered by the Senator from New York [Mr. EVARTS]. That amendment raised this question, which is not settled in this bill: What is to be done, when the vote of a State may be rejected, with reference to the aggregate number of votes, a majority of which is necessary to elect a President? Under the present apportionment there are 401 electoral votes. If 20 of those were rejected and not counted, the question is whether a person receiving a majority of the 381 which are counted, and not receiving a majority of the 401 which may have been appointed, is to be regarded as elected President of the United States, or whether the case has happened in which the House of Representatives shall exercise their power to elect.

This is a very grave and a very important question, and it ought not to have been left unsettled by this bill. It would be entirely immaterial whether the vote of a particular State was counted or rejected if when it was rejected there was still a person voted for as President who had a majority of all the electoral votes. In that case the rejection would have no effect upon the determination of the Presidential election; but if it be that the person having the majority only of votes which are counted is to be President, there will be a temptation on the part of the one House or the other to reject votes in order that a person not having a constitutional majority may be declared President. That is a grave defect.

If it be assumed, as I understood the Senator from Massachusetts to say on a former occasion when debating this bill, that he is President who receives a majority of the votes actually counted when that number is less than a majority of the whole number appointed, I insist that that would be a plain violation of the Constitution. The Constitution provides:

> The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors—

Not "counted," but—

appointed.

Now under this bill, on a difference between the two Houses, the Senate may affirm by its vote that one set of electors from a State have been duly appointed and the House of Representatives may affirm on its part that another set of electors have been appointed. In that case there has been no legal determination that there has been no appointment from that State, but an affirmance by one House that one set has been appointed and an affirmance by the other House that another set has been appointed. So the case as it stands is not that electors have not been appointed in particular States—that is conceded by the action of both Houses—but the situation is that the Houses fail to agree as to who have been appointed, the fact of appointment being asserted and affirmed by both Houses. In a case of that sort, if the person having the largest number of votes which are actually counted and less than a majority of the whole number which have been actually appointed shall be President of the United States he will be President in violation of the Constitution, as I understand it, and as I think it is plainly written.

Then, there is another very serious objection to this bill, and that goes to its very marrow and pith. It is in the mode, or rather in the tribunal, which this bill establishes for the purpose of ascertaining the votes that are to be counted. The Constitution says:

> The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

That means this plainly and unequivocally: First, a command to count the votes; second, a command to count them in the presence of the two Houses. They can not be constitutionally counted in any other mode or in any other presence. To count a vote necessarily involves first the ascertainment of the vote to be counted. When, therefore, the Constitution commands that the votes shall be counted in the presence of the two Houses, it commands necessarily that the necessary and that the essential steps and processes in the counting shall be performed in their presence. So, when the Constitution says the votes shall be counted in the presence of the two Houses, it means that everything involved in the process of counting shall be done then and there and in that presence. You can not count or enumerate a thing until you first ascertain what that thing is. To count in the Constitution means as well ascertainment of the thing to be counted as an enumeration of the thing after it has been ascertained. There is no escape from this argument. You can not count effectually unless the thing to be counted is ascertained. Ascertainment therefore is a logical and necessary part of the process of counting, as much so as enumeration.

Mr. HOAR. May I ask the Senator from Mississippi a question?

Mr. GEORGE. Yes, sir.

Mr. HOAR. I ask whether it would not be equally true to say that in case of an electoral vote you can not ascertain the thing to be counted until you count it? You have got to take the votes one by one and ascertain whether they belong to a certain category.

Mr. GEORGE. I do not exactly understand the question of the Senator. I will answer it though in this way, that counting in the Constitution means first the ascertainment of the vote to be counted, then the arithmetical enumeration of the votes, the footing of them up, and seeing who has the largest number.

Mr. HOAR. Then, if my friend will permit me to vary my question a little, would he not withdraw the last proposition he made? I understand him to affirm that before the process of counting, using the word "counting" in its constitutional sense, can advance you have got to ascertain the thing to be counted. I understood him to say that is counting.

Mr. GEORGE. My proposition is that counting involves two things, ascertainment and enumeration.

Mr. HOAR. I thought the Senator stated it differently, and said that before you could count in a constitutional sense you must ascertain.

Mr. GEORGE. I thought I made myself very well and plainly understood that the word "count" as used in the Constitution involved two processes—ascertainment and enumeration. That being established, that the word "count" does involve these two processes—and I do not understand the Senator from Massachusetts to deny that, but to correct me for, as he supposed, stating it differently—what results? We are commanded to "count" in the presence of the two Houses. Counting involves ascertainment as well as enumeration. Then, without violating the Constitution, how can you separate these two necessary processes involved in the word "count," and require the ascertainment to be made somewhere else and the enumeration only to be made in the presence of the two Houses? There is no affirmative answer to that proposition, as I conceive.

Now, sir, if the ascertainment is a part of the counting process, and the most essential part of it, and the Constitution requires this whole counting process to be done in the presence of the two Houses, then the next question is by what method you will perform these two processes. You can not perform them by the two Houses in joint convention, each in the same room and acting separately. The ascertainment and counting must be in the presence of both. That means not only the corporeal presence, the assemblage of both in the same room, but it means also the understanding or intelligent presence, or in other words that the process shall be so conducted that each House and each member of each House may understand it fully as it goes on.

Well, is it not the absurdest thing in the world that the two Houses should come into the same room, one presided over by the President of the Senate and the other by the Speaker of the House, and in order to

comply with the Constitution each one, one on one side of the Hall and the other on the other side of the Hall, going through this process of ascertainment?

When the Constitution commands the counting and ascertainment to be done in the presence of the two Houses, in the intellectual and understanding presence of the two Houses, it also commands that it must be done in that mode by which the two Houses and the members thereof may understand it and supervise it; and that can only be done by treating the two Houses as the Constitution treats them for this purpose, as constituting one body.

The Constitution says that we shall meet together and the votes shall be counted in the presence of the two Houses. I have shown that can only be done by the two Houses acting as one joint assembly; and this bill now under consideration treats that as so, so far as the enumeration is concerned. This bill provides that the two Houses shall meet together in the Hall of the House of Representatives, and that the President of the Senate shall be the presiding officer. How can he be presiding officer unless they constitute one assembly?

It furthermore provides that he shall preserve order. How can he preserve order if they be in fact two assemblies, organized for separate action, as in case of performing legislative duties? The bill furthermore provides that objections may be made in this joint assembly to the counting of a vote. Up to that point the bill itself treats the two Houses, when met together for the purpose of the electoral count, as one joint assembly; but right there when an objection is made and the real and substantial business for which the Constitution calls them together, the bill provides for a dissolution of this assembly, and then provides, after the two Houses have acted separately upon the question of ascertainment, that then there shall be another joint assembly and the other process of the counting be carried on. In other words, the bill treats this joint assemblage as one assembly for all the purposes of enumeration and compels them to separate for all the purposes of ascertainment, the two processes being involved necessarily in the word "count," which the Constitution requires to be done in the presence of an assembly composed of both.

I say there is no authority in the Constitution for that; and right here that is a conclusive answer to any argument of the two Houses acting separately in the matter, because the Constitution provides in the first article, seventh section, and third clause:

> Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States.

And shall have no effect unless approved by him. So the Constitution ordains that if it is necessary that these two Houses shall consider this question of ascertainment separately, and if the concurrence of one House to the action of the other be necessary, as this bill says it shall be, then it follows that that joint or concurrent vote, order, or resolution must be submitted to the President of the United States. Certainly it was not the intention of the framers of the Constitution to provide for a state of things of that description. But it is impossible to escape from the express language of the Constitution that "every order," not every bill, not every act, not every statute, but every "order," every "resolution," every "vote," in the language of the Constitution, to which the concurrence of the two Houses is necessary, shall be presented to the President for his signature. That I think is a conclusive objection to the mode prescribed in the bill for ascertaining the electoral vote by the separate order or vote of each House.

Mr. HOAR. May I inquire of my honorable friend if he thinks that provision of the Constitution applies to constitutional amendments?

Mr. GEORGE. I will answer that by saying that in order to pass a constitutional amendment a majority of two-thirds is required, which is the exact majority which can overrule the President's veto.

Mr. HOAR. That is after it has been presented to the President.

Mr. GEORGE. I do not know whether that is so or not. It may be that in practice a resolution proposing an amendment to the Constitution is not presented to the President; but if the practice has obtained of not presenting it to him it is because in the first instance it has to pass each House of Congress by a majority, which dispenses with the veto or overrules it.

Mr. HOAR. Does the Senator understand that the joint rules of the two Houses must be presented to the President because to their validity they require the concurrence of the two Houses?

Mr. GEORGE. I believe that the joint rules of the two Houses are secured in this way: By a provision in the Constitution each House is authorized to determine the rules of its own procedure, and in the exercise of that power the Senate may make rules for its separate action, and may also make rules besides its own separate rules for its joint action with the House, and in the same way the House may perform that function, and in that way reach joint rules.

So I stand upon the words of the Constitution itself: every order, every resolution, every vote (questions of adjournment alone excepted) to which the concurrence of the two Houses may be necessary shall be presented to the President.

Mr. HOAR. If the Senator will pardon me one moment——

Mr. GEORGE. I am very glad to be interrupted if I am wrong.

Mr. HOAR. I put this question to the Senator with a view of calling his attention to the consideration that the provision that every order, vote, or resolution to which the concurrence of both Houses is necessary shall be presented to the President, except in a case of adjournment, never has been held anywhere, so far as I know, to apply to anything but legislative matters which are to take effect upon the people by the authority of the Congress. There are all through the Constitution, among the powers of these two Houses, powers which require the concurrence of the two Houses for their exercise, but which, not relating to legislation, are never held to require the assent of the President or to be presented to the President.

Now as to the matter of a constitutional amendment, it is true that a constitutional amendment can not be constitutionally presented to the States for their adoption except by a two-thirds vote of each House of Congress thinking it necessary; but if the Senator's argument was a sound one, that would not prevent the operation of the provisions that it should be presented to the President in the first instance, because his reasons for rejection might change the mind of the two-thirds which had originally presented it. But the only instance, I believe, in our history where a constitutional amendment has been sent to the President of the United States was one which was sent to President Lincoln, which he returned to Congress saying that he did not understand that he had any authority in the matter.

So in the matter of joint rules; we get the authority to pass joint rules from the Constitution, of course, as we get all the rest of our authority; but if this proposition of the Senator's was true we should be obliged to send our joint rules to the President for his consideration, if that is a universal and comprehensive proposition that all matters to which the assent of the two Houses is necessary must be submitted to the President—all votes, orders, or resolutions.

In other words, as I understand it, it has been the uniform construction of the Constitution that in regard to the matter of counting the electoral vote, conferred upon the two Houses as the majority of both Houses conceive by the Constitution itself, as in the matter of joint rules, as in the matter of amendments to the Constitution, they stand upon the separate power which is given for those purposes, and are not included in the phrase which is found in the section of the Constitution relating to legislation, and which is intended only to apply to that.

Mr. GEORGE. I am very glad the Senator has interrupted me because it enables me just here to make a conclusive answer to the objections which he urges.

I think it may be true that this clause which I have read only refers to legislative business, the art of making laws; but the answer I make to the Senator is that nowhere in the Constitution can the two Houses act separately, the concurrence of both being necessary to the validity of an act, except on legislative business. The Constitution only grants to Congress, that is to the Senate and House of Representatives, requiring their concurrent action, legislative powers; and that is one of the greatest objections to the provisions in this bill, that it undertakes, in violation of the scheme of the Constitution, in violation of the grants of the Constitution, to confer upon the two Houses acting separately and yet concurrently, the concurrence of the two being necessary to the validity of the act, upon a matter which is not legislative business.

What kind of business is it? It certainly is not legislative business. It is the ascertainment of a fact and a very important fact to this country. Where do you get the power under the Constitution for the two Houses acting separately and yet concurrently to discharge any other duty except a legislative one?

And that brings me to the last objection I intend to urge against this bill; and that is that this is not a legislative function which ought to be considered separately by the two Houses, but it is rather in the nature of a judicial function; and when the Constitution imposes on us the duty of counting the votes in the presence of the two Houses, it certainly meant that we should adopt that form in the performance of that duty which would enable us to discharge it. Why, certainly, sir, it would be an anomaly in jurisprudence, it would be an anomaly surely in Anglo-Saxon jurisprudence, that for the ascertainment of a single fact, the rendering of an operative judgment upon the ascertainment of a fact should be committed to two separate tribunals, each acting independently of the other, and each having a veto upon the other. By that sort of a tribunal no judicial function has ever been performed. We require unanimity in juries, that twelve men shall agree to a verdict, but they are one body; they consult and confer with each other, and they arrive at a conclusion as the result of that conference; but nobody ever proposed to have two juries to try a case. We have a court sometimes composed of an even number of judges, and the result may be a division between the judges, and there may be a provision or there may be none, for one or the other to rule the case; but it has never been that two courts having equal power can be charged with the determination of the same case.

For these reasons, Mr. President, I have found it my duty to nonconcur with the report of the committee on this bill. I have submitted these remarks not with a view of influencing the action of the Senate, for that is impossible, as they have considered the bill on former occasions, but simply to put on record my reasons for dissent to a very objectionable bill.

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

proposed by the Committee on Privileges and Elections in the nature of a substitute.

Mr. HOAR. I understood there was an agreement to treat that as the original bill.

The PRESIDENT *pro tempore*. If there be no objection the substitute will be treated as an original bill. The Chair hears no objection.

Mr. SAULSBURY. I desire to say that I was not in the Committee on Privileges and Elections when this substitute was proposed. I have, therefore, not had time to examine it; I do not know what its provisions are, and therefore withhold my vote on the bill, not because I might not vote for it if I had made a careful examination of it, but as a member of the committee I have felt it my duty to say that I withhold my vote because I have not had time to examine the bill and ascertain what its provisions are exactly.

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

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. O. L. PRUDEN, one of his secretaries, announced that the President had, on the 16th instant, approved and signed the act (S. 610) to provide for a building for the use of the Federal courts, post-office, and internal-revenue and other civil offices, and a United States jail in the city of Fort Smith, Ark.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. CLARK, its Clerk, announced that the House had passed a bill (H. R. 275) for the relief of William D. Stewart and others, heirs at law of James Stewart, deceased; in which it requested the concurrence of the Senate.

ENROLLED BILL SIGNED.

The message also announced that the Speaker of the House had signed the enrolled bill (H. R. 545) to increase the pensions of widows and dependent relatives of deceased soldiers and sailors; and it was thereupon signed by the President *pro tempore*.

FRENCH SPOLIATION CLAIMS.

The PRESIDENT *pro tempore* laid before the Senate the following message from the President of the United States; which was read, and, with the accompanying papers, referred to the Committee on Claims, and ordered to be printed:

To the Senate of the United States:

I transmit herewith a communication from the Secretary of State, being a revised list of papers on file in the Department of State touching the unpaid claims of citizens of the United States against France for spoliations prior to July 31, 1801.

GROVER CLEVELAND.

EXECUTIVE MANSION, *Washington, March* 17, 1886.

REPORT OF SHIPPING INTERESTS OF GERMANY.

The PRESIDENT *pro tempore* laid before the Senate the following message from the President of the United States; which was read, and, with the accompanying papers, referred to the Committee on Commerce:

To the Senate of the United States:

In response to the resolution of the Senate of the 17th of February, requesting to be furnished with a copy of the report made by the consul-general of the United States at Berlin upon the shipping interest of Germany, I transmit a report of the Secretary of State upon the subject.

GROVER CLEVELAND.

EXECUTIVE MANSION, *Washington, March* 17, 1886.

AGRICULTURAL PRODUCTS.

The PRESIDENT *pro tempore*. The Chair also lays before the Senate a message that came from the President, but, probably by mistake, is not signed, though it comes in due official form. The Chair presents it, and it will be read.

The Secretary read as follows:

To the Senate:

In compliance with a resolution of the Senate of February 9, 1886, I herewith transmit a report from the Secretary of State, with its accompanying documents, relative to the commerce between the United States and certain foreign countries in cereals and the cotton product during the years 1884 and 1885.

EXECUTIVE MANSION, *March* 16, 1886.

The PRESIDENT *pro tempore*. This message is accompanied by a large number of documents. It is not signed by the President.

Mr. COCKRELL. I move that the message be returned to the President to receive his signature before it is printed.

The PRESIDENT *pro tempore*. That order will be made.

LOSSES OF OFFICERS AND SOLDIERS.

The PRESIDENT *pro tempore* laid before the Senate the following communication from the Secretary of War; which was read:

WAR DEPARTMENT, *Washington City, March* 16, 1886.

SIR: I have the honor to acknowledge receipt of the resolution of the Senate of the 3d instant, "That the Secretary of War make to the Senate a report showing the action and proceedings had to date under the act of March 3, 1885, including the claims in full as presented and as recommended for allowance, and any difference in views between the officers of the War and Treasury Departments in regard to the same."

The Department supposes that the act referred to in the resolution is chapter 335 of the laws of the Forty-eighth Congress (23 Stat., 350), which provides "for the settlement of the claims of officers and enlisted men of the Army for loss of private property destroyed in the military service of the United States."

In answer thereto I forward herewith the original papers in the claims referred to and the reports and recommendations of the board of officers convened June 15, 1885, to take into consideration the proviso in the act which requires the Secretary of War to decide what articles are "reasonable, useful, necessary, and proper for such officer or soldier while in quarters engaged in public service in the line of duty."

I also forward copy of two communications of the Third Auditor of the Treasury setting forth his views upon the act, dated November 13 and December 17, 1885. Also the decision of the Second Comptroller, of January 16, 1886, that claims must first receive the action of the Secretary of War before they can be definitely acted upon by the accounting officers.

It will be seen from the papers that the claims are prepared by the claimants alone, in many cases from memory, and from their nature they can not be fully corroborated by any disinterested evidence, the only statement of the claimant that is susceptible of proof from the records of the Department being the station or locale of the officer or soldier at the time of the loss, and where Government property was lost or destroyed at the same time.

The circuitous mode by which a conclusion must be reached in any case also deserves attention. The claimants present their claims to the Third Auditor of the Treasury, who may require certain proof in support thereof. (See circular of the Third Auditor of April 25, 1885, herewith.) When the evidence is received the papers are forwarded to the Secretary of War to decide what articles are reasonable, necessary, useful, and proper, without any statement from the Auditor that the loss is proved. The action of the Auditor is in accordance with the before-mentioned decision of the Comptroller, from which it appears that the Secretary of War must perform the same duty in a claim without a particle of merit that is incumbent upon him in one of undoubted worth. The papers in the claim of S. L. Fremont, formerly lieutenant, Third United States Artillery, is an illustration of the point, and also of the extent and variety of the claims which may be presented under the act.

I have confined myself to the requirements of the resolution, in forwarding the papers therein called for, and as they are originals, I beg they may be carefully preserved and returned to this Department when no longer required by the committee.

Very respectfully,

WILLIAM C. ENDICOTT,
Secretary of War.

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

Mr. COCKRELL. That report is made in response to a resolution presented by myself; and while those are original papers, they ought to be printed. It will be impossible for the Committee on Military Affairs to consider the question fairly and properly unless the documents are printed. I do not suppose they are so voluminous that it will be necessary that they should go to the Committee on Printing.

The PRESIDENT *pro tempore*. The bundle is before the Chair.

Mr. COCKRELL. I see; but I suppose they are not very closely written and only on one side. If they go to the Printing Office they ought not to be treated as most of the manuscript that goes there is and thrown away. They ought to be returned and not destroyed. That can be done, I presume.

The PRESIDENT *pro tempore*. An order can be sent for their return.

Mr. COCKRELL. I move, then, that the papers be printed and referred to the Committee on Military Affairs, and, when printed, that the originals be returned by the Public Printer and then returned by the Secretary of the Senate to the Secretary of War.

The PRESIDENT *pro tempore*. That order will be made.

HOUSE BILL REFERRED.

The bill (H. R. 275) for the relief of William D. Stewart and others, heirs at law of James Stewart, deceased, was read twice by its title, and referred to the Committee on Finance.

UNIFORM SYSTEM OF BANKRUPTCY.

Mr. HOAR. I ask leave to make a motion, not for consideration at this time but that it may be in order to-morrow. I move that the bankruptcy bill, being Senate bill 714, be made the special order for a week from Wednesday. I desire to have it stand after the bill proposed by the Senator from Illinois [Mr. CULLOM]. I do not desire to take up this motion until after the motion of the Senator from Illinois is disposed of.

The PRESIDENT *pro tempore*. The motion will be entered.

Mr. DOLPH. I do not understand the purport of the motion, but I know the Senator from Connecticut [Mr. PLATT] desires to take up the bill for the admission of Washington Territory.

The PRESIDENT *pro tempore*. The motion goes over.

Mr. HOAR. I will say for the information of the Senator and the Senate that I do not propose to antagonize the suggestion of the Senator from Connecticut. If he brings up the question of the admission of Washington Territory I shall give way with the bankruptcy bill until that also is disposed of. I wish merely to have the matter in position for action.

The PRESIDENT *pro tempore*. The motion is entered and goes over until to-morrow.

RELATIONS BETWEEN THE SENATE AND EXECUTIVE DEPARTMENTS.

The PRESIDENT *pro tempore*. The hour of 2 o'clock being nearly at hand the Chair will, with the unanimous consent of the body, lay before the Senate the unfinished business.

The Senate resumed the consideration of the resolutions reported by Mr. EDMUNDS from the Committee on the Judiciary February 18, expressing the sense of the Senate on the refusal of the Attorney-General to send to the Senate copies of certain papers.

Mr. DOLPH. Mr. President, I am aware that the question of the power of removal of officers appointed by the President by and with the advice and consent of the Senate is not a new question.

Green, R. S.	Le Fevre,	Pirce,	Stone, W. J., Ky.
Grosvenor,	Libbey,	Plumb,	Stone, W. J., Mo.
Guenther,	Lore,	Ranney,	Storm,
Hammond,	Louttit,	Reid, J. W.	Symes,
Hanback,	Lowry,	Reese,	Taylor, Zach
Harmer,	Mahoney,	Robertson,	Throckmorton,
Henderson, J. S.	Merriman,	Rusk,	Trigg,
Henley,	Murphy,	Sadler,	Van Eaton,
Hiestand,	Neece,	Sessions,	Van Schaick,
Houk,	Negley,	Singleton,	Wait,
Howard,	Norwood,	Smalls,	Wallace,
James,	O'Donnell,	Spooner,	Ward, J. H.
Jones, J. T.	O'Hara,	Spriggs,	Wellborn,
Kelley,	Payne,	Springer,	Wheeler,
King,	Perkins,	Stephenson,	Whiting,
Laffoon,	Perry,	Stewart, Charles	Woodburn.
Landes,	Pidcock,	St. Martin,	

So the bill was passed.

During the roll call,

On motion of Mr. WEAVER, of Iowa, by unanimous consent, the reading of the names was dispensed with.

The following pairs were announced for this day:

Mr. TOWNSHEND with Mr. HARMER.

Mr. BENNETT with Mr. GILFILLAN.

Mr. KING with Mr. GROSVENOR.

Mr. WARD, of Illinois, with Mr. HOUK.

Mr. COLLINS with Mr. GOFF.

The vote was then announced as above recorded.

Mr. BRAGG moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

MUSTER AND PAY OF VOLUNTEER FORCES.

Mr. CUTCHEON. I now call up for consideration at this time the bill (H. R. 1171) to amend an act entitled "An act to provide for the muster and pay of certain officers and enlisted men of the volunteer forces, approved June 3, 1884."

The SPEAKER. Is the bill in the Committee of the Whole House on the state of the Union?

Mr. CUTCHEON. This bill was considered in the House. The amendment was adopted, and the bill was ordered to be engrossed and read a third time; the previous question was pending, but the question of a quorum being raised, the bill was informally withdrawn. I now move the previous question on the passage of the bill. It will be found in the RECORD, May 4, page 4170.

The SPEAKER. The pending question is on the demand for the previous question.

Mr. REED, of Maine. Will there be debate after that?

The SPEAKER. The Chair will examine it. This bill was considered at an evening session, when the present occupant of the Chair was not present, and therefore knows nothing about it.

Mr. CUTCHEON. The bill was debated fully and amended and ordered to be engrossed and read a third time. The pending question is on its passage.

Mr. MCKINLEY. Let the gentleman explain what the bill is.

The SPEAKER. The Chair will state that the hour for the consideration of bills has expired for to-day, and this will, therefore, go over until to-morrow.

ORDER OF BUSINESS.

Mr. CALDWELL. I desire to call up for present consideration a special order made April 22. The order is as follows:

Resolved, That Thursday, the 6th day of May, 1886 (and from day to day thereafter until disposed of), immediately after the morning hour for the consideration of bills and resolutions, be set apart for the consideration of Senate bill No. 9, to provide for and regulate the electoral count; not to interfere with revenue or general appropriation bills, the river and harbor bill, nor with prior orders, nor with the consideration of reports from the Committee on Public Lands under the special order; and if the consideration of said Senate bill No. 9 be displaced, then the next day not previously set apart shall be devoted to its consideration until the same shall be disposed of, subject to the above-mentioned interference.

I think, Mr. Speaker, it takes precedence, and I now call it up for consideration.

Mr. HATCH. I rise to a parliamentary question.

The SPEAKER. The gentleman will state it.

Mr. HATCH. Has the second morning hour expired?

The SPEAKER. It has some time ago.

Mr. HATCH. I did not hear the Chair so announce it.

The SPEAKER. The Chair did announce it.

Mr. HATCH. I renew my motion, which was pending at the time the second hour began.

The SPEAKER. The gentleman's motion is not pending, as it is not in order. But the gentleman has the right to submit his motion, that is to say, he has the right to antagonize the motion of the gentleman from Tennessee by presenting the motion he desires to.

Mr. HATCH. I renew my motion to proceed to the consideration of the bill (H. R. 5190) to enlarge the powers and duties of the Department of Agriculture, under the special order which has been already read.

The SPEAKER. The gentleman from Tennessee [Mr. CALDWELL] calls up for consideration the special order made for the 6th of May last, relating to the count of the electoral votes. Pending that the gentleman from Missouri [Mr. HATCH] calls up for consideration the bill, the title of which has just been read. The question will first be taken on the motion of the gentleman from Tennessee, for the reason the order of the House sets the bill to which his motion refers for the 6th of May, while it sets the bill to which the motion of the gentleman from Missouri refers for the 13th day of May. Does the gentleman from Missouri raise the question of consideration against the bill to which the motion of the gentleman from Tennessee refers?

Mr. HATCH. I do.

The SPEAKER. The question is will the House proceed to the consideration of the bill (S. 9) to fix the day for the meeting of the electors of President and Vice-President and to provide for and regulate the counting of the votes for President and Vice-President and the decision of questions arising thereon.

Mr. HATCH demanded a division.

The House divided; and there were—ayes 101, noes 27.

Mr. HATCH demanded the yeas and nays.

The yeas and nays were not ordered, only 23 voting in the affirmative—not one-fifth of the last vote.

So the motion was agreed to, and the House determined to proceed with the consideration of the electoral count bill.

ELECTION OF PRESIDENT AND VICE-PRESIDENT.

The bill (S. 9), with the amendments reported by the Select Committee on the Election of President and Vice-President, was then read, as follows:

[Omit the parts in brackets and insert the parts printed in *italics*.]

An act to fix the day for the meeting of the electors of President and Vice-President, and to provide for and regulate the counting of the votes for President and Vice-President, and the decision of questions arising thereon.

Be it enacted, &c., That the electors of each State shall meet and give their votes on the second Monday in January next following their appointment, at such place in each State as the Legislature of such State shall direct.

SEC. 2. That if any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to the said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned.

SEC. 3. That it shall be the duty of the executive of each State, as soon as practicable after the conclusion of the appointment of electors in such State, by the final ascertainment under and in pursuance of the laws of such State providing for such ascertainment, to communicate, under the seal of the State, to the Secretary of State of the United States, a certificate of such ascertainment of the electors appointed, setting forth the names of such electors and the canvass or other ascertainment under the laws of such State of the number of votes given or cast for each person for whose appointment any and all votes have been given or cast; and it shall also thereupon be the duty of the executive of each State to deliver to the electors of such State, on or before the day on which they are required by the preceding section to meet, the same certificate, in triplicate, under the seal of the State; and such certificate shall be inclosed and transmitted by the electors at the same time and in the same manner as is provided by law for transmitting by such electors to the seat of Government the lists of all persons voted for as President and of all persons voted for as Vice-President; and section 136 of the Revised Statutes is hereby repealed; and if there shall have been any final determination in a State of a controversy or contest as provided for in section 2 of this act, it shall be the duty of the executive of such State, as soon as practicable after such determination, to communicate, under the seal of the State, to the Secretary of State of the United States, a certificate of such determination, in form and manner as the same shall have been made; and the Secretary of State of the United States, as soon as practicable after the receipt at the State Department of each of the certificates hereinbefore directed to be transmitted to the Secretary of State, shall publish, in such public newspaper as he shall designate, such certificates in full; and at the first meeting of Congress thereafter he shall transmit to the two Houses of Congress copies in full of each and every such certificate so received theretofore at the State Department.

SEC. 4. That Congress shall be in session on the second Wednesday in February succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o'clock in the afternoon on that day, and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted in the manner and according to the rules in this act provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, and the names of the persons, if any, elected, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice-President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses. Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State from which but one *lawful* return has been received shall be rejected [except by the affirmative vote of both Houses]. If more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in section 2 of this act to have been appointed, if the determination in said section provided for shall have been made, or by such

successors or substitutes, in case of a vacancy in the board of electors so ascertained, as have been appointed to fill such vacancy in the mode provided by the laws of the State; but in case there shall arise the question which of two or more of such State authorities determining what electors have been appointed, as mentioned in section 2 of this act, is the lawful tribunal of such State, the votes regularly given of those electors, and those only, of such State shall be counted whose title as electors the two Houses, acting separately, shall concurrently decide is supported by the decision of such State so authorized by its laws; and in such case of more than one return or paper purporting to be a return from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which [the two Houses, acting separately, shall concurrently decide to be the lawful votes of the legally appointed electors of such State] *were cast by electors whose appointment shall have been duly certified under the seal of the State by the executive thereof, in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State.* When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the question submitted. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of.

SEC. 5. That while the two Houses shall be in meeting as provided in this act the President of the Senate shall have power to preserve order; and no debate shall be allowed and no question shall be put by the presiding officer except to either House on a motion to withdraw.

SEC. 6. That when the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or other question arising in the matter, each Senator and Representative may speak to such objection or question five minutes, and not more than once; but after such debate shall have lasted two hours it shall be the duty of the presiding officer of each House to put the main question without further debate.

SEC. 7. That at such joint meeting of the two Houses seats shall be provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; the Senators, in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives at the Clerk's desk; for the other officers of the two Houses, in front of the Clerk's desk and upon each side of the Speaker's platform. Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this act, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next calendar day, Sunday excepted, at the hour of 10 o'clock in the forenoon. But if the counting of the electoral votes and the declaration of the result shall not have been completed before the fifth calendar day next after such first meeting of the two Houses, no further or other recess shall be taken by either House.

Passed the Senate March 17, 1886.

Attest: ANSON G. MCCOOK, *Secretary.*

The report (by Mr. CALDWELL) was read, as follows:

Mr. CALDWELL, from the Select Committee on the Election of President and Vice-President, submitted the following report, to accompany bill S. 9:

The committee has had under consideration Senate bill No. 9, to fix the day for the meeting of the electors of President and Vice-President, and to provide for and regulate the counting of the votes for President and Vice-President and the decision of questions arising thereon, and report the same back to the House with amendments, as follows:

(1) A verbal amendment in the third section, line 22, insert, after the words "state of," the word "a;" so that it shall read, "state of a controversy or contest," &c.

(2) A material amendment to section 4, lines 38, 39, is as follows: Strike out after the words "shall be rejected" the words "except by the affirmative votes of both Houses," and insert after the word "one," in the same line, the word "lawful;" so that the clause shall read "and no electoral vote or votes from any State from which but one lawful return has been received shall be rejected."

The majority of the committee were of the opinion that where there was but a single return from a State the two Houses should not have the power to reject the vote of the State.

(3) A material amendment is to the same section (No. 4), lines 61, 62, 63, after the word "which" to and including the word "State." At the end of the sentence strike out the words "the two Houses, acting separately, shall concurrently decide to be the lawful votes of the legally appointed electors of such State," and insert the words "were cast by electors whose appointment shall have been duly certified under the seal of the State, by the executive thereof, in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State;" so that the clause will read "and in such case of more than one return, or paper purporting to be a return, from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which were cast by electors whose appointment shall have been duly certified under the seal of the State, by the executive thereof, in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State."

The bill as it passed the Senate provided that where there was more than one return from the State, and no tribunal established in the State to decide the question between the contesting electors, only those votes should be counted which the two Houses, acting separately, should concur in deciding were the lawful votes of the State.

The committee were of the opinion that where there was more than one return from a State, and but a single State government, the vote of the State legally certified by the executive to have been cast by the legally appointed electors should be counted, unless both Houses concur in rejecting the vote.

Should these amendments be adopted by the House and the bill pass, the mode of counting the electoral vote may be thus briefly stated: In those States where a tribunal has been established, under the laws thereof, for the determination of contests concerning the appointment of electors therein, and such tribunal has decided what electors were duly appointed, the determination of the State tribunal shall be conclusive. Where there is but one return from a State the vote so returned shall be counted.

But in case there should arise the question which of two, or more, of such State authorities determining what electors have been appointed is the lawful tribunal of such State, the votes of the electors of such State shall be counted whose title as electors the two Houses, acting separately, shall concurrently decide is supported by the decision of such State so authorized by its laws.

Under the amendment, where there is but one State government and two sets of returns purporting to be the vote of the State, then that return shall be counted which is supported by the certificate of the executive of the State, under the seal thereof and in accordance with its laws, unless both Houses, acting separately, shall concur in deciding that the vote so certified and returned is not the lawful vote of the State.

The bill provides the means of determining what is the vote, how it shall be counted, its count, and the authoritative declaration of the result.

The two Houses are, by the Constitution, authorized to make the count of electoral votes. They can only count legal votes, and in doing so must determine, from the best evidence to be had, what are legal votes; and if they can not agree upon which are legal votes, then the State which has failed to bring itself under the plain provisions of the bill, and failed to provide for the determination of all questions by her own authorities, will lose her vote.

Congress having provided by this bill that the State tribunals may determine what votes are legal coming from that State, and that the two Houses shall be bound by this determination, it will be that State's own fault if the matter is left in doubt.

The power to determine rests with the two Houses, and there is no other constitutional tribunal.

Congress prescribes the details of the trial and what kind of evidence shall be received, and how the final judgment shall be rendered.

The interests involved are too precious and the dangers too great to be left longer without adequate provisions against trouble and discord.

Mr. CALDWELL. Mr. Speaker, this bill if passed will be an authoritative expression of the Constitution erected into law in advance of any complication which may again arise, as it has in the past, as to the counting the electoral votes of the States and the declaration of the result. The power of the President of the Senate to count the vote was understood to have been claimed in 1857 in the case of the electors from Wisconsin; but upon its being challenged both in the House and Senate, that officer disclaimed any such assumption. This claim was again set up in the year of disgrace, 1876, by a cabal, which had determined, in addition to debauching the Electoral College, to usurp the power of the two Houses and give it to one man. This was defeated, notably under the lead of a courageous and honest Senator from the State of New York.

While it is true that the Electoral College, and not Congress, is charged with the duty of making the election of President and Vice-President, and that the selection of the electors belongs exclusively to the States, and no department of the Federal Government is allowed to participate in the creation of the electors; and while thus is committed to the States the sole choice of the electors, whose function is to choose an Executive of the Federal Government, the right is also reserved to that Government, through and by the agency and under the supervision of the Senate and House of Representatives, to judge of the legality of returns, and to preserve itself from lapse or interregnum in the succession of its Chief Magistrate. The power of the two Houses in counting the vote is something more than ministerial and perfunctory merely.

Congress may provide by law or joint rule the manner of counting the vote. The presence of the two Houses when the vote is counted is a constitutional injunction, and is required from the fact that if there is no election by the electors, the duty of electing a President is devolved upon the House of Representatives; and of a Vice-President, upon the Senate. They are to be present at the count to ascertain and declare the result, if any, of the action of the Electoral College; or, in default thereof, to separate and elect the officers themselves. They are to count the votes. What votes? Legal votes. Then they are to determine what are legal votes, and who has a majority of legal votes. The power to judge of the legality of the votes is a necessary consequent of the power to count. The existence of this power is of absolute necessity to the preservation of the Government. The interests of all the States in their relations to each other in the Federal Union demand that the ultimate tribunal to decide upon the election of President should be a constituent body, in which the States in their federal relationships and the people in their sovereign capacity should be represented.

The States, in electing a President and Vice-President of the United States, are not exercising their State sovereignty as they are in electing their governors and other State officers. They are exercising constitutional functions, and are in the performance of a duty necessary to the maintenance of the Federal Government. Each State is the constitutional agent of the Federal Government in this matter, and must act within the scope of her agency and under the direction and law of her principal in providing an officer who is not the head of one State, but of all the States under the Constitution. For instance: Her votes must be cast upon the prescribed day, and for two citizens, one of whom must be a citizen of another State. Each State may appoint as electors a number, no more and no less, but equal to her number of Senators and Representatives in Congress.

The mode of their appointment is left solely to the States, but the elector is a Federal functionary, as much so as a Senator or a Representative. And the duties of an elector, as soon as he is chosen by the State, are prescribed by the Constitution of the United States. "They shall vote by ballot." "They shall make lists of the persons balloted for." "They shall sign and certify them;" "they shall seal and transmit them to the President of the Senate," etc. After the elector has done all required of him and deposited the vote in the hands of the President of the Senate, the Constitution then fixes the day when he shall open them in the presence of the Senate and House of Representatives, when "the vote shall be counted."

This bill is to prescribe the mode in which this count shall be made, and supply the omission that exists under the first article of the Constitution, which gives Congress all power to make all laws necessary to carry out these provisions. The passage of this bill will settle all the questions which have arisen from time to time as to the electoral count.

It will decide, first, that the power to count the vote is not in the President of the Senate.

Second, that it is in the two Houses of Congress, not ministerially merely, not as witnesses,

Capable of nothing but inexplicable dumb show and noise;

but with power to count, and the consequent power to decide upon the legality of the votes to be counted.

Third, that the action of the two Houses shall be separate and concurrent upon all questions of contest arising under the count, but joint as to results, thus preserving the dignity and rights of the two bodies by conceding to each equal and concurrent powers in counting and judging of the validity of electoral votes without merger of the lesser body into the numerically greater.

The apprehension that this bill contains anything inimical to State rights is fanciful and unreal. Even as it came from the Senate without the amendments proposed by the committee, it is not, in my opinion, amenable to such criticism. The object of the proposed amendments to the Senate bill is to remedy any lurking danger in its provisions, which it may be apprehended is ready to spring, lion-like, upon States and overcome them before they could summon their powers of resistance.

The minority of the committee fear that the reservation of the right to Congress to see that the one return of a State is a lawful return "may afford a pretext for usurpation by Congress of the power to disfranchise a State." It is certainly absurd to try to deny to Congress the power to remedy an unlawful return, although it might be the only return.

Instances have been often cited and may be again. Under section 4, article 4, of the Constitution "the United States shall guarantee to every State in the Union a republican form of government." Suppose some State should enthrone a king, constitute a house of lords, and they should appoint electors, and send up but one return properly certified and finally determined as required under the second section of the bill proposed by the minority. Shall an American Congress count such a vote? Suppose under the fourteenth amendment, which deprives a State of electoral votes in proportion as that State shall have denied the right to vote to its citizens of color—suppose there is but one return of that State, duly certified, of the full number of electors, who is to decide the number to be deducted? In neither case, if a future Congress would obey such a law, could Congress help itself from counting such illegal votes, although both Senate and House of Representatives might know that they violated these sections of the Constitution to count them. The majority of the committee thought there might be danger in giving unlimited power to both Houses to disfranchise a State from which there was but one return if they should concurrently decide to reject the return, but felt constrained by the force of the consideration that there was equal danger in forcing Congress to count an illegal return, and had a suspicion that no power in a statute would be found sufficient to make Congress count, whether or no, votes that both Houses had concurred in declaring illegal and that should not be counted.

The separate concurrent action of both Houses provided for in the bill preserves the constitutional identity, rights, and dignity of each. This concession of each House to the other of equal and concurrent power to decide on informalities and illegalities appearing on the face of returns, upon objection of a Senator or Representative, is necessary to the determination of results.

The determination of the question as to the right to the chief executive office of a nation is a prerogative necessary to the preservation and peace of the government.

This necessary power for the Federal Government must be exercised so as not to do detriment to the separate States.

By this bill a State may confine that necessary power within the narrowest possible bounds by making provision to determine all controversies as to her vote.

At last, what is the body the Constitution invests with the authority to count the electoral vote? Is it a foreign or hostile assembly? Is it in any sense antagonistic to or non-representative of the States? It is composed of that body, the Senate, which, under the Constitution, represents the autonomy of the States as such, and that body, the House of Representatives, which represents the people, who constitute the States. Hence, if the State has not provided authorities to decide for whom its electoral vote is cast, then that question shall be decided by a body composed of the Representatives and Senators of all the States.

Under the Constitution who else could decide? Who is nearer to the State in determining a question of vital importance to the whole union of States than the constituent body upon whom the Constitution has devolved the duty to count the vote? But all apprehensions of State disfranchisement are remote and founded in part, at least, upon an assumption that can not obtain that the States will fail to perform their legal duties as to the choosing of electors. I submit that this is an assumption that can not be acted upon by a legislative body in the enactment of laws. In addition to the sense of duty abiding in the States of the Union to authoritatively and in their own way declare and legally certify their choice of electors in order to the election of President and Vice-President of the United States, this law puts a premium upon diligence in the discharge of that duty by the States.

It will be perceived that this bill is not predicated upon the idea of throwing the two Houses into convention and merging the smaller body, the Senate, into the larger body, the House of Representatives, and voting *per capita*. It is submitted that no constitutional warrant can be found for such an idea.

Mr. Speaker, I do not care to consume further the time of the House in the discussion of the bill at the commencement of the debate upon it, believing that it will be the wish of the House to discuss it hereafter in all of its details; and I am willing that there shall be reasonable time for discussion; but I do desire, before taking my seat, to call your attention to one verbal change which will be suggested in the body of the bill as printed. I do not know that I can call it an amendment, nor does it appear among the printed amendments incorporated in the report. It will be noticed in the 38th line, on the 5th page of the bill, that this phrase occurs:

And the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State from which but one *lawful* return has been received shall be rejected, &c.

The committee, after suggesting the propriety of inserting the word "lawful" before the word "return," concluded, in deference to the views of the minority, and in order to obviate possible objections to the bill, that they would recommend to the House, and would agree, that this word should be stricken out. The reason is, as you will perceive, that it is unnecessary. The Houses have the power to count; and hence to decide, what is lawful to be counted, and to express it in this connection, it seemed to the committee, or to the minority of the committee at any rate, would give to Congress the arbitrary power to decide what was a lawful return, even in case where but one return was received from a State.

I shall not at the opening of the discussion detain the House further, but will reserve the remainder of my time, yielding the floor for the present to any gentleman who desires now to discuss the provisions of the bill; but will within a reasonable time resume the floor and call the previous question, and thus test the sense of the House on the adoption of this measure.

The SPEAKER *pro tempore* (Mr. CRISP in the chair). The gentleman has 40 minutes of his time remaining.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. MCCOOK, its Secretary, informed the House that the Senate had passed, with an amendment, in which the concurrence of the House was requested, the bill (H. R. 6983) for the relief of certain soldiers of the Twelfth Michigan Volunteer Infantry, dishonorably discharged under special orders 92, War Department, Adjutant-General's Office, dated March 1, 1866.

It further announced the adoption of the following resolutions:

Resolved, That the Senate has heard with deep sensibility the announcement of the death of Hon. LEWIS BEACH, and of the death of Hon. JOHN ARNOT, jr., late Representatives from the State of New York.

Resolved, That the Secretary communicate this resolution to the House of Representatives.

Resolved, That the Senate has heard with deep sensibility the announcement of the death of Hon. WILLIAM T. PRICE, late a Representative from the State of Wisconsin.

Resolved, That the Senate concur in the resolution of the House of Representatives providing for the appointment of a joint committee to take order for attending the funeral of the deceased, at his residence in the State of Wisconsin; and that the members of the committee on the part of the Senate be appointed by the President *pro tempore*.

Resolved, That the Secretary communicate these resolutions to the House of Representatives.

The message further announced that the President *pro tempore* had appointed Mr. SPOONER, Mr. MANDERSON, and Mr. BLACKBURN the committee on the part of the Senate under the foregoing resolution.

And then, on motion of Mr. BOYLE (at 2 o'clock and 47 minutes p. m.) the House adjourned.

PETITIONS, ETC.

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

By Mr. C. H. ALLEN: Papers in the case of Michael Flynn—to the Committee on Invalid Pensions.

By Mr. BELMONT: Petition of Schuyler Hamilton, to have his record as an Army officer corrected, &c.—to the Committee on Military Affairs.

By Mr. CASWELL: Petition of the conference of the Methodist Episcopal Church in Wisconsin, praying for protection of the lives and property of Chinese in this country—to the Committee on Foreign Affairs.

By Mr. GLASS: Petition of W. J. Vaughn, asking that his war claim be referred to the Court of Claims—to the Committee on War Claims.

By Mr. GROUT: Petition of George W. Colby, for increase of pension—to the Committee on Invalid Pensions.

By Mr. HERMANN: A bill making an appropriation of $25,000 for continuing improvement of Upper Willamette River and mouth of Yam Hill River, in the State of Oregon—to the Committee on Rivers and Harbors.

Also, a bill making an appropriation of $20,000 for continuing improvement of Umpqua River below Scottsburg, in the State of Oregon—to the same committee.

Also, a bill making an appropriation of $25,000 for continuing the

ple; and yet we have had no census since 1880. I say, therefore, that if we yield a revenue of $10,000 to the Government we are just as much entitled to the benefit of this service as if we had a census taken which shows a population of 10,000 people; and hence my conclusion is that we ought either to antagonize and defeat the bill or carry out the proposition of the gentleman from Illinois.

Mr. DOCKERY. I believe the hour has expired, and I prefer to continue my remarks to-morrow.

The hour having expired, the Speaker resumed the chair; and Mr. HATCH reported that the Committee of the Whole House on the state of the Union having had under consideration the bill (H. R. 7536) had come to no resolution thereon.

WILLIAM P. CHAMBLISS.

Mr. STEELE. I desire to submit a privileged report from a committee of conference, which merely corrects an error in the initials and spelling of a name.

The SPEAKER. The report will be read.

The Clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 68) for the relief of William P. Chambliss, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendment numbered 1 and agree to the following:

Strike out the name "William B. Chambliss" wherever it occurs in the bill, and insert the name "William P. Chambliss."

GEORGE W. STEELE,
FRANK L. WOLFORD,
JOSEPH WHEELER,
Managers on the part of the House.
CHARLES F. MANDERSON,
JOHN A. LOGAN,
Managers on the part of the Senate.

The SPEAKER. Unless the reading of the statement be called for the question will be on agreeing to the adoption of the report.

The report was agreed to.

MESSAGE FROM THE PRESIDENT.

A message in writing from the President of the United States was communicated to the House by Mr. PRUDEN, one of his secretaries.

ELECTION OF PRESIDENT AND VICE-PRESIDENT.

The SPEAKER. The regular order is the consideration of the special order coming over from yesterday.

Mr. DIBBLE. Mr. Speaker, the eminent constitutional lawyer, Judge Cooley, of Michigan, in an address recently delivered in Columbia, S. C., as the honored guest of the South Carolina Bar Association, in remarking that "the human mind accepts with complacency the idea of change," and that in reference to our institutions "the Constitution can not remain altogether stationary," continues:

Indeed, at this point is one of our chiefest dangers, a danger the full extent of which we are not likely to perceive except as we consider it carefully and with philosophical mind, unblinded by the brilliancy of a national career altogether unparalleled in history. America is the accepted representative of progress, and our pride in the fact closes our eyes to its perils, so that we come to feel that whatever is new is progression, and we fall into the tide without considering whether it floats us on our accustomed course or rises to the breakers; whether it pursues the course of safety or of destruction.

And he expresses his apprehension that "we shall be led further and further away from constitutional forms, methods, and principles, and possibly into dangers at present unknown and unsuspected." The dangers apparent are, however, in the opinion of this able thinker, "sufficiently serious to challenge thoughtful and considerate attention." And as the result of these reflections he sums up in the following conservative and patriotic expressions, accordant with the best and purest thought of our country in all stages of its existence:

Accepting, as we must, the fact that modifications of the fundamental law are inevitable, it is a plain duty to restrict them as far as possible to the precise method agreed upon when the Constitution was formed, that is to say, to amendments duly formulated and regularly adopted. By this method alone is it certain that the system of liberty which has come down to us as a precious legacy may be preserved. When changes are voluntarily suffered to creep in by other ways, we cultivate a habit of mind which saps the foundation of our institutions and sets us afloat upon a sea of uncertainty without definite landmarks, where the most reckless and pushing is likely to be most influential; and the most presumptuous, by the mere force of assurance, may seize upon the helm and boldly steer the course among unseen dangers. But unless we are prepared to put the wisdom of the past behind us as foolishness, we shall never forget that the liberties we enjoy have been worked out for us through a succession of ages, by keeping the old landmarks steadily in view, and by holding firmly to the teachings of experience. We have no warrant in history for an assumption that by a different road we should have reached the same advanced and enviable position.

Especially should every insidious change which threatens to creep in by usurpation of authority be met at the threshold and sturdily resisted. Any such change will owe its accomplishment either to general ignorance among the people regarding the fundamental principles of government, or to general indifference.

Mr. Speaker, the principles so eloquently enunciated by the distinguished jurist of Michigan are the principles which should guide us in the consideration of the present proposed legislation. It is to be remembered that we are not proposing in this bill a change of the organic law. Whenever a constitutional amendment is submitted to the consideration of Congress, then there need be no bounds, no limitation to the scope of our propositions; but when legislation is proposed by statute, care must be taken that in every respect the fundamental requirements of the written Constitution are strictly and rigidly observed.

This bill proposes to adopt a certain method, by which the danger of confusion in the counting of the electoral vote shall be avoided. Regard must be had in its consideration to the different stages by which the election of a President and a Vice-President are consummated. In the first place there is the appointment of electors; that is one stage. In the second place there is the casting of the vote by electors and its certification; that is another stage. And thirdly there is the aggregation of that vote, and the declaration of its final result in the presence of the two Houses of Congress.

Now take these steps. The appointing power of the electors is exclusively in the States, and the Constitution provides each State shall appoint, in such manner as its legislature may direct, such and such electors. Everything in relation to that appointment, the manner of its being made, any disputes that may arise upon it, everything in connection with its determination from first to last, is under the jurisdiction of the States, and under the control of the State legislatures. Congress has no right to trespass upon that field at all. The next step is when the votes are cast by the electors. It will be borne in mind that these electors are State officers; they are appointed by the State, and in cases where they draw pay, they are paid by the State. They give their votes upon the soil of the State; they constitute a State electoral college; and while they are discharging a duty under the Constitution of the United States they are just as much State officers in the discharge of that duty, as the governor of the State is when he certifies their election under the great seal of the State. Everything, therefore, connected with the casting of that vote, everything connected with the observance of constitutional provisions, if you please, in connection with the casting of that vote, is under State jurisdiction and State authority.

Then we come, Mr. Speaker, to the third stage—that is, the counting of the vote in the presence of both Houses of Congress. Congress has no legislative power conferred expressly or indirectly in the Constitution except in connection with what is done in the presence of the two Houses of Congress on the day of the electoral count. As a matter of course under Article IV, section 1, of the Constitution, Congress has the right to regulate by law the manner and form in which any State shall certify its official public acts, its official public records, and any of the proceedings of its government. That is one of the powers vested in Congress, and it has the right to prescribe in what manner the action of the State in this, as in everything else, shall be transmitted; but as to anything behind that, a careful search will reveal no part of the Constitution where jurisdiction is given Congress to go behind that certification, and to go further than the recognition of credentials.

It is true there is a clause which says that Congress has the right to pass all laws necessary to carry out certain powers; but those powers are defined. It has the power to carry out its own express grants of power. It has the right to pass laws concerning any act of the Federal Government; but the election of a President is not an act of the Federal Government, but is the action of the State Government. It has the right to pass laws concerning what any Federal officer shall do or what any Federal department shall do; but there its power is exhausted. So that Congress has no power in relation to the electoral vote except to count, in the sense of enumeration.

Now let us consider, Mr. Speaker, in what ways a State communicates with the General Government. I can recall but three instances—certainly there are only three current instances—where a State communicates with the Federal Government. Those are where it certifies the election of a member of the House to the House; where it certifies the election of a member of the Senate to the Senate; and where it certifies to the two Houses of Congress assembled for the purpose of counting the electoral vote, the appointment of the electors and their return of the vote cast by them. These are the three instances, and I wish to call the attention of this House to a marked difference which exists between the former two and the third. In all these cases each House should accept implicitly, in the primary event, the *prima facie* case as presented by the State; and the member-elect of the Senate or of the House of Representatives, as the case may be, when he presents the great seal of the State certifying that he is elected to the office of Senator or Representative, is seated on that *prima facie* case. The House or the Senate accepts it and seats him.

Never mind whether behind it all his opponent may be in fact the lawful member. That certificate seats him *prima facie*, and he votes and takes part in all the deliberations of the body, and represents the district or State from which he is accredited until the case is decided. But the Constitution provides as to these two cases that each House of Congress shall be the judge of the election and qualifications of its own members. There you find judicial power of a certain kind expressly granted to the two Houses of Congress, making an exception to the general provision which confines judicial power to the Supreme Court and the subordinate Federal courts. Each House shall be the judge of the election and the qualification of its own members.

Now, Mr. Speaker, we come to the third, the certification by a State of its electoral vote, of the names of its electors and the result of their action. That comes certified under the great seal of the State, and again, in that case, it is the duty of the two Houses to do what they do in the other cases where there is a grant of judicial power; it is their

duty to accept the *prima facie* case presented, and I deny the existence of any authority in one House, or in both Houses of Congress combined, to set aside that *prima facie* case when it is certified and presented in regular form and manner. Why, Mr. Speaker, in that case there is no grant of judicial power as there is in the other cases, yet even in the case where there is a grant of judicial power the two Houses of Congress do recognize the *prima facie* case.

I contend, therefore, that the same analogy prevails in regard to the electoral count; that the *prima facie* case has to be recognized, and that, so far as that count is concerned, is final, because the Constitution has not given to Congress in that case the same judicial power of revision which it has conferred upon each House in regard to the election and qualification of its own members. The case of the electoral count is therefore a distinct case, and with the reception and count of the *prima facie* return the power of Congress is exhausted. That was the idea which actuated the founders of the Constitution.

It will be remembered that at first it was proposed that the National Executive should be elected by the National Legislature, but, after discussion and deliberation, that power was withheld from the National Legislature and was reposed in the several States, as is seen in the emphatic provision that each State shall appoint its own electors. The change was well considered, and its design was to remove the executive department of the Government as far as possible from the danger of being the creature of the legislative department.

The idea was that the President must go into office without being under any obligation of any sort to the National Legislature, and the framers of the Constitution went so far as to provide even that a member of Congress should not be an elector—that to be a member of either House of Congress should be a disqualification. And even when they came to the case where, by failure of election by the States, they were called upon to provide *ex necessitate* that there should be some mode of electing a President, so jealous were the fathers of reposing this power in Congress that they divided it into two parts, giving to one House the power of electing the President and to the other the power of electing the Vice-President; thus providing that in no instance should the Houses of Congress be consentaneously and actively concerned in determining the question of who should be President and Vice-President of the United States.

The provision adopted was that one-half of Congress, acting independently, should choose one of those officers, and that the other half of Congress, also acting independently, should choose the other. That provision, I say, shows the jealousy with which this power was kept from Congress. Not only did the fathers provide that neither of the Houses of Congress should vote for both these officers, but they provided that when either House voted for one of them, its vote should be confined to individuals for whom the States had already voted. They were tied down to a choice between persons who had already been designated by the States.

Now, there are two other constitutional provisions, in relation to the electoral vote, granting powers to Congress. One is that Congress may determine the time of choosing the electors; the other is that Congress has the right to fix a day, which shall be the same all over the country, in which the electors shall cast their votes. I call the attention of the House to the difference in expression in these two cases. The provision is that Congress shall name the *time* of choosing the electors, and that it may also determine the *day* on which they shall cast their votes, which shall be the same throughout the country.

Members will doubtless recollect that under that provision, the early legislation as to the time provided that the States should choose the electors within thirty-four days of a certain date, fixing no day for the choice, but fixing the time within which the choice should be made, thus recognizing the power and the discretion of the States in that regard. The requirement that a day certain should be fixed for the casting of the vote is, by implication, the termination of the power of the State as to appointment of electors. If the vote must be cast on the same day throughout the United States, then it follows as a necessary consequence that unless the appointee, the elector, has been chosen by that day, he can not cast his vote, and the vote of the State is lost.

Just the same, Mr. Speaker, as in the election of any of us, if a man who is a voter does not go to the polls on election day and within the hours fixed by law and cast his vote, the vote is lost, and it makes no difference whether he was sick, or whether he was prevented from casting his vote by some necessity, or mischance, or design, or whether his vote might have changed the complexion of the election; his vote is lost if his right to vote is not exercised on the day designated.

Consequently, Mr. Speaker, I would submit, this being the exercise of a State power, that up to the day of election, the day when the electors are to cast their votes, the State power as to appointment can not be interfered with in any manner, shape, or form by the Congress of the United States, or by any other power. Up to that time the State stands fortified by the privilege granted in the Constitution. The fact that the day is to be designated by Congress, and is to be the same throughout the United States, of course limits the time when the appointing power can be exercised.

Now, if there is any fraud or any neglect of duty, if there is any hiatus, any unforeseen occurrence whereby the vote of a State is likely to be lost by reason of conflict, we contend that the State should have the full period up to the time of the casting of the electoral vote in order to repair that difficulty, to make that determination, to save her vote. As I have already shown, the State has complete control of the matter. It is a field into which Congress has no right to enter. That being the case, the State should have until that time to repair any disaster which may interfere with or interrupt the casting of her vote by the proper electors.

Now we come to the opening of the certificates as laid before the two Houses of Congress by the President of the Senate on the day when the electoral vote is declared. The President of the Senate is to open all the certificates. If it had been intended that the President of the Senate should count all the votes embraced in those certificates, how easy it would have been to have so framed the words of the Constitution. The language of the instrument is—

> The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates—

It does not go on to say, "and shall count the votes," but—

> And the votes shall then be counted.

It has been a question ever since that amendment was adopted, by whom the votes shall be counted; some (though very few) contending that the President of the Senate should count; others contending that the two Houses have the power to make the count; others contending that the House of Representatives has the power to make the count as to the Presidency, because it must elect the President, in the case of the failure of an election by the vote of the States, and that the Senate has, for an analogous reason, the same power with reference to the Vice-Presidency.

I submit, Mr. Speaker, that the Constitution not having named by whom the count is to be made, it is competent for Congress, by statute or by joint agreement, joint resolution, or joint rule, to name individuals to exercise the duty of making the count. I submit that Congress has this power under its general legislative authority to pass all laws to carry into effect any of the functions of the Government; because at that stage the vote has come into the possession of the Federal Government from the State government; the State government has certified the result of the election under the seal of the State and sent it here. The vote is in the hands of the Federal Government, and Congress has authority to provide for the count.

But what is that count? Mr. Speaker, that count is simply an enumeration. It has been said that it must embrace two features; that you must have an ascertainment of what are votes before you can count them, and that, therefore, the count must embrace both ascertainment and enumeration. Upon this proposition has been built up an argument claiming for Congress judicial power to go back and decide questions on their merits as to transactions within the State by State officers.

Why, Mr. Speaker, of course there must be ascertainment in a certain sense before there can be counting; but it is the kind of ascertainment that the clerk of a court or a registering officer exercises when he reads the decree of the court, in order to record it. It is the kind of ascertainment which a sheriff exercises when he reads an execution in his hand, in order to find how many dollars he is to levy on the property of the judgment-debtor. That is the kind of ascertainment. It is not the exercise of a judicial function; and this power of ascertainment no more authorizes Congress, or its appointees, the tellers, to go behind the certification of the vote than the clerk of a court would be authorized to go behind the decree of the court, in order to correct it, or a sheriff to alter the figures of the amount which he is commanded to collect in his execution.

The count is a ministerial act, not a judicial act. We should be on our guard, therefore, Mr. Speaker, in any system of legislation, against usurpation, against an undue extension of the powers of Congress. The spirit of this act, its avowed policy, as expressed by its authors, is in accord mainly with the views I have advanced. In some few details it seems to a portion of the committee, some seven of us, that the line is not as well guarded and defended as it might be, and therefore we have submitted some amendments in that respect.

Not only should we hesitate to extend our powers in this regard beyond the proper limits because it is the spirit of the Constitution, but it is the spirit of the times. The members on this floor will remember that in the early history of this country it was the common practice for the nomination for the Presidency to be made by a Congressional caucus. It was the usual way, but, like the fathers, the people of the country, jealous of reposing any of that power in Congress, spontaneously adopted and put into operation a system of nomination by party convention removed from Congress, having delegates in the main not members of Congress, showing not only the jealousy which the fathers had of this power, but the jealousy which the people of the United States to-day show by their action every four years in national convention—the jealousy of establishing too much control over the election of the national Executive in the two Houses of Congress.

But it may be asked where is the judicial power to be lodged as to the determination of the right to this office. Who is to prevent grievous wrongs from being done to one party or the other of the people in

the person of its candidate for the Presidency, if there be no places where hide-bound forms of credentials can be broken through?

To that, Mr. Speaker, I would simply reply that it is the opinion of eminent constitutional lawyers that Congress has the power to establish a judicial tribunal, or it can confer on an existing judicial tribunal jurisdiction, to try the right to the presidential office as well as to any other. But above all things, in relation to the presidency, certainty is a matter of prime concern, and the country can better endure wrong for four years—as this country once has done and survived it—than to place the power of appeal from the dictates of the States in a body like Congress, not authorized by the Constitution for that purpose, and not representatives of the States in that regard.

A few words as to the differences that exist in the House committee in relation to the amendments proposed. As I have before said, this bill comes from the Senate, and, in its general tenor and spirit, meets, I think, with the unanimous approval of the House committee. So far as I know there has been no dissenting opinion as to the main features of the bill and the advisability of its passage; but in one or two matters, we submit, the spirit of the bill is carried out and rendered more consistent by the adoption of the amendments submitted by the minority. There are only two points of difference.

In reference to the use of the single word "lawful," as stated by the chairman of the committee yesterday, the committee have agreed to adopt the views of the minority, considering the word to be unnecessary in the place where it is inserted, and so far as that amendment is concerned I will not consume the time of the House. The first difference between the majority and minority of the committee is that by the bill as proposed by the committee certain limitations of time are put upon the States in the exercise of the appointing power of the electors, and in regard to the determination by the States of any dispute as to who are chosen electors. In accord with the principles I have mentioned, seven of the committee are of the opinion that, so far as casting the vote is concerned, the State has all the constitutional power conferred, and that Congress can not prescribe that a State shall make its determination within a limited time prior to the day of casting the vote.

When the Constitution of the United States says that the day on which the electoral votes shall be cast shall be the same throughout the United States, the Constitution thereby imposes a limitation upon the appointing power of the States. The appointment must be made, all determinations concerning it must be made, all disputes concerning it must be settled, prior to that day; but Congress has no power, as is attempted here, to put a statute of limitation other than the limitation imposed by the Constitution on the appointing power of the State, by enacting that the determination of such question must be made six days, or at any other period, before the vote is cast. That is our point of difference; and its amendment is accomplished by the striking out of some six or eight words without destroying the phraseology or frame of the bill as proposed.

The other point on which the minority submit a difference of views from the rest of their brethren of the committee is this: That where there are two sets of papers from the same State, coming up before the two Houses of Congress and opened by the President of the Senate, both of which sets of papers purport to be returns of such State, that in such case that return and that only shall be received which has been certified by the executive of the State under the seal of the State and in accordance with its laws. That is the position of the minority. The majority of the committee go farther and give to the two Houses of Congress the power to over-ride that certificate; and from that conclusion of the committee, six of its members have dissented.

We hold that the act of the Congress assembled for the electoral count is to recognize credentials, and that when these credentials have been recognized by the two Houses as the lawful certificates sent, officially certified by the governor under the seal of the State, the returns so certified shall be counted, and that there is no proviso or "unless" about it, as the majority of the committee have it—"unless the two Houses decide not to count," thus giving the two Houses the right to override that State's action and deprive it of its vote, although the credential is in due form, signed by the executive of the State and under the seal of the State. We say that to be consistent, Mr. Speaker, that return, in the case of two, is the one to be counted and none other, and that it shall be counted, and that the two Houses shall not interfere or interpose to prohibit its count.

It may be said, suppose there are two persons claiming to be the Executive; suppose there is a dual government, that there are two persons claiming to hold the office of governor, two persons claiming to hold the State seal, two impressions of the seal which are fac-similes and two returns which come up purporting to be the returns from the State: What is to be done in that case?

That, Mr. Speaker, is a case I do not find provided for in this bill. I go further and say that there is no way of providing absolutely for such a case, unless you could get, instead of two bodies acting separately to decide the question, one umpire or arbiter; because, under the power which Congress undoubtedly possesses, and which I have conceded throughout the whole of my remarks—the power of the recognition of credentials—it might happen that the Senate would recognize one set of credentials and the House the other set of credentials; and then, of course, that vote would have to be thrown out, because there is no arbiter to decide which are the proper credentials. That case, I say, is not provided for here, either by the majority of the committee in the bill, or in the amendments proposed, or by the minority report; and I submit that it is impossible to provide for it unless you have, as I say, a single power, a unit, to decide. You can not determine the question by having two bodies to decide it, because they may take opposite positions.

Mr. Speaker, I have not dwelt upon the features of this bill, because I suppose they are familiar to the members of the House. I have dwelt upon the principles which seem to underlie the bill, and submit that in the amendments offered by the minority these principles are consistently preserved, and the bill made complete and symmetrical in all its parts.

I will ask to reserve the remainder of my time.

The SPEAKER *pro tempore* (Mr. McCREARY in the chair). The gentleman from South Carolina has twelve minutes of his time remaining.

Mr. COOPER. Mr. Speaker, I do not propose to occupy the time or to delay the action of this House by any general discussion of this bill. I agree with all the committee that the condition of affairs, the defects in the present law, the perils through which we have passed by reason of these defects, and the possible recurrence of such perils, require that the legislative department of the Government shall make such provisions as shall obviate such dangers, correct these defects, and protect us from such perils in future. I therefore agree that a bill should be passed of the general character and containing the general features proposed by the pending bill.

I have agreed with the majority of the committee in the amendments which they propose for the purpose of protecting and guaranteeing the States and the nation from any peril by the invasion of their rights by the Senate and the House of Representatives in the counting of the electoral vote.

But I can not agree with the amendments proposed by the minority, and I desire simply to give a few reasons why, believing as I do that the amendments proposed by the majority go to the utmost verge of wisdom, prudence, and safety in the direction which I have indicated; they can not go further in that line as requested by the minority of the committee.

Objection is made by the minority to the provision that the differences, the claims between the contending electors of the respective States, should be settled within the State where such contest is made by laws enacted prior to the day when that contest is to be decided. They object first to the phrase "enacted prior to the day." It seems to me, Mr. Speaker, manifest that these contests, these disputes between rival electors, between persons claiming to have been appointed electors, should be settled under a law made prior to the day when such contests are to be decided.

In my judgment it would be wise if it could be provided that these contests should be decided under and by virtue of laws made prior to the exigency under which they arose, made prior to the existence of the particular contest to be decided. That it would be unwise to permit a legislature to assemble and permit the dominant party, in view of the very existing affairs, in view of the peculiar phases of the contest which is being made, to enact laws governing and deciding that contest—possibly with a view of having it decided in accordance with their wishes rather than with the expressed wish of the people or with justice and the right. I think that it would be wise if the contest should be made in the face of existing law rather than that the law should be made in the face of the existing contest. Therefore, I would prefer that the interval should be further extended rather than that it should be absolutely destroyed as the minority proposes. I do not believe that a legislature should be permitted to meet concurrently with the contesting electors and provide a method of deciding the contest at the time the contest is proceeding. To what anarchy, to what confusion, to what riot, if you please, Mr. Speaker, might such a course of procedure lead!

It seems to me manifest that this law, under which this question is to be solved as to which of two sets of claiming electors are to be recognized, ought to be an enactment existing prior to the day they are to assemble; and if prior, then certainly it should be enacted for a reasonable time prior. And who will say that six days is not a reasonable time? Who can say that the limit of a week is too long an interval in which those who are to decide these disputes are to study the law, examine its provisions, and ascertain its effect upon the pending contest? How could any court, how could any tribunal intelligently solve the claims of parties under a law which is made concurrent, to the very moment perhaps, with the trouble which they are to settle under the law?

Therefore I do not agree with the minority of the committee, that this bill should be so amended as to strike out the provision that the law should exist prior to the time of meeting. And if we have a right to say it shall be an existing law when they meet, we have a right to say how long it shall be existing. If we have a right to say it shall be

six hours or six minutes prior, we have a right to say it shall have been enacted six days prior.

Again, and especially, it is insisted here by the minority that the office, the power and duty of the Senate and House of Representatives is merely and purely clerical; that they have no power, no discretion, no right here to adjudicate upon anything whatever. I do not and can not so understand the provisions of the Constitution concerning the counting of the electoral vote by the Senate and House. Are we to suppose that our wise and unostentatious fathers, who made the Constitution, and who above all men despised pomp and circumstance, provided for mere show that the Senate, the concentrated wisdom, learning, and statesmanship of the legislative department of the great Republic, is to vacate its seats, each single Senator rising in his place, donning the Senatorial toga, and forming an imposing procession with the second officer of the Republic at their head, leave the Senate Chamber silent, empty, and deserted as a newly made sepulcher, march over here with measured step while we, the representatives of the people, receive them standing with uncovered heads—they to sit at the right hand of the presiding Vice-President while we crowd to the left, and finally all to remain sitting, and only sitting, in owl-like, solemn, lifeless silence, until a couple of gentlemen solve a small sum in addition which any average ten-year old school boy could perform just as correctly and just as satisfactorily inside of thirty minutes any day of the week, and then all rise up and the Senators return in the same mournful, solemn, and imposing manner in which they came? Sir, the foolish formality, the solemn silliness of such a proceeding, it does seem to me, could have no other office and produce no other effect than to excite the merriment of the street Arabs who would congregate in the corridors and the galleries to witness the performance.

And in case there should be objection made to any return, under the very provisions of this bill which this minority propose the grave and reverend Senators must rise, fold their garments around them, shake off temporarily the polluting dust of this Chamber, and depart—go over to their Senate Chamber, and the objections are there to be stated; the Senators then, being utterly helpless to decide any objections, return here and sit down again. Thus the ceremony proceeds. I undertake to say, sir, that it is absurd to suppose that our fathers contemplated any such dumb show. They meant that this solemn transaction should mean something.

They meant that this assembling of the two Houses, which has the effect of stopping the wheels of legislation, of suspending all other action upon the part of the legislative department of the Republic—the Senators and the Representatives being gathered together for this special purpose, the Vice-President presiding over the joint assembly, while the eyes of the nation are directed to it, awaiting the decision—our fathers intended, I say, that this solemn proceeding should mean something more than a gathering of the two Houses simply to sit by and ascertain that, 185 being subtracted from 210, there would be a certain 25 remainder.

What are we required to do in such a case? Why did the Constitution thus require that all legislative proceedings should be suspended? Why did it require this solemn formality, with all this solemn circumstance and pomp? Why, unless they did understand that the joint legislative tribunals of the Republic, the four hundred men representing the States, and the people of the States, had a duty imposed upon them, the discharge of which would be of some value and some significance. What is that duty? It is not, I grant you, to reject the vote of a State, and nobody claims that the Senate and the House have the right to say that the vote of any State shall be rejected. But they have a right, and, as I understand the matter, it is their duty, to ascertain whether a State has voted or not, and ascertain whether the vote that has been deposited under the forms of law, with the proper officer, is in fact the lawful vote of a State.

It is, as has been already said, a question of identity, and these two assembled bodies, the Senate and the House of Representatives, have the right, and have the duty imposed upon them, to see to it that the votes counted are in fact the votes of the States. Sir, if there be no power in these concurrently acting bodies to decide such questions, then, as has been admitted by the distinguished gentleman who has just presented the views of the minority, those questions, if they arise, as they may, will necessarily go unadjudicated, and we shall be remitted to chaos, and to what always follows chaos in such cases, the arbitrament of the sword.

Sir, it is within the recollection of living men, members of this House, that upon at least two occasions there have been in each of two States of the Republic two acting-governors, each claiming to be duly elected by the people, each surrounding and environing himself with all the paraphernalia of gubernatorial authority, each having in his possession and using the great seal of the State, each sending out proclamations, and, in the case of the electoral count, each would no doubt have been found sending down to this Capitol, under the great seal of the State, and under his signature as governor, a certificate that certain men had been legally chosen and qualified as electors of the State.

What are we to do in such a case? My friend says that we can do nothing. I answer that, under the provisions of this bill, as it is proposed to be amended by the majority of the committee, the House may inquire into the authenticity of the certificates, and may say, if they can, which one of the certificates sent here is true and correct; and if they can not do that, may reject them both, and settle the question in that way.

Mr. DIBBLE. Will my friend from Ohio [Mr. COOPER] permit a question?

Mr. COOPER. Certainly.

Mr. DIBBLE. Does not the majority report provide that the two Houses can not decide that question unless they both agree, and agree to throw out?

Mr. COOPER. Exactly so. That is one of the chief provisions against an invasion of the rights of the States.

Mr. DIBBLE. They are to agree to throw out, and nothing else.

Mr. COOPER. Yes; the majority of the committee in their recommendations go, I say, to the utmost verge of safety in providing against any possible invasion of the right of a State, for they agree that, where there is but one certificate from a State, no matter whether every single member of each House considering it may believe, or may know, that not one of the men named in that certificate has been duly elected, yet they shall have no right to throw it out, but it must be counted. Therefore, I think that this bill does not go far enough. There are contingencies for which it does not provide. It does not provide, for instance, for the case in which a State certifies that a member of Congress, or an alien, or a foreigner, or some other disqualified person, has been chosen as an elector. The only objection I have to the bill, therefore, is in a very different line from that of my distinguished friend from South Carolina [Mr. DIBBLE] who thinks it goes too far in giving power to the Senate and House.

But this bill does provide that where there purport to come from a State more returns than one, where there are conflicting returns, as there might be in the case I have suggested—where two sets of returns come here both regular upon their face, both (as might happen in the contingency to which I have referred) duly certified by the governor of the State, we may examine into them; but if the House and the Senate can not ascertain which are the votes of the lawfully chosen electors, in that contingency, under the provisions of the bill, and in that contingency only, both returns may be rejected, "if the two Houses acting separately shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State."

Mr. DIBBLE. Will my friend point out any provision of the bill providing any mode of determining the question where there are two returns from dual State governments, and when one House favors the regularity of one government while the other House favors the validity of the other government?

Mr. COOPER. I have already stated that there is no provision for a case of that kind. And no return which appears upon its face to be lawful can be rejected, except by the concurrent action of both the Senate and the House, such action being taken separately. The only possible contingency in which, under the bill, any return can be rejected is when the House and the Senate, acting separately, both agree that the return does not represent the lawful votes of the legally qualified electors of the State. As I said, I might complain, and I do in fact feel that this bill does not go far enough in that line; but I certainly search in vain for reasons for complaint that it has gone too far.

Mr. DIBBLE. My friend will permit me to say that I read the majority report to be this: The return lawfully certified by the legal executive, in accordance with the laws of the State, shall be counted unless the two Houses throw it out. Now, the minority of the committee maintain that if a return is the lawful return it should be counted, and that nobody should be authorized to throw it out.

Mr. COOPER. There is no doubt about the language of the bill, and no occasion for any dispute as to what its provisions mean. The bill speaks for itself, and says that—

> Those votes, and those only, shall be counted which were cast by electors whose appointment shall have been duly certified under the seal of the State, by the executive thereof, in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide——

Decide what? Not that the votes shall be thrown out, not that there has been some informality, not that the return is irregular; far more than this is required to authorize even the Senate and the House, acting separately, to concurrently reject a vote. Nobody undertakes to reject the lawful vote of any State, but the bill provides that these returns shall be counted——

> Unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State.

Who will say that when there are conflicting returns, a return should be received when the Senate and the House, separately acting, shall concurrently agree that that return does not represent votes lawfully cast by the legally-appointed electors of the State? And this is what the gentleman from South Carolina is making such a fuss about, as I understand. On this point there seems to be a squeamish sentimentality of very unhealthy growth.

Mr. DIBBLE. My friend will permit me to say that the "fuss" I am making is just this: that the two Houses——

Mr. COOPER. I beg my friend's pardon. He and I together will make a speech which will read very incongruously, I fear.

Mr. DIBBLE. I will not interrupt the gentleman further.

Mr. COOPER. I am not complaining.

Mr. DIBBLE. I will not interrupt the gentleman.

Mr. COOPER. Mr. Speaker, on behalf of the majority of the committee I insist that the provisions of this bill are wise. I beg the House to remember that it is only in the case of two returns that any return can be rejected. I desire to repeat that, although the two Houses, acting separately, should concurrently agree that a return was not the return of the votes legally cast by the lawfully-appointed electors of the State, still there would be no right to ignore that return and those votes if there were no conflicting return from the State. In other words, if the authorities of the State have not themselves challenged the correctness of a return, we are not to do it. But where the authorities of a State come here and themselves challenge the correctness of a return which is presented to us, and invoke us to inquire into its legality; and where the two Houses, in response to that invitation on the part of the State, shall, acting separately, reach a concurrent agreement that a particular return does not embrace the votes legally cast by lawfully-appointed electors, the two Houses of Congress ought to have the right to say that such a return shall not be used to elect the Chief Magistrate of this Republic.

And what dire consequences are likely to follow from such a proceeding? I need not remind the House that the adjudication, the determination under this provision that a certain return should not be counted, could not elect anybody President of the Republic. Any person chosen President must have the votes of a majority of the whole electoral college, not merely a majority of the votes which are counted; and the decision and declaration of the Senate and the House that a particular State has made no return does not enable any one to claim to be elected thereby. The result of the election could only be affected in case one candidate had, with the votes embraced in the controverted return, a majority of the electoral college, and would not have a majority without those votes. In that case, the election of President would be remitted to the determination of the House of Representatives—only that, and nothing more.

Who will complain of that? Certainly a State which places itself in this position, which has failed to observe the forms of law, failed to preserve peace and order within its own boundaries, which has a conflict in its own territory, dual governments presenting conflicting and irreconcilable claims—a State which permits itself to be in that position, and comes with that sort of representation, could not complain if the Senate and the House should say to it: "You should adjudicate the rights of these tribunals within your own boundaries and not send them here and require us to investigate and decide them."

Therefore, it seems to me if there be errors in this bill, if there be defects in it, it is not in the line of going too far in the way of infringing on any supposed rights of any of the States. We certainly have the right, and it is our duty, to say to-day that when votes are counted they should be lawful votes, coming from lawfully constituted authorities, and in the way in which the State has provided.

Sir, I do not desire, as I have said, to go into the general discussion of the merits of this bill, but simply to note objections to the bill as it passed the Senate, and as it is proposed to be modified by amendments of the majority of the committee, and having done so, I desire to reserve the residue of my time.

The SPEAKER *pro tempore* (Mr. MCCREARY in the chair). The gentleman has thirty minutes of his time remaining.

Mr. EDEN. With the concurrence of the majority of the committee I desire to offer an amendment, which is as follows: After the word "States" in line 32, section 4, insert "which shall have been regularly given by electors whose appointment has been certified to according to section 3 of this act." Should that amendment be adopted, the word "lawful," which the committee propose to insert in line 38, of course will not be adopted.

I do not propose, Mr. Speaker, to engage in any elaborate discussion of the bill before the House; I am not prepared to do so; but I regard the measure as a very important one and as one which ought to be passed. I think, however, the amendments proposed by the committee should also be adopted. I will confine myself to the consideration of the points embraced in the bill and the amendments reported by the committee, so that it will be seen what the law will be if adopted with those amendments.

The bill as it passed the Senate, in the second section provides that if any State shall have established, by laws passed prior to the day fixed for the appointment of electors, a tribunal for the determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods of procedure, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination shall be conclusive, &c.

The third section makes it the duty of the executive of each State, as soon as practicable after the conclusion of the appointment of electors, by the final ascertainment, under and in pursuance of the laws providing for such ascertainment, to send a certificate thereof, under the seal of the State, to the Secretary of State of the United States, and to deliver a like certificate to the electors of such State on or before the day they are required under the law to meet; and the electors are to inclose and transmit this certificate at the same time and in the same manner as is provided by law for transmitting by such electors to the seat of Government the lists of all persons voted for as President and of all persons voted for as Vice-President.

The important points in the bill as passed by the Senate are in the fourth section, which provides that objections shall be called for upon the reading of any certificate, and when objections are made the two Houses shall separate and the objections shall be submitted to each House separately for its decision; but no electoral vote or votes from any State from which but one return has been received shall be rejected except by the affirmative vote of both Houses. Where more than one return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in section 2 of this act to have been appointed, if the determination of said section shall have been made; but in case there shall arise the question of which one of two or more of such State authorities determining what electors have been appointed, as mentioned in section 2 of this act, is the lawful tribunal of such State, the votes regularly given by those electors only of such State shall be counted whose title as electors the two Houses, acting separately, shall concurrently decide is supported by the decision of such State so authorized by its laws; and in such case of more than one return from a State, if there shall have been no such determination of the question aforesaid, then those votes only shall be counted which the two Houses, acting separately, shall decide to be the lawful votes of the State.

The object of the bill of the Senate is to fix certain rules by which the two Houses shall be governed in counting the electoral vote.

In case of but one return from a State the Senate bill allows the vote to be rejected by the affirmative vote of both Houses.

When there is more than one return from a State and a tribunal of the State, according to section 2 of the bill, has determined who are the lawfully appointed electors of the State, the votes of such electors are to be counted without question.

If a question arises as to which of two or more of such State authorities, acting under section 2 of the bill, is the lawful tribunal of the State, then the vote of such electors only shall be counted as the two Houses, acting separately, shall concurrently decide is supported by the decision of such State so acting under its laws.

In case of more than one return from a State, if no determination has been made by a tribunal thereof as to which is the lawful return, then those votes only shall be counted which the two Houses, acting separately, shall concurrently decide to be the lawful votes of the legally appointed electors of the State.

It will thus be seen that under the Senate bill there are three contingencies in which the two Houses in counting the electoral vote may refuse to count the vote of the State.

The House committee has undertaken to remedy this defect by a limitation of the power of the two Houses to reject the vote of a State. We propose to amend the bill so that where there is but one return, or paper purporting to be a return, from a State, and the vote was regularly given, and the credentials of the electors are in due form and in accordance with the laws of the State, and properly certified by the executive authority thereof, the vote shall be counted.

We propose a further amendment, that where there are two or more returns from a State, and no tribunal thereof has determined who are the legally appointed electors from the State, the votes regularly given by electors, whose appointment shall have been duly certified under the seal of the State by the executive thereof, in accordance with the laws of the State, shall be counted, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State. If the amendments proposed by the House committee be agreed to, there will be but one contingency in which the vote of a State may be rejected. That contingency is the presentation of double returns from a State by opposing State authorities, disagreeing in the determination as to which set of electors are the legally appointed electors of the State. In that case no electoral vote of the State will be counted unless the two Houses, acting separately, shall concurrently decide that one of the opposing sets of electors are the duly appointed electors of the State.

In case of more than one return from a State, where no State tribunal has determined the question as to which is the true and lawful return, the vote of those electors regularly given who bear the official certificate of the governor under the seal of the State, showing that they were duly appointed in pursuance of the laws of the State, under our amendment are to be counted unless rejected by the concurrent vote of both Houses, acting separately. I am of opinion that with the adoption of the proposed amendments the Senate bill may be safely passed, and that no question will remain to be determined relative to the count of the electoral vote, when the two Houses meet for that

purpose, that can not be rightfully determined in accordance with the terms of this bill. Under the bill as thus amended the States are left not only to appoint the electors, but to determine all disputes relative to their appointment.

If no dispute arises relative to the appointment, and no contesting electors appear to demand a hearing, the bill as amended, should it become a law, absolutely requires the electoral vote of the State to be counted. If a dispute or contest has arisen relative to the appointment of electors, and the proper State authorities have determined who are the lawfully appointed electors, the bill as amended says the vote shall be counted. If more than one return of electoral votes is made from a State, and no determination has been made under its laws who, of the opposing forces, were lawfully appointed electors of the State, the bill as amended requires that the vote of those electors regularly given, who hold the certificate of the governor under the seal of the State, showing that they were appointed according to the laws of the State, shall be counted, unless rejected by the concurrent vote of the two Houses, acting separately.

In the one instance only, where a question arises as to which of two or more State authorities, acting under the second section of the bill, and having made conflicting decisions as to lawfully appointed electors from the State, is the concurrent action of both Houses required to decide as to the legally appointed electors from a State. In case no decision can be reached, of course the vote of the State will be lost; but that is an extreme case, and one not likely to arise exceptin revolutionary times.

The necessity of the proposed legislation is manifest. Heretofore, when the period for counting the electoral vote has arrived, merely temporary expedients have been adopted to meet the particular emergency. In several instances grave questions have arisen that had to be decided upon the spur of the moment and amid the excitement of party contests. That all these have been adjusted peaceably is no reason for leaving the law unsettled and thus inviting future contests over questions arising upon each occasion when the duty of counting the electoral vote devolves on the two Houses of Congress.

In providing by law a method to insure a fair count of the electoral vote we need exercise no doubtful powers. The Constitution requires the vote to be counted. I assume that Congress has the authority under the Constitution to pass all laws necessary to carry into effect that mandate of the Constitution. I am of opinion that this bill, when amended as we propose, does not go beyond that necessity. Nor do I conceive that the two Houses of Congress, when met for the purpose of counting the vote in pursuance of this bill, will be likely to do violence to the will of the people as expressed under the laws of the several States in the appointment of electors of President and Vice-President.

The minority of the committee have made some criticism on that part of the bill which provides that if a State tribunal authorized by law shall have determined contests relative to the appointment of electors, at least six days before the time of their meeting, that in making the count Congress shall be governed by that determination. The minority of the committee assume this to be an attempt upon the part of Congress to dictate to the States the mode of appointing electors. I respectfully submit that this criticism is not just. The States are entirely free under the Constitution to adopt the mode of appointment of electors that the legislatures thereof may prescribe. This bill only provides that if the States shall have settled all controversies relative to the appointment of electors, within a given time before the meeting of the electors and by a tribunal of its own selection, the votes of the electors thus appointed and regularly given shall be counted.

If any State neglects to use the means within its power to identify who are its legally appointed electors, the two Houses of Congress, when in joint meeting to count the electoral vote, are to resort to other provisions of the bill to determine who are the legally appointed electors of the State. The bill contemplates no exclusion of electoral votes from the count because of the failure of a State to settle disputes as to the lawful vote of the State. While I do not mean to say that this bill, with our proposed amendments thereto, is perfect, I do believe it is a very great improvement upon the law as it now stands upon the subject of counting the electoral vote. Every question that can be properly settled prior to the meeting of the two Houses to make the count is settled by this bill, leaving the Senate and the House to pass upon objections that may be made pending the count under the provisions of the bill. It seems to me that the passage of this bill will insure a fair and orderly count of the electoral vote, and relieve the country of the anxiety heretofore felt when disputes over double returns were left to be decided by the two Houses without any settled rules to govern them.

I reserve the balance of my time.

The SPEAKER *pro tempore*. The gentleman has forty minutes of his time remaining.

Mr. ADAMS, of Illinois. The gentleman from New York [Mr. BAKER] agreed, as I understood, to speak before me. If he is ready I will yield to him.

Mr. SPRINGER. The gentleman from New York [Mr. BAKER] has retired from the Hall, and will not be here again this afternoon.

Mr. ADAMS, of Illinois. As the gentleman from New York [Mr. BAKER] is absent I will now, Mr. Speaker, if permitted, take the floor in my own right, although I do not expect to occupy an entire hour. The question involved in the bill before us is of such importance that it is hardly possible for any one who undertakes its discussion to refrain from going over the whole subject of the electoral count. I shall not pursue that course. I think the demand for some legislation on this subject is so strong that if any bill reasonably good is presented we ought to adopt it without captious criticism; and when a bill has come from the Senate, and certain definite amendments are proposed by the House, I, for one, propose to confine myself to the discussion of those points in which there is a difference between the Senate and the committee of the House, and those points in which the committee of the House is itself divided.

There was an amendment proposed by the committee, which, I understand, is practically abandoned, for the insertion of the word "lawful" before the word "returns" in one of the paragraphs of this bill. Am I correct, I ask my colleague.

Mr. EDEN. So I understand.

Mr. ADAMS, of Illinois. Then I shall not consume any time in speaking of that amendment.

The principal amendment proposed by the House committee is in striking out the words "except by the concurrent vote of both Houses." This will be found on page 5 of the printed bill, in section 4, in lines 38 and 39. The case provided for by that part of the section is expressed in these words:

> And no electoral vote or votes from any State from which but one lawful return has been received shall be rejected, except by the affirmative votes of both Houses.

That was the bill as it came from the Senate.

Mr. CALDWELL. With the exception of the word "lawful."

Mr. ADAMS, of Illinois. With the exception of the word "lawful," which, as I have said, I understand has been abandoned.

The House, by striking out the words "except by the affirmative votes of both Houses," makes the presumption in favor of a single return a conclusive presumption, and the main object of my addressing the House at this time is to indicate my opinion that, whether that is wise or not, it is not a valid exercise of the constitutional power of this House.

Mr. EDEN. Will my colleague allow me to interrupt him a moment to call his attention to the fact that the amendment which I have sent up and had read, and which I shall offer at the proper time, is intended to take the place of that word "lawful," and probably it may remedy the objection my colleague has to that part of the bill?

Mr. ADAMS, of Illinois. I have observed as nearly as I could the reading of the amendment of my colleague, and may have occasion to consider it in the course of my remarks hereafter.

My theory is that the Constitution in declaring that the President of the Senate shall open the certificates in the presence of the two Houses, and the votes shallthen be counted, must of necessity mean one of two things: it must mean either that the President of the Senate himself does the counting, or else it must mean that the counting is done by the two Houses of Congress.

Whatever may have been the idea of the framers of the Constitution—in fact, however difficult it may have been to them to conceive of the questions that have arisen at a later day—the discussions which took place in Congress and out of Congress from within ten years of the adoption of the Constitution to the present time have, in my judgment, rendered untenable now the theory that the President of the Senate shall count the votes; and therefore my theory is that the two Houses of Congress, acting each in its own individual capacity, each voting by itself, have absolute control of the entire subject.

Whenever the two Houses of Congress agree that a certain alleged return is the legal vote of a State, their determination that that alleged return is the legal return is the counting of the vote of that State within the meaning of the Constitution; and whenever the two Houses of Congress agree that a certain alleged return does not represent the legal vote of the State, their concurrent determination that that alleged return is not the legal vote of the State is equivalent to a refusal to count the vote of that State within the meaning of the Constitution; hence, my judgment is that the entire scope of our power to legislate on this matter must be confined to the third contingency, namely, the case in which the two Houses of Congress neither concurrently vote "yea" upon the proposition nor concurrently vote "nay" upon it, but differ in opinion, and one decides one way and the other the other. The power of Congress to intervene in such a case arises, in my judgment, out of the necessity of the case, and the exercise of our legislative power to meet the contingency must be considered now to be in accordance with the meaning of the Constitution.

There are several causes, Mr. Speaker, why it must be determined that an alleged vote of a State is not the real vote of the State.

In the first place the persons claiming to be electors may not have been voted for by the people of their State according to the provisions of the Constitution and the laws enacted by the State.

In the second place the persons assuming to have been elected as electors may have been ineligible to that office.

In the third place, admitting that they were eligible and were duly elected, yet when they met to cast the electoral votes it may be that they did not cast them in accordance with the Constitution and the laws; and fourthly, if in all their acts they complied with the Constitution and the law, and they are eligible to act as electors, and have been duly voted for as such at the polls, yet the persons for whom they vote may not have been eligible to the office to which they assumed to elect them; and, in my judgment, notwithstanding the changes that have come over the character of Presidential elections in this country, these objections to the validity of an alleged electoral vote stand in full force to-day, and will so stand until the Constitution has been amended.

I am aware that some of these cases of invalidity are not so important in our minds as they were in the minds of the framers of the Constitution. To us it may make little difference whether a person chosen as an elector is a Senator or Representative or person holding an office of profit and trust under the Government. To us it may appear to make little difference whether the electors vote by ballot as the law requires or not; or whether they cast their votes upon the day appointed by law or not.

To us, accustomed to the choice of a presidential candidate by the convention of a political party, it may appear of less importance than it appeared to our fathers that the President elected should be a native-born citizen, or over thirty-five years of age. Yet all these provisions are still the provisions of the Constitution, and in my judgment it is not our duty to disregard them; it is our duty to observe them until in the wisdom of Congress and of the people it shall have been determined that the Constitution shall be changed.

The reason why I refer to these different causes of invalidity is that, if the amendment proposed by the House committee is adopted, the only means which we have or can have for enforcing these provisions of the Constitution will have been done away forever. I know that when the two Houses of Congress meet here to count the electoral vote, the main question present to their minds and present to the minds of the people is the question which Presidential candidate the people appear to have preferred. And yet, so long as these provisions regarding the eligibility of electors, regarding the eligibility of a Presidential candidate, regarding the form and manner in which the electoral vote shall be cast, remain as portions of the Constitution, it is not only our bounden duty to observe and abide by them, but it is also the bounden duty of those two Houses of Congress, who have a duty imposed on them which is not imposed on us in passing upon this bill, the duty, namely, of sitting here in joint convention and deciding upon the electoral vote submitted to them by the President of the Senate.

But, Mr. Speaker, the main objection I have to the amendment proposed by the House committee, namely, the proposed striking out of the words "except by the affirmative vote of the two Houses," the effect of which would be that a single return would have a conclusive presumption of validity in its favor—the main objection which I have to that provision is that I believe it possesses no legal and constitutional validity whatever. However wise it may seem to us, in attempting to legislate on this subject, that a single return shall be conclusively presumed to be valid, the real question will arise when the two Houses meet here to pass upon the electoral votes in the next Presidential election; and those Houses, in my judgment, when they meet here to discharge a duty which is expressly imposed upon them by the Constitution, will not be bound by the action of the Senate and House of the Forty-ninth Congress and the President, when he signs this bill, if it shall pass. It is their duty, conferred on them by the Constitution, to count the votes. If for any reason whatever a single return shall appear to both Houses of Congress to be an invalid return they have the right so to determine; and if they do so determine, that vote will not be counted, however many statutes we may pass like this.

It has often been asked what the operation of counting the electoral vote consists in. The President of the Senate sits in that chair and opens certain papers. The members of the Houses know not what they are. He submits them to the Houses as papers purporting to be electoral votes. That they purport to be electoral votes does not prove that they are such. That he opens and submits them to the two Houses does not constitute a counting of the votes. The action of the tellers at the desk in regard to the papers placed in their hands does not, I think, constitute the counting of the electoral votes.

The tellers are but the eyes, the ears, and the hands of the Houses, their mere ministerial agents, and the votes are not counted until the two Houses of Congress have in some way acted upon them. It will be observed that provision is made in this very bill for an objection even in the case under consideration; provision is made for an objection even in the case of a single return; and under the provisions of this bill any member of this House and one Senator have the right to make a written objection, and if they do make that written objection, then, by the terms of this bill, the Houses must separate and must vote upon that question one way or the other.

When the tellers go on counting the electoral vote, and nothing is said, it is the concurrent acquiescence of the two Houses. The concurrent acquiescence of the two Houses amounts just as much to a counting of the electoral votes as though their assent were expressed in votes cast in separate chambers of this Capitol. But under this bill if any objection is made, then by the very terms of the bill the Houses separate and the vote is had upon that question one way or the other; and until some vote has been had on that subject by the two Houses of Congress the votes have not been counted and can not be within the meaning of the Constitution.

Mr. EDEN. I understand my colleague to make a point upon that part of the amendment that is proposed, that notwithstanding, if it is a lawful return, it being but one it is to be counted; yet the bill provides for objections. I suppose it would be proper that objections should be made to see whether it was a proper return or not. The fact that the bill provides for objections does not reach that point.

Mr. ADAMS, of Illinois. Very well; that gives me occasion to say, Mr. Speaker, that my argument is not based at all upon the wording of this bill, because I believe that, in the absence of legislation, or in the presence of legislation, the two Houses of Congress are the only bodies which can count, and a legislative body can not count, or do anything else, except by assenting to some proposition by a vote. Therefore I say that, whether this law is in existence or not, under the meaning of the Constitution and the necessity of the case, under the provision that the vote shall be counted by the two Houses, as we now understand it in these later days, under the provision that the vote shall be counted by the two Houses of Congress, there would be always the right of any member of this legislative body, if it happened to be sitting to count the votes, to raise the question and bring it to a vote; and a similar right would, as I opine, exist in the Senate which in such case sits with the House.

I can not conceive that any statute can take away from either of these two legislative bodies the power to come to a vote of yes or no on any question relating to the business they then have in hand under the provisions of the Constitution. And, if the Constitution has conferred upon the two Houses the right to count the electoral vote, and if, as I believe, the count of an electoral vote by a legislative body consists only in an assent by that body to the proposition that such and such a paper does in fact represent the legal vote of a State—if that is true (and to my mind there can be no question about it), then, under the Constitution and this law, or under the Constitution without this law, the question could always be raised, either in the House or in the Senate, whether a particular return purporting to be the legal vote of a State was in fact that vote or not. Hence I say that a provision of law like this, which seeks simply to take away from the two Houses the right to express an opinion upon that question, is of utter invalidity. The two Houses of Congress, meeting under the Constitution to discharge the solemn duty of counting the vote, may utterly disregard any such statutory provision.

Mr. EDEN. Does my colleague take the position that Congress can pass no law providing rules by which the vote shall be counted?

Mr. ADAMS, of Illinois. I will come to that immediately. I do not desire to detain the House further than to merely indicate my general ideas upon this subject, and therefore I pass now to the question suggested by my colleague from Illinois [Mr. EDEN]. The question is as to the scope of the legislative power of Congress.

Soon after the Constitution was adopted attempts were made to provide mode of counting the electoral vote. As early as 1800 an attempt was made to regulate the matter by statute.

A bill passed the Senate providing for a procedure somewhat analogous to that which is now prevailing. When that bill came into the House, Mr. Gallatin moved to amend it so as to provide that the decision should be made by the votes of a majority of the members of both Houses, voting as one body.

That proposition nearly carried. It was defeated, I think, by so close a vote as 46 against, to 44 in favor of it. From that time to this that theory has been practically abandoned—at least down to the Forty-eighth Congress, when, as gentlemen will remember, Mr. Eaton, of Connecticut, proposed and secured the passage by this House of a similar provision.

But, I say, the idea that the two Houses should sit as one body has been practically abandoned ever since the failure of Mr. Gallatin's attempt. Therefore, from that time to this, the work of counting the votes has been done by a joint session of two independent bodies each acting freely, both acting concurrently in order to act effectively, each able to vote yea or nay; and, therefore, the counting of the electoral vote by the two Houses in that way, in the sense of a joint or a concurrent vote by the Houses that a certain paper purporting to be a return should be regarded as a return, was only possible when both Houses happened to agree. If they both voted yea, the vote was counted. If they both voted nay, the vote was rejected, and the only contingency left was the contingency in which one House voted yea and the other nay.

Now, my theory, I will say to my distinguished colleague from Illinois [Mr. EDEN], is this: that the moment you abandon the doctrine that the two Houses sit as one body and vote per capita—the moment you accept the theory that action must be had by the two bodies acting concurrently—from that moment it must be assumed to have been the meaning of the Constitution that legislation upon this subject would be valid only in so far as it was necessary to meet the contingency of a divided vote of the two Houses. I can not conceive how a

statute can enact any rule that will make an alleged return a real return if both Houses say that it is not.

I can not resist the conclusion that, under the meaning of the Constitution, if both Houses concurrently say that an alleged return is not a real return, that vote is not counted and can not be counted; and I can not resist the conclusion that, under the same Constitution, if the two Houses, acting concurrently, say that a certain alleged return is a legal return, their saying so amounts to the counting of that vote, and no statute can avail against it. Therefore I say to my colleague that in my judgment, although Congress may pass laws to govern the count of the electoral vote, Congress can not pass a law which can nullify the concurrent action of the two Houses of Congress upon whom has been cast by the Constitution of the United States the duty of acting concurrently in that matter. That, at all events, is the only theory which is satisfactory to my mind.

When I listened to my colleague while he enumerated the various contingencies which were to be met by this bill, as a single return and a double return, a single State tribunal and a double State tribunal, it occurred to me that he might simplify the matter by reducing the possible contingencies to two, namely, the contingency in which the two Houses of Congress concurrently vote yea or nay, and that other, the sole remaining contingency, in which the two Houses are unable to agree. This contingency in which the two Houses are unable to agree covers the entire scope of our legislative power, so far as we assume by legislation to control the proceedings of the two Houses of Congress to meet for the purpose of counting the electoral vote.

I will now remind the House that this question has been discussed since 1800. It has been discussed repeatedly. Repeatedly attempts have been made to legislate; repeatedly have joint rules been enacted by the two Houses; and the scope of all this legislation, the purpose of every such joint rule, has been to meet the contingency to which I have alluded, that is, the contingency in which the two Houses, bound by the necessity of the case to act concurrently or not to act at all, have been unable to agree. To meet this contingency has been the effort in all that has been done by the two Houses of Congress in the adoption of legislation or in the framing of joint rules on this subject.

The attempt in this bill to say that a return, single or double, should avail against the concurrent vote of the two Houses is, I think, the first instance of any such attempt. I believe it will not succeed. I believe it can not succeed. We might think it wise so to provide; but I say it is impossible that such a provision can be effectual. It would have no legal validity whatever. If a bill like this should pass, and the two Houses should meet, and, in the exercise of their plain right under the Constitution, be called on to pass upon a single return which all the members considered to be illegal, there would be this dilemma: The two Houses would either have to violate this statute or would have to violate the Constitution under which they act. Whichever way they acted there would be dissatisfaction, there would be doubt, there would be complaint in the public mind; there would be all those evils which we are accustomed to deprecate and deplore under the language, "A disputed Presidential election." Therefore, it seems to me the amendment ought not to be adopted, being not only unwise but invalid. The only thing, in my judgment, which Congress can do is to provide for the case in which the two Houses may fail to agree.

I am aware, Mr. Speaker, that in criticising this proposed amendment of the House committee it may be thought that I do in effect criticise one provision of the Senate bill, for there is in the Senate bill a provision that where the question of the validity of the title of electors has been submitted to a State tribunal and decided to be valid, such return shall be conclusively presumed to be valid, even though both Houses might dissent from that conclusion.

Perhaps the two cases are not exactly parallel. The conclusive presumption of validity established by the provision of the Senate bill to which I have alluded is established in a case where the question at issue has been submitted to and decided by the State tribunal provided for in section 2 of the bill. The decision of this State tribunal may be regarded as a judicial determination of the question by a court of last resort. To give conclusive effect to such a judicial determination is at any rate a very different thing from the provision of the proposed amendment, since the latter gives the same conclusive presumption in favor of a mere alleged return which has never been judicially passed upon and may be known to be a forgery by every member of each House.

Mr. EDEN. I will ask my colleague whether he recollects an instance in the whole history of the Government in which the two Houses have failed to agree in a case where there was but a single return.

Mr. ADAMS, of Illinois. I am not prepared to answer that question fully; but as my colleague is more familiar with the history of this matter than I am (for I was not prepared to discuss this bill, not knowing until late yesterday that it would come up), I will ask him whether there was more than one return from the State of Georgia in the case of the election when Horace Greeley was a candidate.

Mr. EDEN. There was but one return.

Mr. ADAMS, of Illinois. I will ask my colleague, further, whether the Senate did not agree to count that vote and the House refuse to count it.

Mr. EDEN. The vote was counted.

Mr. ADAMS, of Illinois. Did not the House refuse to count it?

Mr. EDEN. My recollection is that the House so voted after the count had been made.

Mr. ADAMS, of Illinois. My impression is that my colleague is mistaken; but he is so well informed, I feel bound to assume that I am mistaken myself.

Mr. EDEN. I have not examined that case recently, but certainly the vote of Georgia was counted, just as the vote of Missouri was counted in 1820, I believe.

Mr. ADAMS, of Illinois. According to my recollection, when the two Houses separated, the question was brought to a vote in each House, "Shall the vote from Georgia for Horace Greeley be counted?" and the Senate voted yea, while the House voted nay. That is my recollection.

I say, Mr. Speaker, that there may possibly be in the Senate bill a defect of the same kind as that which I attribute to the House amendment; but the provision of the Senate bill that when the question of the validity of the title of electors has been submitted to a State tribunal and decided affirmatively that title shall be conclusively presumed to be valid, is not, in my judgment, so dangerous as the provision of the House amendment that a single return, or a paper purporting to be a return, shall be conclusively presumed to be the legal and valid vote of a State, even though all the members of both Houses (to use the illustration of my friend from Ohio) are firmly convinced that the return is a rank forgery. My friend from Ohio said that in such a case he would be in favor of the return standing. I should not be; and I think that nothing we might enact in the form of legislation would prevent the two Houses of Congress from expressing their opinion in regard to the legal value of such a paper purporting to be the electoral vote of a State.

I notice a distinction drawn by the gentleman from Ohio between challenging the vote of a State, as he called it, and deciding a challenge when it has been made. In the case of a single return, he said, any objection to that return would be challenging the vote of a State. I do not think so. But he says that in case of more than one return, it amounts to a challenge in some mode by the State itself; and therefore a decision by the two Houses of Congress may properly be made. In my judgment the distinction is not well founded. I rest my objection to one or the other of the propositions upon that ground, which is the only logical basis on which I can frame a theory of the electoral count, namely, that if the two Houses of Congress, acting concurrently, agree one way or the other, they act in accordance with the Constitution, and nothing which any statute may provide can invalidate their action.

Although I see some slight objections to the Senate bill, I do not care to detain the House upon them. Perhaps they are corrected by the amendment my colleague from Illinois proposes to make. I refer to the provision in the Senate bill. I can not put my hand on it now, but it is a provision that there shall be conclusive presumption in regard to the validity of the title of electors, and their votes shall be counted if they are regularly cast. I think that is the phrase.

Mr. EDEN. Does the gentleman refer to the amendment I propose?

Mr. ADAMS, of Illinois. No, sir, but I was trying to find in the Senate bill the place where these words occur. I believe it is in section 4, page 5, of the printed bill:

> If more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in section 2 of this act to have been appointed, if the determination in said section provided for shall have been made.

Now, the object of the Senate bill there was to establish conclusive presumption whenever a State tribunal had been erected and had discharged its functions. Yet, by the insertion of the words "regularly given," everything is thrown into as much confusion as if this conclusive presumption had not been established. Because the regularity of the proceedings of the electors is not a question which comes before the State tribunal. The State tribunal has to decide simply the title of the electors. The title of the electors may be valid, and yet their votes may be invalid, and the words "regularly given" referred not to the title of the electors themselves, but to the validity of their votes after they have been regularly elected. And, if that question is left open to one or the other, or to both Houses of Congress, I fail to see how the Senate, by that wording of the section, has avoided doubt and perplexity, as it is assumed they have done.

But, Mr. Speaker, notwithstanding any defects in the Senate bill, the necessity for some legislation on this subject is so strong, the importance of passing it at this session of Congress is so urgent, that I do not feel justified in detaining the House any more on this subject. For my part, I shall vote against the amendment proposed by the committee, but I trust the bill in some form will become a law.

Mr. Speaker, how much time have I remaining?

The SPEAKER. Twenty minutes.

Mr. ADAMS, of Illinois. I will reserve it for the benefit of whom it may concern.

ELECTION OF PRESIDENT AND VICE-PRESIDENT.

The SPEAKER. The House resumes the consideration of the unfinished business coming over from yesterday, which is an act (S. 9) to fix the day for the meeting of the electors of President and Vice-President, and to provide for and regulate the counting of the votes for President and Vice-President, and the decision of questions arising thereon.

Mr. CALDWELL. Mr. Speaker, recognizing the impatience which has been manifested at the delay, by early adjournment, of the consideration of the electoral-count bill, I gave notice, yesterday, when we resumed its consideration I would ask the House to order the previous question after twenty minutes had been taken up in debate. I propose to stand by that announcement, and now yield five minutes to the gentleman from New York [Mr. BAKER].

Mr. BAKER. Mr. Speaker, the bill under consideration proposes to carry into execution a power conferred by the Constitution, section 8 of Article I, which provides that Congress shall have power—

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

It is conceded that the language quoted is a delegation to Congress of power to provide for carrying into effect the power to open and count the votes of the electors lodged in the President of the Senate.

By section 1 of Article II it is provided by the Constitution that—

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in Congress; but no Senator or Representative or person holding an office of trust or profit under the United States shall be appointed an elector.

Also, that—

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

The bill before us proposes:

1. To fix a day for the meeting of the electors of President and Vice-President;

2. To provide for and regulate the counting of the votes for President and Vice-President; and

3. The decision of questions arising thereon.

If, by appropriate enactment, Congress can provide against a recurrence of the vexed questions that once threatened the welfare and peace of our country; if we shall be able to legislate so as to enable the execution of the constitutional provisions and powers governing the selection of the chief magistrate of the nation, so that the possibility of dissension and strife shall be avoided, this Congress will do much to merit commendation.

In legislating upon this important subject it must be remembered that the power is now vested by the Constitution in the President of the Senate, who "shall, in the presence of the Senate and House of Representatives, open all of the certificates, and the votes shall then be counted." That by the action of the very first Congress at its first session, April 6, 1789, as we learn from the Annals of Congress, volume 1, pages 16 and 17, the two Houses of Congress, having organized in accordance with constitutional requirements, "the President elected for the purpose of counting the votes declared that the Senate and House of Representatives had met, and that he, in their presence, had opened and counted the votes of the electors for President and Vice-President of the United States." That the practice and precedent thus inaugurated and established have ever since governed.

That Congress had in it many of the men who had participated in the deliberations of the body which framed the Constitution, or who had been members of the conventions of the several States by which the instrument had been considered and ratified. Their judgment, thus expressed, has been commented upon and approved by both Kent and Story. The former says:

The Constitution does not expressly declare by whom the votes are to be counted and the result declared. In the case of questionable votes and a closely-contested election this power may be all-important, and I presume in the absence of all legislative provision on the subject that the President of the Senate counts the votes and determines the result, and that the two Houses are present only as spectators to witness the transaction, and to act only if no choice be made by the electors.

The latter, in his Commentaries on the Constitution, says:

In the original plan, as well as in the amendment, no provision is made for the discussion or decision of any questions which may arise as to the regularity and authenticity of the returns of the electoral votes, or the right of the persons who gave the votes, or the manner, or the circumstances, in which they ought to be counted. It seems to have been taken for granted that no question could ever arise on the subject, and that nothing more was necessary than to open the certificates which were produced, in the presence of both Houses, and to count the number and names as returned.

The pending bill, as stated by the gentleman from Tennessee [Mr. CALDWELL] decides, first, that the power to count the vote is not in the President of the Senate. I submit that my friend is in error in that respect. Precedent and the opinions of learned commentators seem to differ with him. If the Constitution, then, does, as I believe, by fair implication, vest in the President of the Senate the power and duty not only to open, but also to count, the votes, then Congress can not, by this or any other legislation, take away or transfer to any other person or officer that power and duty. It has been well said that Congress can not take upon itself any of the power granted to the executive and judicial departments of the Government; that it can not assume unto itself a duty which is imposed upon an officer of the Constitution. Prior to 1804, when the new twelfth amendment was formally adopted, Congress had enacted legislation for the purpose of providing for the execution of the Constitution regarding the election of electors. Again, after the adoption of the twelfth amendment, Congress legislated upon the subject, but at no time does there appear to have been expressed any doubt as to the power to count the votes being lodged in the President of the Senate.

The twelfth amendment reads:

ARTICLE XII.

The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the 4th day of March, next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list; the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

It appears that the Constitution prescribes the duties and powers of the electors when appointed or elected by the several States. Congress can not abridge or enlarge such powers, nor can Congress in any manner interfere with their constitutionally prescribed duties. Such duties are to vote, list their votes, sign and certify such lists and transmit them sealed to the seat of Government of the United States, directed to the President of the Senate. When these duties have been discharged, then, at the time fixed, they are to be opened and counted, and the result announced in the presence of the two Houses of Congress by the President of the Senate, the only officer recognized by the Constitution or authorized to do any act in relation to the subject, and who is required to perform his duties in the presence of the two Houses, upon whom no duty seems to be imposed, no power conferred, unless it appears that no person has a majority of the votes of the electors; in which case the House of Representatives shall immediately, and by ballot, choose as President one of the three persons having the highest number of electoral votes; and in case the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them before the 4th day of March next following, then the Vice-President shall act as President. A failure of the electors to elect a Vice-President confers, under the Constitution, the power on the Senate to elect that officer.

Does the proposed bill enlarge the powers or duties of the Senate and House of Representatives? Does it interfere with the full expression through the electors of the people's preference? Can we conclude that the framers of the Constitution, when they conferred upon the respective Houses of Congress the extraordinary powers prescribed by the Constitution, intended to invest them with the still more extraordinary power of rejecting and thereby creating by themselves and for themselves the contingency which alone gives them the right and power to elect a President and Vice-President? Can the reasoning of a learned Senator be resisted when he says:

The mere statement of such a proposition is its own refutation, and if no such power rests with the two Houses for concurrent action, how much more preposterous does it seem to be to claim that it rests with either House alone, and especially with the House of Representatives, with which body the power to elect a President abides in the event of a failure of the electors to elect.

Such a doctrine would stand as a perpetual menace to the peace of this country. It would establish an ever-present temptation to Congress to intermeddle with the elections of Presidents. When the framers of the Constitution expressly prohibited Senators and Representatives from appointment as electors, they clearly indicated their purpose to exclude them from all power in or over the matter of the election of a President by the electors appointed by the States.

This was the understanding which the members of the First Congress had of the Constitution, as is evidenced by their proceedings in the ascertainment of the results of the first Presidential election. For a long period of time the practice then adopted was followed without substantial change. All through the period when the minds most active in the formation of our Constitution and those of forceful action in the early affairs of our governmental movements controlled or influenced Congress with respect to the ascertainment of the results of Presidential elections the precedent of the First Congress was in all substantial respects followed.

In my judgment, Mr. Speaker, the pending bill is clearly in conflict with the Constitution. This is an effort honestly conceived to remedy what seems to be a defect in that instrument by congressional enactment. I believe our Constitution in the respect indicated is not in the

best form. We can not correct it by our act. We can not confer on ourselves power not authorized by the Constitution.

Let us do now what should have been done some years ago—inaugurate a proceeding for the necessary amendment of the Constitution. Fifteen times the people in the method pointed out by the fundamental law have amended the Constitution. It were far better to do what has been done so many times in the past, secure in the proper method the necessary amendment to the Constitution, rather than incur the risks and dangers incident to the doubtful expedient now under consideration.

[Here the hammer fell.]

Mr. CALDWELL. I now yield for fifteen minutes to the gentleman from Alabama [Mr. HERBERT].

Mr. HERBERT. Mr. Speaker, this bill has come over to us as I understand by a practically unanimous vote on the part of the Senate, Democrats and Republicans. That body has four times passed and sent to this House this bill, or one very similar to it. I hope the time has come when the House is at last ready to pass the bill in some shape or other.

No question has been more thoroughly and ably discussed in the last ten years than that involved in this bill—the counting the electoral vote. Eleven years ago the country was on the eve of civil war because we had a disputed Presidential election and no law provided under which the count could be made. The Electoral Commission was resorted to. The country submitted to the result, but was never satisfied with it. It was the natural, and perhaps the inevitable, result. The country never will be satisfied in any political case with a temporary expedient or device under a law passed at the moment, after parties had taken sides on the question. The party losing under such circumstances will naturally believe it has been cheated. The people of this country are law-loving and law-abiding, but they want laws passed before cases arise, and not with reference to any special case that may have arisen. When a party loses a suit under a law passed beforehand, without reference to his particular case, even though he may believe injustice has been done him, has no feeling of personal wrong or personal indignation against the law-making power, because he knows that human laws must be imperfect. Like the upright judge, when he is compelled to decide what his conscience does not approve, he says: "This, indeed, is very hard, but so the law is written." And therefore it is that an unjust law, an imperfect law, is better than no law at all. Let the people know beforehand what the law is and what they are to expect.

This bill, Mr. Speaker, provides in effect that the President of the Senate shall not count the vote but that it shall be counted under the direction of the two Houses. That construction of the Constitution I understand to be agreed upon by a large majority of the able men who have considered the question in the last ten years. The gentleman from New York [Mr. BAKER] who has just taken his seat contends that the President of the Senate has that power. Once and only once in the history of the Government did the President of the Senate count the vote, and that was in 1789.

Mr. REED, of Maine. The first time?

Mr. HERBERT. Yes, the first time; but the question had never then been debated or discussed as it has been since, and if the precedent was set then it was abandoned immediately afterward, and never from that day to this has it been adopted or followed.

I think it is an open secret that in 1876 the President of the Senate, Mr. Ferry, was ready to count the vote, believing that he would be sustained in this action by the administration; but his party, at that time in control of the Senate of the United States, after a thorough and exhaustive examination of all the precedents which were compiled and collated, decided that he had not the power. The claim was not insisted on, because it could not be sustained.

The ablest speech made, I think, on that question was that of Senator Conkling. It would be impossible to condense his splendid argument or for me to repeat it, but his position, unanswerably maintained, was this: The sole provision in the Constitution touching this question is this: "The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted." Here is a duty imposed upon the President of the Senate. He shall, in the presence of the Senate and House of Representatives, open the certificates. Then the first person is dropped and the third person is taken up; there the sentence changes its construction; there the duty imposed upon the President of the Senate ceases, and afterwards a new part of speech is used—the third person is adopted, and a verb relating to a noun in the third person, "the votes," employed, and a new duty imposed by the words "and the votes shall then be counted."

Again, to quote consecutively the words imposing a duty on the presiding officer—

The President of the Senate shall open all the certificates—

there the duty ceases—

and the votes shall then be counted.

Counted by whom? Let us examine. The provision is that the opening of these certificates shall be in the presence of the Senate and House of Representatives.

Why are they present? They must have a duty to perform, and they can be there but for one purpose, the purpose of superintending the counting of the votes after the President of the Senate shall have opened the certificates. Now this construction has been agreed upon, I think I may say, by nine-tenths of the Democrats in Congress, as well as by nine-tenths of the Republicans.

They have discussed the question over and over again in the Senate; and this bill, as I have said before, has come to us practically in the same shape, and practically by the unanimous vote of both parties in that body, four different times. If this bill is correct, then in its first proposition, that the vote is to be counted in the presence of the Senate and House of Representatives by and under their superintendence and direction, it necessarily follows that it is to be done in the presence of the Senate as an organized body, and in the presence of the House as an organized body.

The words are not in the presence of the members of the Senate, or in the presence of the members of the House of Representatives, but in the presence of the Senate, which can only mean the organized Senate, and the House of Representatives, which can only mean the organized House of Representatives.

Here, then, we have, according to the construction agreed upon by such great weight of authority, two distinct bodies that are to be present and take part in the count of the votes. Just there arises the difficulty this bill proposes to provide for. If two organized bodies, two persons, are to count, there will be no count if they disagree, because counting is an affirmative act. If one says count this vote and the other says no, then there can be no count of that vote. To provide, as far as possible, against such disagreements, the bill provides that the States may appoint tribunals by law enacted before elections take place, and that by these tribunals each State for itself may decide who are its regularly chosen electors.

I have not time to discuss this proposition, but it seems to me fair and reasonable; and if no one has a better plan—and during ten years no more acceptable plan seems to have been suggested—then it does seem that the House of Representatives ought to agree to this proposition. I understand the House Committee having this bill in charge are practically unanimous, nearly all being in favor of decisions by State tribunals; but the minority say they want to reserve to the States the right to pass a law even after an election.

Mr. Speaker, to me this proposition seems mischievous in the extreme. It would simply give the power to any State, after an election was held and a dispute had arisen, to trump up in that State an electoral commission to decide that question according to rules to be made for the occasion, which would enable it to reach precisely the decision desired by the majority in the State Legislature. This is the first objection. The second is equally as strong. Unless you provide beforehand that State laws establishing these tribunals or conferring jurisdiction on tribunals already established shall be passed in advance of the election, no State will take the trouble to pass such laws. If the States know that they can, whenever a case arises, convene the legislature and pass a bill to dispose of each electoral question, you remove all probability of the passage of such laws. I do not know, not having heard distinctly the arguments on the other side, but presume that gentlemen adopt the theory that this is a violation of the rights of the States to prescribe any such condition. Now, to me it seems there is nothing in this argument, because here the Constitution vests in the Federal Government the power to count the votes; and the exercise of that power is a Federal function, to be controlled by the Federal Government. The rules of evidence we have the right to prescribe, because the Constitution is silent upon the question. A power has been given, and it is perfectly plain that the Constitution vests in Congress the power to enact what legislation is necessary and proper to carry out the purposes of the provision granting the power.

One argument used by the gentleman on the other side, who has just taken his seat, is drawn from the writings of Chancellor Kent. In that quotation Chancellor Kent says that while it is his opinion the President of the Senate has the right to count the vote, that it is only "in the absence of legislation," clearly implying that, according to his idea, the right exists in Congress to legislate on the subject.

Now, Mr. Speaker, I find that my time is about to elapse and that I am not able to go on with the argument which I had proposed to offer in connection with this bill. Let me say, however, that I hope the principal amendment recommended by the majority of the committee will prevail. I am for this bill with that amendment, or I am for it without the amendment; but I think it provides one further safeguard that ought to be enacted into law.

In conclusion let me say that a grave responsibility will rest upon us if we fail to provide some mode of counting the electoral vote. We witnessed the peril into which the country was drawn in 1876; we heard the murmurs which followed the decision of the Electoral Commission; we remember how for hours and days the country trembled two years ago at the thought that another disputed Presidential election was at hand and no law providing for its settlement. We have heard the demand coming up from all quarters of the land, and I do hope the House will not refuse to pass some law on the subject.

Mr. CALDWELL. I yield one minute to the gentleman from Alabama [Mr. OATES].

Mr. OATES. I desire to offer an amendment striking out of section 4, in lines 20 and 21, these words:

And the names of the persons, if any, elected.

So that it will read:

The result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote; which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice-President of the United States.

The SPEAKER. The Chair desires to state that unless there is some other understanding on the floor the amendments proposed by the committee, which are always considered as pending, must be disposed of first.

Mr. OATES. I only ask this to be considered after the amendments proposed by the committee are disposed of. I desire to offer it at this stage because the gentleman from Tennessee [Mr. CALDWELL] has notified me he was about to move the previous question on the bill and pending amendments.

The SPEAKER. When the gentleman from Tennessee asks the previous question he can indicate on what amendments he desires it to operate.

Mr. EDEN. I desire to make a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. EDEN. It is whether the amendment I proposed will be cut off by the previous question.

The SPEAKER. The Chair supposes, unless there be some understanding to the contrary, that no amendments are considered as pending at this stage except those of the committee.

Mr. EDEN. I will ask the privilege of offering that amendment, so that it may be covered by the previous question.

The SPEAKER. The Chair would suggest that all gentlemen who desire to offer amendments send them to the Clerk's desk before the previous question is demanded, so that gentlemen representing the committee may hear what they are and decide as to whether they shall be covered by the previous question.

Mr. EDEN. My amendment was sent up at the beginning of the remarks I made yesterday.

The SPEAKER. But it is not pending unless there is some understanding to that effect.

Mr. EDEN. I will ask the privilege of offering it now so that it may be considered as pending after the previous question shall be ordered.

The SPEAKER. The gentleman from Illinois asks consent that the amendment he sent yesterday to the desk shall be considered as pending.

There was no objection.

Mr. CALDWELL. I yield for a moment to the gentleman from South Carolina [Mr. DIBBLE].

Mr. DIBBLE. I simply rise for the purpose of offering formally the amendments contained in the views of the minority of the committee which the Clerk has at the desk.

The SPEAKER. If there be no objection they will be considered as pending.

There was no objection.

Mr. CALDWELL. I now ask the previous question on the bill and amendments.

Mr. FINDLAY. Before the question is taken on ordering the previous question——

Mr. CALDWELL. I insist on my motion.

Mr. FINDLAY. I desire to offer an amendment to correct what the committee themselves, I think, will recognize to be a defect in the verbiage of the bill.

Mr. CALDWELL. I yield to the gentleman from Maryland [Mr. FINDLAY] for a moment that I may understand what he proposes; but in doing so I do not abandon the floor.

The SPEAKER. The gentleman from Maryland will state what he proposes.

Mr. FINDLAY. I have reduced my amendment to writing. I propose to strike out in line 14 of section 3, on page 2, the words "the same," and insert the word "similar." I do this on the principle of *simile non est idem*. You say "the same certificate," and you have already provided that that is to go to the Secretary of State.

Mr. CALDWELL. The language is "the same certificate in triplicate."

Mr. FINDLAY. It is not the same, but similar. And then, in line 15, you should change "certificate" to "certificates," making it plural; so that it will read:

Similar certificates in triplicate under the seal of the State.

I also want to add in line 28 of the same section the words:

And shall also transmit a similar certificate to the President of the Senate.

That is a certificate of the determination which has been made in any case of a controversy or a dispute. The bill does not provide that the President of the Senate shall have the determination certified to him where there has been a dispute or controversy in the State. You provide that it shall go to the Secretary of State. It seems to me the President of the Senate, who has all the other papers, should have certified to him the determination where there has been a controversy or dispute.

Mr. CALDWELL. I decline to yield for those amendments.

Mr. FINDLAY. I send up my amendments.

The SPEAKER. The gentleman from Tennessee declines to yield and has demanded the previous question.

Mr. FINDLAY. What is the effect of ordering the previous question?

The SPEAKER. If the previous question is ordered it cuts off all amendments except those which have been reported by the committee and those which by unanimous consent are considered as pending.

The previous question was ordered.

The SPEAKER. The Clerk will report the first of the amendments proposed by the majority of the committee.

The Clerk read as follows:

On page 5, line 38, after the word "one" insert the word "lawful."

Mr. CALDWELL. I call the attention of the Clerk to the fact that in the report he will find a verbal amendment which comes before that one. It is to insert on page 3 of the bill, line 22, after the words "State of," the word "a;" so that it will read:

And if there shall have been any final determination in a State of a controversy, &c.

This was omitted in the Senate bill; but I find that in the print I have before me the article is inserted.

The SPEAKER. If there be no objection that correction will be made.

There was no objection.

The Clerk read as follows:

Page 5, line 38, after the word "one" insert the word "lawful."

Mr. CALDWELL. The committee have determined to abandon that amendment.

The amendment was not agreed to.

The Clerk read the next amendment, as follows:

Page 5, lines 38 and 39, after the word "rejected" strike out the words "except by the affirmative votes of both Houses."

The question was taken, and there were—ayes 72, noes 70.

Tellers were ordered, and the Speaker appointed Mr. CALDWELL and Mr. ADAMS, of Illinois, to act as tellers.

The House again divided, and the tellers reported—ayes 101, noes 86.

So the amendment was agreed to.

The Clerk read the next amendment, as follows:

Strike out in lines 61, 62, and 63, after the word "which," in line 61, the words "the two Houses acting separately shall concurrently decide to be the lawful votes of the legally appointed electors of such State."

Mr. DIBBLE. Mr. Speaker, the minority of the committee propose to amend that amendment by their amendment No. 3, which is at the Clerk's desk.

The minority amendment was read, as follows:

Amend the amendment proposed by the majority of the committee by striking out from the said amendments the words "unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State."

The amendment of the minority was rejected—ayes 7, noes 89.

The amendment of the committee was then agreed to.

The SPEAKER. These are all the amendments proposed by the committee. The minority propose certain amendments, which will now be read.

Mr. EDEN. Mr. Speaker, the amendment which I offered comes in, I think, before the minority amendments. It was offered with the consent of the majority of the committee.

The SPEAKER. The minority has pending an amendment to section 2, and the amendment of the gentleman from Illinois [Mr. EDEN] is to section 4. That fact, however, would not control the question of priority in considering the amendments.

The Clerk read the next amendment, as follows:

In section 2, lines 1, 2, and 3, strike out the words "laws enacted prior to the day fixed for the appointment of the electors," and insert the word "law;" and in line 8 of the same section strike out the words "so existing on said day."

The amendment was rejected.

The Clerk read the next amendment, as follows:

In section 2, lines 5, 6, and 7, strike out the words "and such determination shall have been made at least six days before the time fixed for the meeting of the electors;" and in line 9 of the same section strike out the words "at least six days," and the word "said" in the same line.

The amendment was rejected.

The SPEAKER. The amendment offered by the gentleman from Alabama [Mr. OATES] comes next in order.

The Clerk read the amendment, as follows:

Amend section 4 by striking out of lines 20 and 21 the following words: "and the names of the persons, if any, elected;" so that the provision, if amended, will read: "who [the President of the Senate] shall thereupon announce the state of the vote; which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice-President of the United States."

The question was taken; and there were—ayes 27, noes 37.

Mr. OATES. No quorum.

The SPEAKER. The point being made that no quorum has voted, the Chair will appoint as tellers the gentleman from Alabama [Mr. OATES] and the gentleman from Tennessee [Mr. CALDWELL].

The House again divided; and the tellers reported—ayes 61, noes 90; no quorum voting.

Mr. CALDWELL. I call for the yeas and nays on this question.

The yeas and nays were ordered.

The question was taken; and it was decided in the affirmative—yeas 141, nays 109, not voting 72; as follows:

YEAS—141.

Allen, J. M.	Dawson,	Laffoon,	Singleton,
Bacon,	Dibble,	Lawler,	Skinner,
Barksdale,	Dockery,	Le Fevre,	Snyder,
Barnes,	Dougherty,	Long,	Sowden,
Barry,	Dunn,	Lovering,	Springer,
Blanchard,	Eldredge,	Mahoney,	Stewart, Charles
Bland,	Ermentrout,	Martin,	Stone, W. J., Ky.
Blount,	Everhart,	Maybury,	Swope,
Boyle,	Findlay,	McAdoo,	Tarsney,
Bragg,	Fisher,	McCreary,	Taulbee,
Breckinridge, C. R.	Foran,	McMillin,	Taylor, J. M.
Breckinridge, WCP	Ford,	McRae,	Thomas, J. R.
Brown, W. W.	Forney,	Merriman,	Tillman,
Burrows,	Frederick,	Miller,	Townshend,
Cabell,	Gay,	Mills,	Tucker,
Caldwell,	Gibson, C. H.	Morgan,	Turner,
Campbell, Felix	Gibson, Eustace	Morrison,	Van Eaton,
Campbell, J. E.	Glass,	Muller,	Viele,
Campbell, T. J.	Glover,	Murphy,	Wallace,
Candler,	Green, R. S.	Neal,	Ward, T. B.
Carleton,	Green, W. J.	Norwood,	Warner, A. J.
Catchings,	Hall,	Oates,	Warner, William
Clardy,	Hammond,	O'Ferrall,	Weaver, J. B.
Cobb,	Harris,	O'Neill, J. J.	Wellborn,
Collins,	Hatch,	Peel,	Wheeler,
Comstock,	Hemphill,	Pindar,	Whiting,
Cowles,	Herbert,	Ranney,	Wilkins,
Cox, S. S.	Hewitt,	Reagan,	Willis,
Cox, W. R.	Hill,	Richardson,	Wilson,
Crain,	Holman,	Riggs,	Winans,
Crisp,	Hudd,	Robertson,	Wise,
Croxton,	Hutton,	Rogers,	Wolford,
Daniel,	Johnston, T. D.	Rusk,	Worthington.
Dargan,	Jones, J. H.	Sayers,	
Davidson, A. C.	Jones, J. T.	Seney,	
Davidson, R. H. M.	Kleiner,	Seymour,	

NAYS—109.

Allen, C. H.	Farquhar,	Lindsley,	Romeis,
Anderson, C. M.	Fleeger,	Louttit,	Rowell,
Anderson, J. A.	Fuller,	Lyman,	Ryan,
Atkinson,	Funston,	Markham,	Sawyer,
Baker,	Gallinger,	McComas,	Sessions,
Bayne,	Goff,	McKenna,	Spooner,
Bingham,	Grout,	McKinley,	Stephenson,
Boutelle,	Hale,	Millard,	Stewart, J. W.
Brady,	Hayden,	Moffatt,	Stone, E. F.
Brown, C. E.	Haynes,	Morrill,	Strait,
Buchanan,	Heard,	Morrow,	Struble,
Buck,	Henderson, T. J.	Neece,	Swinburne,
Bunnell,	Hermann,	Nelson,	Taylor, E. B.
Butterworth,	Hiestand,	O'Hara,	Taylor, I. H.
Bynum,	Hires,	O'Neill, Charles	Taylor, Zach.
Campbell, J. M.	Hitt,	Osborne,	Thomas, O. B.
Caswell,	Holmes,	Outhwaite,	Thompson,
Conger,	Hopkins,	Owen,	Van Schaick,
Cooper,	Jackson,	Payne,	Wade,
Culberson,	James,	Payson,	Wait,
Cutcheon,	Johnston, J. T.	Perkins,	Wakefield,
Davenport,	Kelley,	Peters,	Weber,
Davis,	Ketcham,	Phelps,	West,
Dorsey,	La Follette,	Pirce,	White, Milo
Dunham,	Laird,	Plumb,	Woodburn.
Eden,	Landes,	Reed, T. B.	
Ely,	Lanham,	Rice,	
Evans,	Lehlbach,	Rockwell,	

NOT VOTING—72.

Adams, G. E.	Dowdney,	Johnson, F. A.	Sadler,
Adams, J. J.	Ellsberry,	King.	Scott,
Aiken,	Felton,	Libbey,	Scranton,
Ballentine,	Geddes,	Little,	Shaw,
Barbour,	Gilfillan,	Lore,	Smalls,
Belmont,	Grosvenor,	Lowry,	Spriggs,
Bennett,	Guenther,	Matson,	Stahlnecker,
Bliss,	Halsell,	Milliken,	Steele,
Bound,	Hanback,	Mitchell,	St. Martin,
Browne, T. M.	Harmer,	Negley,	Stone, W. J., Mo.
Brumm,	Henderson, D. B.	O'Donnell,	Storm,
Burleigh,	Henderson, J. S.	Parker,	Symes,
Burnes,	Henley,	Perry,	Throckmorton,
Cannon,	Hepburn,	Pettibone,	Trigg,
Clements,	Hiscock,	Pidcock,	Wadsworth,
Compton,	Houk,	Randall,	Ward, J. H.
Curtin,	Howard,	Reese,	Weaver, A. J.
Dingley,	Irion,	Reid, J. W.	White, A. C.

So the amendment was agreed to.

The following pairs were announced:

Mr. TRIGG with Mr. HOUK, until further notice.

Mr. DOWDNEY with Mr. BRUMM, until Saturday next.

Mr. STORM with Mr. LITTLE, until further notice.

The following-named members were announced as paired for this day:

Mr. MATSON with Mr. GILFILLAN.

Mr. HENDERSON, of North Carolina, with Mr. GROSVENOR.

Mr. THROCKMORTON with Mr. LIBBEY.

The following-named members were announced as paired on this vote:

Mr. BURNES with Mr. HENDERSON, of Iowa.

Mr. RANDALL with Mr. CANNON.

Mr. CURTIN with Mr. HARMER.

Mr. HALSELL with Mr. WADSWORTH.

The result of the vote was announced as above stated.

Mr. OATES 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 SPEAKER. The Clerk will now read the amendment offered by the gentleman from Illinois [Mr. EDEN].

The Clerk read as follows:

After the word "State," in line 37, of section 4, insert "which shall have been regularly given by electors whose appointment has been certified to according to section 3 of this act;" so that the clause will read as follows:

"And the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been certified to according to section 3 of this act, from which but one return has been received, shall be rejected."

The amendment was agreed to; there being—ayes 30, noes 26.

The bill as amended was ordered to a third reading; was accordingly read the third time, and passed.

Mr. CALDWELL moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

DEPARTMENT OF AGRICULTURE.

Mr. HATCH. I move that the House now resolve itself into Committee of the Whole on the state of the Union, for the further consideration of the bill (H. R. 5190) to enlarge the powers and duties of the Department of Agriculture.

The SPEAKER. The gentleman from Missouri [Mr. HATCH] calls up for consideration the special order, the bill he has indicated, and moves that the House now resolve itself into Committee of the Whole on the state of the Union, to resume its consideration.

The motion of Mr. HATCH was agreed to.

The House accordingly resolved itself into Committee of the Whole on the State of the Union, Mr. SPRINGER in the chair.

The CHAIRMAN. The House is in the Committee of the Whole House on the state of the Union for the further consideration of the bill (H. R. 5190) to enlarge the powers and duties of the Department of Agriculture.

Mr. HATCH. Mr. Chairman, I am under the impression that general debate on this bill has been limited by order of the House and that the time has all been occupied with the exception of some forty minutes. I ask the Chairman to turn to the record, and by so doing I think it will be found that the gentleman from Iowa [Mr. WEAVER] is now entitled to the floor, and has remaining some thirty or forty minutes.

The CHAIRMAN. The Chair is informed that the gentleman from Iowa is entitled to the floor for thirty-seven minutes.

Mr. HATCH. What further time for general debate remains under the order of the House?

The CHAIRMAN. The Chair is not advised at present, but will look at the record to ascertain that fact. The gentleman from Iowa [Mr. WEAVER] is now entitled to the floor for thirty-seven minutes.

Mr. REAGAN. I should like to know before the gentleman proceeds exactly how much time remains for debate on this question?

The CHAIRMAN. The Clerk informs the Chair that the time remaining is one hour and fifty-four minutes, of which the gentleman from Iowa is entitled to thirty-seven minutes.

Mr. REAGAN. Does the Chair say the one hour and fifty-four minutes are to be consumed by one side only?

The CHAIRMAN. The discussion on this bill took place at the last session of Congress, and the Chair is not now advised as to what was the division of time.

Mr. REAGAN. It would seem strange that nearly two hours on one side should be taken up in closing the debate.

The CHAIRMAN. The time seems to have been disposed of under an order of the House, for which the Chair is not responsible.

Mr. WEAVER, of Iowa. Mr. Chairman, the object of this bill is to give to the industrial interests of the country an executive department whose head shall be a member of the President's Cabinet, on equal footing with every other member of that body. It may be claimed that it is a new departure. So it is; and so was the bill that established the Department of the Interior at a recent period in the history of the country.

Now, if this bill shall become a law it will give the united industrial interests of the country a status which they have not had during the first century of the Republic. It will give the united labor interests a voice in Cabinet councils, in shaping the policy of administrations, and in criticising laws and policies. They have been excluded for a century. It is time for a change.

To my mind, sir, this is a proper bill. It is an important step toward the solution of the controversy now going on between associated capital and organized labor.

PUBLIC BUILDING AT SCRANTON, PA.

Mr. SCRANTON. I ask unanimous consent that the Committee of the Whole on the state of the Union be discharged from the further consideration of the bill (H. R. 4241) to amend the act entitled "An act to authorize the purchase of a site and the erection of a suitable building for a post-office and other Government offices in the city of Scranton, Pa.," approved July 27, 1882.

The bill was read.

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

Mr. MORRISON. I object.

NICHOLAS LEVEMBER.

The SPEAKER. The bill (H. R. 7506) for the payment of pension money to Nicholas Levember was some time ago erroneously referred to the Committee on Invalid Pensions. If there be no objection, that committee will be discharged, and the bill will be referred to the Committee on War Claims.

There being no objection, it was ordered accordingly

Several MEMBERS. Regular order.

REPORT ON TRADE GUILDS, ETC.

Mr. BARKSDALE, from the Committee on Printing, submitted a report; which was read, as follows:

HOUSE OF REPRESENTATIVES, *January* 10, 1887.

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

"*Resolved*, That there be printed for the use of the House of Representatives ——thousand copies of the volume of reports from the consuls of the United States on the trade guilds of Europe and the laws and regulations by which they are governed, published by the Department of State in 1885."

The Committee on Printing, to whom was referred the foregoing resolution, report it back to the House amended so as to read as follows:

"*Resolved by the House of Representatives (the Senate concurring)*, That there be printed, with pamphlet covers, 7,000 copies of the volume of reports from the consuls of the United States on the trade guilds of Europe and the laws and regulations by which they are governed, published by the Department of State in the year 1885; 5,000 copies of which shall be for the use of the House of Representatives and 2,000 copies for the use of the Senate."

And they recommend the passage of the resolution as so amended. The estimated cost is $1,606.15.

The substitute reported by the committee was agreed to, and the resolution, as amended, adopted.

Mr. BARKSDALE moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ELECTION OF PRESIDENT AND VICE-PRESIDENT.

Mr. CALDWELL. I submit the report of the committee of conference on the bill with reference to the electoral count.

The report was read, as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 9) to fix the day for the meeting of the electors of President and Vice-President, and to provide for and regulate the counting of the votes for President and Vice-President, and the decision of questions arising thereon, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate agree to the amendments of the House numbered 1 and 2.

That the Senate agree to the amendment of the House numbered 3 with an amendment, to wit: On page 3, line 30, insert in the sentence proposed by the House to be inserted in the bill, after the word "been," and before the word "certified," the word "lawfully;" and that the House agree to the same.

That the Senate agree to the amendment of the House numbered 4, with an amendment, to wit: In lieu of the words stricken out by the House insert the following: "but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified;" and that the House agree to the same.

That the Senate agree to the amendment of the House numbered 5, with an amendment, to wit: In lieu of the words proposed to be stricken out and to be inserted insert as follows: "the two Houses shall concurrently decide were cast by lawful electors appointed in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State. But if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted;" and that the House agree to the same.

ANDREW J. CALDWELL,
JOHN R. EDEN,
W. C. COOPER,
Managers on the part of the House.

GEO. F. HOAR,
GEO. F. EDMUNDS,
JAMES L. PUGH,
Managers on the part of the Senate.

The SPEAKER. The statement of the House conferees which accompanies this report will be read.

The Clerk read as follows:

Amendment numbered 1: The effect of the House amendment numbered 1 is simply to correct a clerical error which omitted the article "a" before the word "controversy," and its effect is simply to restore it and preserve the sense of the sentence.

Amendment numbered 2: Amendment numbered 2 was put upon the bill by the House, and strikes out the words, in lines 20 and 21, "and the names of the persons, if any, elected," the effect of which is to prevent the President of the Senate from doing more than announcing the state of the vote as ascertained and delivered to him by the tellers; and such announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice-President.

Amendment numbered 3: The amendment of the House of Representatives was the insertion in lines 37, 38, 39, after the word "State," in line 37, the words "which shall have been regularly given by electors whose appointment has been certified to according to section 3 of this act," and striking out the words in lines 40 and 41 "except by the affirmative votes of both Houses." The word "lawfully" is to be inserted after the words "has been," in line 39. And the effect of the amendment is to insure the count of the lawful electoral votes from any State from which but one return has been received.

In addition, there are inserted the words "but the two Houses concurrently may reject votes which have not been regularly given by certified electors." The effect is to express in words what is of clear implication by the words preceding, thus leaving nothing to doubtful construction.

Taken as a whole this amendment will insure the counting of lawfully certified votes of States, objections of a Senator or a Representative to the contrary notwithstanding.

Amendment numbered 4: This amendment, as reported from the conferees, is a remodeling of the language of the House amendment, so as to clear up any ambiguity in the section and define accurately the meaning of Congress as to the decision of all questions as to counting the votes of States from which there are more than one return, or paper purporting to be a return, and when there has been no determination of the question in the States by making certain the counting of votes cast by lawful electors appointed by the laws of the State.

It takes the concurrent votes of both Houses, deciding that the votes are not lawful votes, in order to reject them. And, in the case of the two Houses disagreeing, then the electors whose appointment has been certified by the executive of the State shall be counted.

The general effect of all these amendments, and of the bill as reported to the House, is to provide for the decision of all questions that may arise as to its electoral vote to the State itself; and where, for any reason, that fails, then the Houses circumscribe their power to the minimum under any circumstances to disfranchise a State, and such result can only happen when the State shall fail to provide the means for the final and conclusive decision of all controversies as to her vote.

Mr. CALDWELL. I move the adoption of the conference report, and on that motion I call for the previous question.

Mr. BURROWS. I desire to inquire whether this conference report has been acted on by the Senate.

Mr. CALDWELL. It must first be acted on here.

Mr. BURROWS. Then it has not been acted on by the Senate?

Mr. CALDWELL. Not yet.

Mr. BURROWS. I do not desire to retard action on this matter, but it is a very important subject, and I will ask the gentleman from Tennessee whether he has any objection to allowing the report to be printed in the RECORD and the question to go over until to-morrow morning. Of course, when a report is read in this way, there is little opportunity for its careful examination.

Mr. CALDWELL. This subject has already been fully considered and discussed; I think it best to ask for immediate action. I insist on the motion for the previous question.

The previous question was ordered.

The SPEAKER. The question is now on agreeing to the report of the committee of conference.

Mr. GROSVENOR. I demand the yeas and nays.

The SPEAKER. Under the rules of the House, 30 minutes are allowed for debate; 15 minutes in support of the report, and 15 minutes in opposition to it. If no gentleman wishes to take the floor, the Chair will submit the question to the House.

The yeas and nays were not ordered.

The conference report was agreed to.

Mr. CALDWELL moved to reconsider the vote by which the conference report was agreed to; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

PUBLIC BUILDING AT FORT SCOTT, KANS.

Mr. DIBBLE submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1386) for the completion of a public building at Fort Scott, Kans., having met, after a full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House numbered 1, and agree to the same with an amendment as follows: In line 1, strike out the word "twenty-five" and insert the word "forty;" and the Senate agree to the same.

SAMUEL DIBBLE,
N. D. WALLACE,
W. H. WADE,
Managers on the part of the House.

WILLIAM MAHONE,
P. B. PLUMB,
G. G. VEST,
Managers on the part of the Senate.

The following statement accompanying the conference report, under the rules, was read, as follows:

The managers on the part of the House on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1386) for the completion of a public building at Fort Scott, Kans., present the following statement, in accordance with the rules, to accompany the conference report:

The bill, as it came from the Senate, provided for an increase of $50,000, making the total appropriation for Fort Scott, Kans., $100,000. The House amended by striking out "fifty" and inserting "twenty-five," which would make the total appropriation $75,000. The effect of the conference report, if agreed to, will be an increase of $40,000 instead of "fifty-thousand" proposed by the Senate, and "twenty-five thousand" proposed by the House.

SAMUEL DIBBLE,
N. D. WALLACE,
W. H. WADE,
Managers on the part of the House.

The report was agreed to.

Mr. DIBBLE moved to reconsider the vote by which the report was agreed to; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

FEES FOR PASSPORTS.

The SPEAKER. A bill (S. 3014) relative to fees for passports was erroneously referred to the Committee on the Judiciary. If there be no objection, that committee will be discharged from the further consideration of the bill, and it will be referred to the Committee on Foreign Affairs.

There was no objection, and it was ordered accordingly.

The SPEAKER. The next business in order is the call of committees for reports of bills of a private nature.

ADVERSE REPORT.

Mr. MILLER, from the Committee on Banking and Currency, reported back adversely the bill (H. R. 1530) for the relief of the Merchants' National Bank of Poughkeepsie, N. Y.; which was laid upon the table, and the accompanying report ordered to be printed.

ELIZABETH GLASSBRENER AND MARY GLASSBRENER.

Mr. MATSON, from the Committee on Invalid Pensions, reported back favorably the bill (H. R. 10093) for the relief of Elizabeth Glassbrener and Mary Glassbrener; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

SENATE BILLS REPORTED FAVORABLY.

Mr. MATSON, from the Committee on Invalid Pensions, also reported back favorably Senate bills of the following titles; which were severally referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying reports, ordered to be printed:

A bill (S. 2009) granting a pension to David A. Ireland; and

A bill (S. 2196) granting a pension to Dillian Vandeventer.

DR. A. LANNING.

Mr. MATSON, from the Committee on Invalid Pensions, also reported back with amendment a bill (S. 1102) granting an increase of pension to Dr. A. Lanning; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

ADVERSE REPORTS.

Mr. MATSON, from the Committee on Invalid Pensions, also reported back adversely bills of the following titles; which were severally laid on the table, and, with the accompanying reports, ordered to be printed:

A bill (S. 1248) granting a pension to John M. Young;

A bill (S. 134) granting an increase of pension to Shadrach Brown;

A bill (S. 2129) granting an increase of pension to John W. Wills;

A bill (S. 1720) granting a pension to John Thrasher;

A bill (S. 861) granting a pension to John B. Skaggs;

A bill (S. 2039) granting an increase of pension to Ira Miller; and

A bill (S. 860) granting an increase of pension to John N. Runyan.

CHANGE OF REFERENCE.

On motion of Mr. MATSON, the Committee on Invalid Pensions was discharged from the further consideration of the bill (S. 2435) granting a pension to Henrietta M. Drum Hunt; and the same was referred to the Committee on Pensions.

MRS. JULIA DE QUINDRE.

Mr. LOVERING, from the Committee on Invalid Pensions, reported back favorably a bill (S. 2451) for the relief of Mrs. Julia De Quindre; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

GEORGE R. HOOPER.

Mr. LOVERING, from the Committee on Invalid Pensions, also reported back favorably a bill (S. 1838) to increase the pension of George R. Hooper; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

HELEN PLUNKETT.

Mr. LOVERING, from the Committee on Invalid Pensions, also reported back favorably a bill (S. 757) granting a pension to Helen Plunkett; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

ADVERSE REPORT.

Mr. LOVERING, from the Committee on Invalid Pensions, also reported back adversely a bill (S. 1571) granting a pension to Abbie M. Hay; which was laid on the table, and, with the accompanying report, ordered to be printed.

ELIZABETH M. J. MEAGHER.

Mr. LOUTTIT, from the Committee on Invalid Pensions, reported back with amendments the bill (H. R. 8463) granting a pension to Elizabeth M. J. Meagher; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

HARMON DAY.

Mr. HAYNES, from the Committee on Invalid Pensions, reported back with favorable recommendation the bill (H. R. 9611) granting a pension to Harmon Day; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

ADVERSE REPORTS.

Mr. HAYNES, from the Committee on Invalid Pensions, also reported back with adverse recommendation House bills of the following titles; which were severally ordered to be laid on the table, and the accompanying reports printed, namely:

A bill (H. R. 7422) to increase the pension of James C. Daggett;

A bill (H. R. 10125) granting an increase of pension to Sarah F. Bridges;

A bill (H. R. 8173) granting a pension to Addison Morrill; and

A bill (H. R. 9454) granting a pension to Emily C. Stannard.

Mr. HAYNES, from the Committee on Invalid Pensions, also reported back with adverse recommendation Senate bills of the following titles; which were severally referred to the Committee of the Whole House on the Private Calendar, and the accompanying reports ordered to be printed, namely:

A bill (S. 2570) granting a pension to Horace W. Brownell; and

A bill (S. 475) granting a pension to Mrs. Bridget Rush.

CHANGES OF REFERENCES.

On motion of Mr. HAYNES the Committee on Invalid Pensions was discharged from the further consideration of the bill (H. R. 10123) for the relief of Ansyl Potter, and the same was referred to the Committee on War Claims.

On motion of Mr. MORRILL the Committee on Invalid Pensions was discharged from the further consideration of the bill (H. R. 9351) for the relief of J. D. Ash, and the same was referred to the Committee on Pensions.

MINERVA ABBEY.

Mr. MORRILL, from the Committee on Invalid Pensions, also reported back with a favorable recommendation the bill (H. R. 10103) granting a pension to Minerva Abbey; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

ADVERSE REPORTS.

Mr. TAULBEE, from the Committee on Invalid Pensions, reported back, with an adverse recommendation, bills of the following titles; which were severally ordered to be laid on the table, and the accompanying reports printed, namely:

A bill (H. R. 8798) granting a pension to Thomas J. Hays;

A bill (H. R. 4745) granting a pension to William S. Bewley;

A bill (H. R. 3684) granting a pension to James H. Taylor;

A bill (H. R. 8882) for the relief of John Campbell;

A bill (H. R. 5769) granting a pension to Sarah F. Harvey;

A bill (H. R. 9305) for the relief of Henry H. Haggard;

A bill (H. R. 9310) to increase the pension of Edward J. Buddington;

A bill (H. R. 3967) granting a pension to Samuel O. Hancock; and

A bill (H. R. 4831) granting a pension to Robert Ray.

ALPHEUS R. FRENCH.

Mr. THOMPSON, from the Committee on Pensions, reported back with a favorable recommendation the bill (S. 1582) for the relief of Alpheus R. French; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

RECOMMITMENT OF A BILL.

Mr. STRUBLE. Mr. Speaker, I am directed by the Committee on Pensions to ask the House to return to that Committee for further consideration the bill (S. 1463) granting arrears of pension to Mary Helena Mahan. It now stands on the Calendar of the House under an adverse report.

The SPEAKER. The request is not strictly in order at this time; but if there be no objection the Committee of the Whole House will be discharged from the further consideration of the bill, and it will be recommitted to the Committee on Pensions.

There was no objection, and it was so ordered.

MALITTY ROSE.

Mr. WHITE, of Pennsylvania, from the Committee on Pensions, reported back with a favorable recommendation the bill (S. 2335) for the relief of the heirs of Malitty Rose; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

MARGARET R. JONES.

Mr. ELDREDGE, from the Committee on Pensions, reported back with a favorable recommendation the bill (H. R. 10082) to increase the pension of Margaret R. Jones; which was referred to the Committee

Mr. COCKRELL, the chairman of the committee said:

As the Senator says, others may wish to speak, and when we ascertain that, we can arrange when the vote shall be taken. In the mean time we can leave the joint resolution on the Calendar, so as to be called up at any time. It may be left as unfinished business, perhaps.

Mr. BLAIR. I should like that very much indeed, with the understanding that a vote be not pressed until a proper opportunity comes, after what has been said.

The PRESIDING OFFICER (Mr. SEWELL in the chair). If there be no objection, that order will be made, and the joint resolution will be laid aside, retaining its present position on the Calendar.

It was postponed with that understanding, and, as I have said, next Tuesday morning at the close of the morning business I will move to take up the resolution.

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore*. Is there further morning business?

Mr. HOAR. I desire to inquire of the Chair whether a letter of the Secretary of State, with certain papers accompanying the same in regard to foreign archives, has been presented to the Senate this morning.

The PRESIDENT *pro tempore*. There was a letter from the Secretary of State presented.

Mr. HOAR. I desire that the letter and the accompanying papers be printed, both the letter and the documents accompanying it. The accompanying papers are letters from Mr. Parkman and other gentlemen high in authority as historians.

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

FLORIDA LAND FORFEITURE.

Mr. CALL. Mr. President, before proceeding with the remarks which I was submitting to the Senate yesterday——

The PRESIDENT *pro tempore*. The Chair will lay before the Senate the resolutions submitted by the Senator from Florida [Mr. CALL] on the 7th instant.

The CHIEF CLERK. Resolutions of Mr. CALL to provide for the forfeiture of certain lands granted to the State of Florida to aid in the construction of a line of railroad from Fernandina to Tampa Bay, Florida.

Mr. CALL. Mr. President, before proceeding I ask to amend the resolution by making it a joint resolution, and in the second paragraph, after the word "against," by striking out "all corporations" and inserting "Florida Navigation and Railway Company;" so as to read:

2. *Resolved*, That the Attorney-General of the United States be instructed to bring suit through the district attorneys of the United States for an injunction against the Florida Navigation and Railway Company, or their agents, &c.

Then I propose to strike out the words "States or railroad companies," and insert the words "State of Florida."

The PRESIDENT *pro tempore*. The Senator will send forward his amendments to the desk.

Mr. HOAR. I should like to inquire of the Senator from Florida if he desires to proceed with his remarks before we take up the conference report.

Mr. CALL. I will yield to the Senator from Massachusetts, if he desires it, provided there is to be no discussion of the subject.

Mr. HOAR. I presume there will be none.

Mr. CALL. With that understanding, I am willing to yield.

The PRESIDENT *pro tempore*. Does the Senator from Florida yield at this stage?

Mr. CALL. I will, after submitting the amendments. As I propose to amend, the resolution will read:

A joint resolution (S. R. 98) relative to the forfeiture of certain lands granted to the State of Florida to aid in the construction of a line of road from Fernandina to Tampa Bay, Florida:

Be it resolved, &c., That the grant approved May 17, 1856, granting lands to the State of Florida for the construction of a line of railroad from Fernandina, Fla., to Tampa, Fla., and from the Saint John's River, Florida, to Pensacola, Fla., should be forfeited as to all lands not earned before the time fixed in the act for the expiration of the grant, namely, ten years from the date of the approval of the act in May, 1856; and that the said lands so forfeited shall revert to the United States and be subject to homestead settlement, reserving to all actual settlers the right to 160 acres of land, and the right to enter, at the price of $1.25 per acre, 80 acres of land where they have purchased the same or the improvements on it; and that the Committee on Public Lands be instructed to report a bill to the Senate to this effect.

Resolved further, That the Attorney-General of the United States be instructed to bring suit, through the district attorneys of the United States, for an injunction against the Florida Navigation and Railway Corporation or their agents attempting to sell, or selling, or advertising for sale the lands of the United States embraced in the grant made to the State of Florida under the act entitled "An act granting public lands in alternate sections to the States of Florida and Alabama to aid in the construction of certain railroads in said States," approved May 17, 1856, while bills for the forfeiture of the same shall be pending before Congress which have been or shall be recommended by the committees of either House of Congress to be forfeited.

The joint resolution was read twice by its title.

The PRESIDENT *pro tempore*. The resolution will be modified as proposed, if there be no objection.

COUNTING OF ELECTORAL VOTES.

Mr. HOAR. I now move to take up the conference report on the bill (S. 9) fixing a day for the meeting of the electors for President, &c.

The PRESIDENT *pro tempore*. The Senator from Massachusetts moves that the Senate proceed to the consideration of the conference report named by him.

Mr. EDMUNDS. I understand from the ruling of the Chair that doing this as a privileged matter would not displace the resolution of the Senator from Florida [Mr. CALL], so that this being disposed of the Senator from Florida will be entitled to go on. I think it is fair to him that that should be understood.

Mr. CALL. That is my understanding, Mr. President.

The PRESIDENT *pro tempore*. The Senator from Florida undoubtedly will have the right to the floor in the next morning hour, or at any time before 2 o'clock.

Mr. CALL. My purpose was to yield to the Senator from Massachusetts on the condition which he agreed to, that his report should be taken up subject to objection if there was discussion; that he would not insist upon it if it led to discussion. That was the understanding.

The PRESIDENT *pro tempore*. The question is on the motion to proceed to the consideration of the conference report.

The motion was agreed to; and the Senate proceeded to consider the report of the committee of conference on the bill (S. 9) to fix the day for the meeting of the electors of President and Vice-President, and to provide for and regulate the counting of the votes for President and Vice-President, and the decision of questions arising thereon.

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

Mr. EDMUNDS. I understand that this conference report was read when it was presented, and therefore the simple question is on agreeing to it. I wish to say that as agreed upon by the conferees of the two Houses, as I understand it and as I believe they understand it, it is in substance and, except in two or three lines, in the very form that the Senate have passed it over and over again; and so I suggest that it is not necessary to read the report again, but we ought to act upon it at once.

The PRESIDENT *pro tempore*. If the reading is not called for, it having been previously read at length, the Chair will put the question on agreeing to the report of the conference committee.

Mr. WILSON, of Iowa. Mr. President, I do not intend to engage in any extended discussion of this report, but I merely wish to state, in the briefest manner possible, that I can not vote for concurrence, for the reason that I can not agree to the doctrine upon which this report is based.

As I understand it, it assumes to the two Houses of Congress acting concurrently the jurisdiction to determine and induce the circumstances out of which would spring the right of the House of Representatives to elect a President of the United States and of the Senate to elect a Vice-President. I do not believe that the Constitution contemplated a jurisdiction of that character in the two Houses of Congress; and inasmuch as I believe this bill proposes to assume a jurisdiction which, in my judgment, is prohibited by the Constitution, I shall content myself with voting against the bill, having expressed myself more at length when the Senate bill was before the body during the last session of Congress.

The PRESIDENT *pro tempore*. The question is on agreeing to the report of the committee of conference.

The report was concurred in.

ENROLLED BILLS SIGNED.

A message from the House of Representatives, by Mr. CLARK, its Clerk, announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President *pro tempore*:

A bill (H. R. 356) granting a pension to Lucinda Barrett;
A bill (H. R. 429) granting a pension to Harry McElhinny;
A bill (H. R. 927) granting a pension to Cudbert Stone;
A bill (H. R. 929) granting a pension to G. W. Fraley;
A bill (H. R. 1860) granting a pension to Frederick Robertson;
A bill (H. R. 4103) granting a pension to M. S. Clay;
A bill (H. R. 4265) granting a pension to Josiah Mahoney;
A bill (H. R. 5599) granting a pension to Joshua L. Morris;
A bill (H. R. 5894) for the relief of Elon A. Marsh and Minard Lafever;
A bill (H. R. 6132) granting a pension to William Lynch;
A bill (H. R. 6314) to increase the pension of James Carlin;
A bill (H. R. 6443) granting a pension to Alexander Falconer;
A bill (H. R. 6817) granting a pension to Thomas Brown;
A bill (H. R. 6819) granting a pension to William Conner;
A bill (H. R. 6825) granting a pension to James R. Baylor;
A bill (H. R. 6832) granting a pension to Mrs. Catharine Sattler;
A bill (H. R. 7540) to increase the pension of Franklin Sweet;
A bill (H. R. 7696) for the relief of George W. Robaugh;
A bill (H. R. 7698) granting a pension to Robert K. Bennett;
A bill (H. R. 7796) granting a pension to James Long;
A bill (H. R. 8150) granting a pension to Jesse Campbell;
A bill (H. R. 8180) to increase the pension of Charles Hahneman;
A bill (H. R. 8280) granting a pension to John Patton;
A bill (H. R. 8310) granting a pension to Cyra L. Weston;
A bill (H. R. 8474) granting a pension to James McGlen;
A bill (H. R. 8623) granting a pension to Mary E. Hedrick;
A bill (H. R. 8827) granting a pension to John Buchanan;
A bill (H. R. 8830) granting a pension to Aaron Garis;