IN SENATE.

TUESDAY, *May* 3, 1864.

Prayer by the Chaplain, Rev. Dr. SUNDERLAND.

The Journal of yesterday was read and approved.

PETITIONS AND MEMORIALS.

Mr. COWAN presented a memorial of agriculturists, miners, and manufacturers of Pittsburg, Pennsylvania, praying for the enactment of suitable laws for the encouragement of foreign immigration; which was referred to the Committee on Agriculture.

Mr. POMEROY presented the memorial of Francis A. Gibbons and F. X. Kelley, praying to be reimbursed for money alleged to have been advanced and materials furnished in the construction of light-houses in California and Oregon in the year 1853; which was referred to the Committee on Claims.

Mr. SUMNER presented a petition of men and women of Hartford, Oneida county, New York, praying for the abolition of slavery, and for such an amendment of the Constitution as will forever prohibit its existence in any part of the Union; which was referred to the select committee on slavery and freedmen.

Mr. HARLAN presented a petition of men and women of the United States, praying for the abolition of slavery, and for such an amendment of the Constitution as will forever prohibit its existence in any part of the Union; which was referred to the select committee on slavery and freedmen.

Mr. FOSTER presented the petition of Mary C. Hamilton, widow of Captain Fowler Hamilton, United States Army, deceased, praying for a pension; which was referred to the Committee on Pensions.

Mr. WILSON presented a memorial of medical officers in the United States service, praying for an increase in the rank and pay of medical directors of Army corps and of surgeons serving under bonds as medical purveyors, equal to that of chief quartermasters and commissaries of Army corps; which was referred to the Committee on Military Affairs and the Militia.

Mr. WILLEY presented the petition of Frederick Bauer, in behalf of the German Evangelical church, of Martinsburg, Virginia, praying for compensation for the loss of their house of worship, alleged to have been burned while being used by Union soldiers; which was referred to the Committee on Claims.

Mr. JOHNSON presented a memorial of the Board of Trade of Baltimore, Maryland, remonstrating against the abrogation of the reciprocity treaty between the United States and Great Britain; which was referred to the Committee on Commerce.

He also presented a memorial of the Board of Trade of Baltimore, Maryland, praying for the establishment of steam lines between the United States and the most important commercial marts of the world; which was referred to the Committee on Post Offices and Post Roads.

REPORTS FROM COMMITTEES.

Mr. MORRILL, from the Committee on the District of Columbia, to whom was referred a bill (S. No. 177) to authorize the construction of a street railway in the District of Columbia, and for other purposes, reported it adversely.

Mr. HARLAN, from the Committee on Public Lands, to whom the subject was referred, reported a bill (S. No. 264) for the disposal of coal lands, and of town property in the public domain; which was read and passed to a second reading.

He also, from the same committee, to whom were referred the amendments of the House of Representatives to the bill (S. No. 160) granting lands to aid in the construction of certain railroads in the State of Wisconsin, reported a recommendation that the Senate agree thereto. The Senate proceeded to consider the amendments of the House of Representatives; and they were agreed to.

Mr. HENDERSON, from the Committee on the District of Columbia, to whom was referred a bill (H. R. No. 383) to incorporate the "home for friendless women and children," reported it adversely.

Mr. ANTHONY, from the Committee on Printing, to whom was referred a motion to print the petition of George B. Simpson, inventor of the submarine telegraph cable insulated with gutta percha, praying that he may be remunerated for his invention, or that the Commissioner of Patents may be authorized to rehear his claim, and adjudicate it upon its merits, reported adversely thereon.

ARMY APPROPRIATION BILL.

Mr. FESSENDEN. The Committee on Finance, to whom was referred the action of the House of Representatives on the Senate amendments to the bill (H. R. No. 198) making appropriations for the support of the Army for the year ending June 30, 1865, have instructed me to move that the Senate agree to the amendment of the text of the original bill proposed by the House of Representatives, which is the substitution of one word for another which entirely changes the sense, the word "Army" having been inserted in a clause of the original bill in place of "arms," which would limit the operation of the appropriation very much, and embarrass the Department. In regard to the amendments of the Senate, in one of which the House of Representatives non-concurs, the committee recommend that the Senate insist on its original amendment. Then there are several amendments concurred in with amendments. The committee recommend that the Senate disagree to these amendments of the House of Representatives, insist on our amendments, and ask for a conference on these subjects.

The PRESIDENT *pro tempore*. The first question will be on agreeing to the amendment proposed by the House of Representatives to the original text of the bill, which is on page 7, line eight, to strike out "Army" and insert "arms," and to insert a comma after "accouterments."

The amendment was agreed to.

The PRESIDENT *pro tempore*. It is further moved that the Senate disagree to the amendments of the House of Representatives to its own amendments, and insist on its own amendments, and ask for a conference on the disagreeing votes of the two Houses.

The motion was agreed to.

The PRESIDENT *pro tempore*. How shall the committee be appointed?

Mr. FESSENDEN. By the Chair.

The PRESIDENT *pro tempore*. That course will be pursued if there be no objection. The Chair hears none.

Mr. FESSENDEN, Mr. WILSON, and Mr. HENDERSON were appointed conferees on the part of the Senate.

BILL INTRODUCED.

Mr. ANTHONY asked, and by unanimous consent obtained, leave to bring in a bill (S. No. 265) to expedite and regulate the printing of public documents, and for other purposes; which was read twice by its title, and referred to the Committee on Printing.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. LLOYD, its Chief Clerk, announced that the House of Representatives had agreed to the amendment of the Senate to the bill of the House (No. 360) for the prevention and punishment of frauds in relation to the names of vessels.

The message further announced that the House of Representatives had agreed to the amendments of the Senate to the amendments of the House to the bill of the Senate (No. 31) making a grant of lands to the Lake Superior and Mississippi Railroad Company in the State of Minnesota to aid in the construction of the railroad of said company from St. Paul to Lake Superior.

The message further announced that the House of Representatives had passed the following bills and joint resolutions; in which it requested the concurrence of the Senate:

A bill (No. 193) for the benefit and better management of the Indians;

A bill (No. 222) to extinguish the Indian title to lands in the Territory of Utah suitable for agricultural and mineral purposes;

A bill (No. 414) for the relief of the estate of B. F. Kendall;

A bill (No. 425) for the relief of the Wea, Peoria, Kaskaskia, and Piankeshaw Indians, of Kansas;

A bill (No. 441) providing for the removal of certain stray bands of Indians from the State of Wisconsin;

A bill (No. 442) to authorize the President of the United States to negotiate with certain Indians of middle Oregon for a relinquishment of certain rights secured to them by treaty;

A joint resolution (No. 71) for the relief of Thomas J. Galbraith, of Minnesota; and

A joint resolution (No. 72) relative to pay of staff officers of the Lieutenant General.

The message further announced that the House of Representatives had passed a resolution requesting the Senate to return to the House the bill (No. 159) for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State, and for other purposes, for the purpose of correcting an error in the engrossment of the bill.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House of Representatives had signed the following enrolled bills; which thereupon received the signature of the President *pro tempore:*

A bill (S. No. 198) to aid the Indian refugees to return to their homes in the Indian territory;

A bill (H. R. No. 220) to vacate and sell the present Indian reservations in Utah Territory, and to settle the Indians in the Uinta valley; and

A bill (H. R. No. 360) for the prevention and punishment of frauds in relation to the names of vessels.

HOUSE BILL RETURNED.

The Senate proceeded to consider the resolution of the House of Representatives requesting the return of the bill of the House (No. 159) for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State, and for other purposes; and

On motion of Mr. HARLAN, it was

Ordered, That the Secretary be directed to return the said bill to the House of Representatives agreeably to its request.

HOUSE BILLS REFERRED.

The following bills and joint resolutions from the House of Representatives were severally read twice by their titles, and referred as indicated below:

A bill (No. 377) making appropriations for the payment of the awards made by the commissioners appointed under and by virtue of an act of Congress entitled "An act for the relief of persons for damages sustained by reason of the depredations and injuries by certain bands of Sioux Indians," approved February 16, 1863—to the Committee on Finance.

A bill (No. 193) for the benefit and better management of the Indians—to the Committee on Indian Affairs.

A bill (No. 222) to extinguish the Indian title to lands in the Territory of Utah suitable for agricultural and mineral purposes—to the Committee on Indian Affairs.

A bill (No. 414) for the relief of the estate of B. F. Kendall—to the Committee on Indian Affairs.

A bill (No. 425) for the relief of the Wea, Peoria, Kaskaskia, and Piankeshaw Indians, of Kansas—to the Committee on Indian Affairs.

A bill (No. 441) providing for the removal of certain stray bands of Indians from the State of Wisconsin—to the Committee on Indian Affairs.

A bill (No. 442) to authorize the President of the United States to negotiate with certain Indians of middle Oregon for a relinquishment of certain rights secured to them by treaty—to the Committee on Indian Affairs.

A joint resolution (No. 71) for the relief of Thomas J. Galbraith, of Minnesota—to the Committee on Indian Affairs.

A joint resolution (No. 72) relative to pay of staff officers of the Lieutenant General—to the Committee on Military Affairs and the Militia.

CONSTITUTIONAL QUORUM.

Mr. HOWE. I move that the Senate resume the consideration of the unfinished business of the morning hour of yesterday.

Mr. SHERMAN. I am very anxious to obtain the decision of the Senate on the question of a quorum in order to expedite business; and that is a privileged question, according to the decision of the late Presiding Officer of the Senate. I trust the Senator from Wisconsin will allow me to submit a motion that the Committee on the Ju-

diciary be discharged from the consideration of the resolution concerning a quorum of the Senate, and that we may settle that question this morning. I do it simply to expedite business. I think if we adopt that resolution it will enable the Senator to get rid of his bill much better, and enable us to dispose much better of all the business of the Senate. I will submit that motion, with his consent.

Mr. HOWE. Very well.

Mr. FOSTER. Before the question is taken, I simply wish to say that that resolution has been considered in the Committee on the Judiciary, and that an expression of opinion adverse to its passage has been expressed by a majority approaching to unanimity in the committee. At the last meeting of the committee prior to the absence of the chairman in consequence of the ill health of his family it was discussed, and as it was not supposed that the Senate were in special haste in regard to the matter it was laid by until another meeting of the committee, which will occur tomorrow.

Mr. SHERMAN. In making the motion I did not wish for a moment to reflect on the Judiciary Committee. I knew that the chairman of the committee was detained from the Senate by sickness in his family; I believe by the death of one member of his family and the sickness of another; and another member of the committee is also absent. I therefore made the motion in order to expedite the business of the Senate, without any desire to trouble the Senate with any longer discussion on the subject.

The motion was agreed to.

Mr. SHERMAN. I offered a series of resolutions which were referred to the committee. I ask for the reading of the first resolution, which is the only one upon which I now desire action. I do not wish to delay the Senate by taking up the others.

The PRESIDENT *pro tempore*. The first question will be on postponing all prior orders and taking up the resolution for consideration.

The motion was agreed to; and the Senate proceeded to consider the following resolution, submitted by Mr. SHERMAN on the 7th of March last:

Resolved, That a quorum of the Senate consists of a majority of the Senators duly chosen or qualified.

Mr. SHERMAN. I will read the clause of the Constitution upon which this whole matter turns. It is the first clause of the third section of the first article:

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

The only question is whether a quorum of the Senate consists of a majority of those duly chosen by the Legislatures of the States, or whether it consists of a majority of all who by possibility may be elected members of the Senate. I think the grammatical construction is perfectly plain. The Senate is to consist of "two Senators from each State, chosen by the Legislature thereof;" but until a person is chosen by the Legislature he is not a Senator and cannot be counted. The grammatical construction is so plain that I cannot add to it. Can a man be a Senator until he is chosen by the State Legislature? That is all I wish to say about the grammatical construction.

As regards the precedents, they have been both ways. The honorable Senator from Vermont, [Mr. FOOT,] in the very able argument that he made on this subject during the last Congress, introduced most of the precedents. I am not going over those precedents, but of the first two precedents that were introduced by him, one was for and the other against his position. I have them now before me. The second one I will read:

"*January* 4, 1790. There being twelve States entitled to twenty-four members, of whom twelve appeared on 6th January; and were considered a quorum."

Twelve are not a majority of twenty-four, but they were considered a quorum.

"But it is supposed that the seat of one of the Senators of Virginia [Mr. Grayson] had been vacated by his death, the date of which is not stated, but his successor was appointed 31st March, 1790."

Showing that in this case, the second time the question ever came before the Senate, a majority of those elected were considered a quorum. As twenty-four was the number that could be elected, twelve were considered a quorum. There being one vacancy, the number was reduced to twenty-three, and twelve were a majority of those elected.

But again, the Constitution uses precisely the same language in regard to the House of Representatives. The first clause of the second section of the first article provides:

"The House of Representatives shall be composed of members chosen every second year by the people of the several States," &c.

The language is precisely the same; but the House of Representatives have definitely settled this matter. Upon an appeal from the decision of the Chair, by an almost unanimous vote they have declared that the majority of those chosen or elected members of that House constituted a quorum. Here is the action of the House of Representatives upon precisely the same language, which is a precedent to some extent.

But I think the Senate decided this question substantially for itself by a very important vote, to which, by the way, the chairman of the Judiciary Committee called my attention, and told me it would probably influence his vote on the subject; and that is a vote which was taken on the 2d of March, 1861. It will be remembered that Congress at that time passed a resolution proposing a certain amendment to the Constitution of the United States. When that resolution was under consideration in the Senate, the point was made by the Senator from Illinois [Mr. TRUMBULL] that it required two thirds of the whole Senate to concur in the proposed amendment.

"Mr. TRUMBULL raised a question of order whether, the joint resolution being a proposition to amend the Constitution of the United States, it did not require an affirmative vote of two thirds of the members composing the Senate."

The language of the Constitution upon which this point was raised is this:

"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution," &c.

The question was, whether "two thirds of both Houses" did not require two thirds of all that could by possibility be in the Senate or House of Representatives. The point was distinctly raised, and the Senate by an almost unanimous vote—by a vote of 33 yeas to 1 nay—decided that it only required two thirds of those present.

I say then, Mr. President, on the ground of grammatical construction, on the ground of precedent, and I might add on the ground of necessity, the construction I put upon the Constitution is the plain one. The framers of the Government never intended that their schemes should be broken up and this Government disorganized by the absence of the representatives of some of the States caused by death, secession, or anything of that kind. We are now just in that critical condition when we cannot call for a division on a question. We are afraid to call for a division, we are afraid to take the sense of the Senate, for fear we shall be left without a quorum. At five o'clock last night on the passage of an important bill we were left without a quorum. Under these circumstances I deem it my duty to bring the question to the attention of the Senate with the hope that we may now have a vote upon it.

Mr. FOSTER. I am not about to detain the Senate from the vote which the honorable Senator from Ohio wishes to have taken. I expressed my views briefly on this subject at a former session, and am not now disposed to repeat them. They would not be strengthened by repetition. I may be wrong certainly (and when I differ from the honorable Senator from Ohio perhaps the presumption is that I am wrong) in my construction of the Constitution. The general ground, however, on which he puts it, to wit, the necessity of the case, I submit to him with great confidence does not by any means exist, nor will the change of the quorum obviate the evils of which he complains. He says that we adjourned last evening at five o'cock for want of a quorum. It is true; but there were several members either in the Capitol or within call of the Capitol at the time. We have a few times during this session been compelled to adjourn for want of a quorum, and but a very few times only—fewer either this session or the last for that reason than any previous session since I have been a member of the Senate. Since our members have been diminished we have had what I deem a constitutional quorum present during a longer period of each day than at any period prior to our diminution of numbers by the failure of States to elect Senators.

If we make the change asked for by the Senator from Ohio, what will be the consequence? A smaller number will make a quorum; what then? Every member will then feel what he does not now feel, that he may be away from his seat in the Senate, not perhaps absolutely with impunity, but still he can go without the risk which attaches to him if he goes now. A heavy responsibility is now felt by every Senator for himself; if he be qualified as our States have said we are qualified for seats in this body, but he will feel that responsibility diminished when this change is made, and he will not be by any means as likely to be in his seat as he now is, and we shall have fewer members present than we have now. In my judgment it will be more difficult to obtain a quorum when the quorum is reduced to the number which the Senator from Ohio says is the proper constitutional quorum than it is now. It will be more troublesome to find that number here on a vote than it is to find the constitutional number under the present rule on a vote now. The more the responsibility is divided the less it is felt. On that ground, therefore, if there were no other, I should insist upon following the rule which I believe has been uniformly adhered to from the foundation of the Government, unless possibly there may be one or two exceptions, fixing the quorum on the principle I contend for, at the number which it is now held to be. I will not, however, as I suggested, occupy the time of the Senate.

Mr. DAVIS. I will respectfully suggest to the honorable Senator from Ohio that he make this subject the special order for some early day, when it can receive more consideration than it can receive this morning.

Mr. SHERMAN. In reply, I will only say that this whole question depends simply upon the construction of two clauses of the Constitution, and it has been now before the Senate for three years. I have not pressed it. It has been discussed and conversed about a great deal, and I believe the Senate are ready to vote upon it. I think the adoption of this resolution will expedite our business, and at the same time we shall come to the correct constitutional rule. It is due to the Senate that we should settle the question one way or the other at once. If the Senate decide against it now I shall never bring the question up again. All I want is to have the vote of the Senate upon it.

Mr. DAVIS. I do not make the suggestion from any desire to protract or put off unnecessarily or wantonly the consideration and decision of this question; but it strikes me that it is one of the most important that has ever come, or can ever come, before Congress. I am aware that it has been discussed heretofore. I listened with great pleasure and instruction to the elaborate and able speeches of the Senator from Vermont [Mr. FOOT] and the Senator from Connecticut [Mr. FOSTER] on this subject during the last Congress. I think it important to every member of the Senate, whether he heard those debates or not, and especially to the new members of the Senate who have taken their seats in the body since those debates took place, that they should be reproduced; that the able and satisfactory reasons against this proposition presented in those debates by the gentlemen whom I have named, as well as others, should be again presented to the Senate. I do not desire to have the discussion protracted. I should be perfectly willing to hear a few gentlemen who have investigated and who understand the subject present their views, and then, so far as I am concerned, that the Senate shall take a vote upon it. But to press to a vote this morning, on a few minutes' consideration, so important a question as this, involving the number of Senators that under the present condition of circumstances may constitute a quorum to do business, it seems to me would be precipitating one of the most important inquiries in which this body can be engaged. I suppose no gentleman expected this subject to come up for debate this morning, unless it was the gentleman from Ohio.

Mr. SHERMAN. I gave notice of it yesterday.

Mr. DAVIS. I am aware that the gentleman called it up yesterday; but I had not myself thought that it would be brought up for debate this morning. If the gentleman will consent to

let it go over until to-morrow morning, I shall have no objection to its consideration then and to a prompt decision of the question by the Senate. My object is not delay; but I merely want the arguments for and against this important proposition again reproduced and presented in a concise form to the Senate and the country. I suggest that it be postponed to and made the special order for to-morrow at a quarter after twelve o'clock.

The PRESIDENT *pro tempore*. Does the Senator from Kentucky submit that motion?

Mr. DAVIS. Yes, sir; I move that the further consideration of the resolution be postponed to and made the special order for to-morrow at a quarter after twelve o'clock.

Mr. SHERMAN. I am never disposed to press any gentleman to a vote on a question when he is not prepared for it; and at the suggestion of some Senators around me, with the understanding that the resolution be made the special order for to-morrow at half past twelve o'clock, I will consent to a postponement.

Mr. HOWE. The motion of the Senator from Kentucky is to postpone it until a quarter after twelve o'clock to-morrow.

Mr. SHERMAN. I am perfectly willing to agree to that; but I hope we shall then dispose of the subject.

The motion was agreed to.

CLAIMS OF WISCONSIN.

Mr. HOWE. I now move that the Senate proceed to the consideration of the unfinished business of the morning hour of yesterday.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to the consideration of the joint resolution (S. No. 8) for the relief of the State of Wisconsin, the pending question being on the adoption of the amendment reported from the Committee on Public Lands.

Mr. FESSENDEN. Mr. President, I do not suppose it is possible to call the attention of Senators to this question, although it involves a great deal of money. I noticed yesterday when the honorable Senator from Indiana [Mr. HENDRICKS] was speaking, that, with the exception of the Senators from Wisconsin, I believe I was the only Senator who attended to what he said, so that the argument on that side of the question was not heard, and I presume this will fare no better. Still, I feel inclined to do what I can to call the attention of the Senate to it a little further.

It is true that the Territory of Wisconsin organized a company to open a canal to connect the waters of Lake Michigan with those of Rock river; and that company was authorized to apply to Congress to get a grant of land for the purpose of aiding in opening that canal. The Congress of the United States, it seems from the act granting this land, were of opinion that it was advisable to do it for the benefit of the United States, as well as for the benefit of the canal company itself. They expected to derive a benefit from it in two ways: first, in having the canal for use; and in the next place, probably, in increasing the value of their land. They granted, therefore, the alternate sections of land, and made these provisions:

"*Provided*, That the said canal, when completed, and the branches thereof, shall be and forever remain a public highway, for the use of the Government of the United States, free from any toll or other charge whatever for any property of the United States, or persons in their service, passing through the same: *Provided*, That said main canal shall be commenced within three years, and completed in ten years, or the United States shall be entitled to receive the amount for which any of said land may have been previously sold, and that the title to purchasers under the Territory shall be valid."

Thus the United States parted with the land and made a provision to secure to themselves the results of the sale of the land if the canal was not completed within ten years. It seems from these two provisos that the United States were induced to grant these lands for the benefit that they expected to derive in using the canal free for their own purposes, and made it a condition that they should receive back the money for which the lands might be sold if the canal was not commenced within three years and finished within ten. Then, in the sixth section, they further provide:

"That the said State of Wisconsin"—

Not yet a State at that time—

"shall be held responsible to the United States, and for the payment into the Treasury thereof, of the amount of all moneys received upon the sale of the whole or any part of said lands, at the price at which the same shall be sold, not less than $2 50 per acre, if the said main canal shall not be commenced within three years and completed within ten years, pursuant to the provisions of the act creating said canal corporation."

And then came the seventh section:

"That, in order to render efficient the provisions of this act, the Legislature of the State to be erected or admitted out of the territory now comprised in Wisconsin Territory, east of the Mississippi, shall give their assent to the same by act to be duly passed."

It is contended here that as the State of Wisconsin never did give its "assent to the same by act" of the Legislature, it is therefore not at all responsible, and the report is predicated upon that idea. The simple facts as I understand them were these: the Territory of Wisconsin became under that act substantially the trustee of these lands; it went on and made sales; individuals connected with the corporation put into the work a certain amount of their own funds; they were to receive the benefit. It seems, however, from the statements made, about which there is no dispute, that after a while the Territory became rather tired of the business and was disposed to appropriate these lands to its own use to stop the operation, and a petition was sent to Congress substantially to that effect, but Congress under a report—a very able one, as has been properly said—made by the present Senator from Michigan, [Mr. HOWARD,] then a member of the House of Representatives, which demonstrated the injustice of that proceeding so far as the canal was concerned and those who were interested in its construction, decided against that application, and the project fell through. The territorial authorities, however, according to the statement, about which I suppose there is no dispute, went on and sequestrated the proceeds of these lands, so far as the sales were concerned, to the use of the Territory, but they did it under certain resolutions passed by them which are stated at length in the report. I will read them:

"*Resolved by the Council and House of Representatives of the Territory of Wisconsin*, That the receiver of the canal lands shall pay over to the treasurer of the Territory all moneys which may arise from any sale of the canal lands, except the sum which shall be required to defray the expenses of the sale, and the said treasurer is hereby authorized to receive the same; and the said treasurer of the Territory of Wisconsin is hereby required to execute to the Governor of the Territory and his successors in office, for the use of the Territory or future State of Wisconsin, a bond in the penal sum of $50,000, to be approved by the Governor, conditioned for the faithful discharge of his duties as treasurer.

"*Resolved*, That the money thus received into the treasury of the Territory shall be liable for all debts due from said Territory, and the said treasurer is hereby authorized to pay and discharge the same in the same manner and for the same purposes as any other money in said treasury.

"*Resolved*, That the money so received shall be liable to be, and so much thereof as shall be necessary is hereby, appropriated to the payment of the expenses of holding the convention to form a constitution for the State of Wisconsin the current year, and may be paid out in such manner as the convention shall provide.

"*Resolved*, That the faith of the Territory and future State of Wisconsin is hereby pledged to repay to the said canal fund the sum which shall be diverted in pursuance of the above resolutions to the purposes aforesaid, whenever the same shall be required to be repaid, for the purpose of executing the trust created by Congress in making the 'canal grant;' and all laws contravening these are hereby repealed."

The report and the remarks made by the honorable Senator from Indiana draw a distinction between the Territory and the State of Wisconsin. They assume that the State is not liable under the act of 1838, because it never passed the act assuming this obligation on which alone it was to be liable. That may dispose of the obligation technically under the sixth section of that act; but then the question arises what the equitable claim is first between the State which has received these funds and the Congress of the United States; and then, what the obligation is between the corporation and Congress, representing the Government, which has parted with its party for a specific purpose. I am unable, so far as this equitable obligation is concerned, to see the distinction that is attempted to be drawn in the argument of the honorable Senator from Indiana, between the Territory and the State. With a change of name, it is the same person. The money was received by the Territory and went to the benefit of the Territory; consequently it went to the benefit of the State when the State became such, and the distinction that is attempted to be drawn, although it may apply to the technical law, is very misplaced, so far as it applies to the equity of the case, I think. I cannot on any principle understand how the State which was made out of the Territory, and which has through the Territory received all the benefits of the fund, is to be distinguished from the Territory itself. It is introducing what to me would seem to be a new principle. It may be illustrated in this way: if I incur a pecuniary obligation by the receipt of money belonging to another person, and go to the Legislature and get my name changed, the equitable obligation remains on me no longer to pay the money, according to the argument! I cannot understand the force of it. But here in these resolutions under which this fund was appropriated and perverted to other purposes, taken out and used, is a specific obligation to pay back to the canal fund the money that they thus perverted—for what purpose? because that is left out of the argument of the honorable Senator from Indiana—for the purpose of executing the trust; that is, completing the canal, and not to appropriate it for any other purpose, or to repay it for any other purpose.

I am merely stating the facts, and all the arguments, in my judgment, arise on the facts stated. Then the question arises: this money having been thus appropriated, Wisconsin applied to be admitted as a State, and in her application to be admitted as a State she asked permission to sell the portion of these lands which were unsold, and to use the proceeds for certain specific purposes, and to have them counted as a part of her five hundred thousand acres of land granted by the act of 1841, and to appropriate the five per cent. fund for the use of schools. Congress was asked to assent to that arrangement and Congress gave its assent. It was a petition of the State itself that it might be so, as one of the articles of admission. What did Congress say? They say they do assent to it, but they say in assenting:

"*Provided*, That the liabilities incurred by the territorial government of Wisconsin under the act entitled 'An act to grant a quantity of land to the Territory of Wisconsin for the purpose of aiding in opening a canal to connect the waters of Lake Michigan with those of Rock river,' hereinbefore referred to, shall be paid and discharged by the State of Wisconsin."

Now, the argument is that when we passed that, all the obligation that was upon the Territory was simply to repay the amount of money that might be due to the canal company, to repay what they had advanced; that whatever the individual stockholders had put in should be repaid to them, and that they should be freed entirely from the obligation to complete the canal; that no one was to account to the Government for the money received from the sale of the lands, when the express language of the resolution of the Territory was that the fund diverted should be repaid for the purpose of completing the contract that was entered into; and now the State of Wisconsin having received the money, having sold the land, having put the money into her treasury, comes forward here and says substantially: "The obligation of the Territory was just to make good to these stockholders what they may have expended, and to make nothing good to the Government of the United States, arising from the fact that the canal has never been completed"——

The PRESIDENT *pro tempore*. The Chair must interrupt the Senator to call up the unfinished business of yesterday, which is now before the Senate.

Mr. HOWE. What is the unfinished business?

The PRESIDENT *pro tempore*. The unfinished business is the joint resolution appropriating $25,000,000 to pay for one hundred days' volunteers.

Mr. FESSENDEN. I think it is hardly worth while to defer that; I suppose we can take a vote on it at once.

Mr. HOWE. Let this be settled. I move to postpone the unfinished business.

Mr. FESSENDEN. I have not the slightest objection to going on, and so far as I am personally concerned I should prefer to finish what I have to say now; but in regard to the question which was up yesterday on which we were taking the yeas and nays and the Senate were dividing on the main question, I think it is best to settle that.

Mr. HARLAN. I would prefer that the Senator from Maine be permitted to make his argument, but I do not wish the vote to be taken on the main question to-day. I desire to examine

The PRESIDENT *pro tempore*. Objection being made to its present consideration, it lies over under the rule.

CLAIMS OF WISCONSIN.

Mr. HARLAN. I offer the following resolution of inquiry:

Resolved, That the Secretary of the Interior be directed to inform the Senate what disposition has been made of the lands granted by an act entitled "An act to grant a quantity of land to the Territory of Wisconsin for the purpose of aiding in opening a canal to connect the waters of Lake Michigan with those of Rock river," approved June 18, 1838. Also, that he be directed to inform the Senate whether the State of Wisconsin has received the five hundred thousand acres of public lands to which she became entitled on entering the Union, under an act entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant preemption rights," approved September 4, 1841; and whether any part of the grant to aid in the construction of the canal above named, or any part thereof, was included in the said five hundred thousand acres; and, if so, how much. Also, that he be directed to inform the Senate what part of the five per cent. of the net proceeds of the sales of the public lands within the State of Wisconsin, to which she became entitled under the act for the admission of said State into the Union, has been adjusted and paid; and if in the adjustment of the account between the United States and said State the said State has been charged with the value of any lands or the proceeds of the sales thereof, granted under any other law, and if so, to state the amount.

As I suppose there will be no objection to it I ask for the present consideration of the resolution.

Mr. HOWE. My impression is that all the information called for in the resolution is here, communicated by the Secretary of the Interior to the Senator from Indiana [Mr. HENDRICKS] who made the report on this subject.

Mr. HARLAN. I have read the report carefully, and it is not embodied in the report.

Mr. HOWE. It is here. It was sent to the Senator from Indiana.

Mr. HARLAN. Has it been sent officially?

Mr. HOWE. Yes, sir.

Mr. HARLAN. Let the resolution go over, and I will look into the matter.

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

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. MCPHERSON, its Clerk, announced that the House of Representatives had passed the bill of the Senate (No. 145) to equalize the pay of soldiers in the United States Army, with amendments; in which it requested the concurrence of the Senate.

The message further announced that the House of Representatives had agreed to some and disagreed to other amendments of the Senate to the bill of the House (No. 151) making appropriations for the naval service for the year ending the 30th June, 1865, and it had agreed to the first amendment of the Senate to the said bill, with an amendment; in which it requested the concurrence of the Senate.

The message further announced that the House of Representatives had insisted upon its disagreement to the ninth amendment of the Senate to the bill of the House (No. 198) making appropriations for the support of the Army for the year ending the 30th of June, 1865, and for other purposes, insisted on by the Senate, insisted upon its amendments to the seventh and eighth amendments of the Senate, disagreed to by the Senate, agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. THADDEUS STEVENS of Pennsylvania, Mr. ROBERT C. SCHENCK of Ohio, and Mr. WILLIAM R. MORRISON of Illinois, managers at the same on its part.

The message further announced that the House of Representatives had passed a bill (No. 207) making appropriations for the construction, preservation, and repairs of certain fortifications and other works of defense for the year ending the 30th of June, 1865, in which it requested the concurrence of the Senate.

The message also returned to the Senate the bill of the House (No. 159) for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State, the error in the engrossment of the bill having been corrected.

BILLS BECOME LAWS.

The message further announced that the President of the United States had approved and signed on the 3d instant the following acts:

An act (H. R. No. 47) for the relief of William C. Walker and others; and

An act (H. R. No. 388) for the relief of Jesse Williams.

HOUSE BILL REFERRED.

The bill from the House of Representatives (No. 207) making appropriations for the construction, preservation, and repairs of certain fortifications and other works of defense for the year ending the 30th of June, 1865, was read twice by its title, and referred to the Committee on Finance.

NAVAL APPROPRIATION BILL.

The Senate proceeded to consider its amendments to the bill of the House (No. 151) making appropriations for the naval service for the year ending the 30th of June, 1865, disagreed to by the House of Representatives, and the amendment of the House to the first amendment of the Senate to the said bill; and

On motion of Mr. FESSENDEN, it was

Resolved, That the Senate insist upon its amendments to the said bill disagreed to by the House of Representatives, disagree to the first amendment of the House to the first amendment of the Senate thereto, and ask a conference on the disagreeing votes of the two Houses thereon.

Ordered, That the conferees on the part of the Senate be appointed by the President *pro tempore*.

The PRESIDENT *pro tempore* appointed Mr. HALE, Mr. VAN WINKLE, and Mr. POWELL.

CONSTITUTIONAL QUORUM.

Mr. SHERMAN. I must insist now on the special order being taken up.

The PRESIDENT *pro tempore*. The Senate will resume the consideration of the special order of the day, the resolution submitted by the Senator from Ohio in relation to the quorum of the Senate, the question being on the adoption of the resolution.

Mr. DAVIS. I desired yesterday that the consideration of this subject should be postponed until this morning, and the Senator from Ohio with his usual urbanity and courtesy assented to that proposition, for which I return him my thanks. I think the proposition a very important one. I will ask the Secretary to read the resolution.

The Secretary read it, as follows:

Resolved, That a quorum of the Senate consists of a majority of the Senators duly chosen or qualified.

Mr. DAVIS. Mr. President, according to the estimate in which I hold that proposition it is not often that one of more importance is presented to the consideration of the Senate. It involves an inquiry as to what number of Senators constitute a quorum, and in addition to that the adjunct question whether legislative measures that may be passed are void and inoperative, they not having received the votes of a constitutional quorum of the Senate. I hold this proposition to be not only true but clear: that less than a constitutional quorum of either House of Congress is not competent to pass any measure of legislation. The principle involved in the resolution is therefore one of the highest interest and importance.

The resolution now under consideration reads thus:

Resolved, That a quorum of the Senate consists of a majority of the Senators duly chosen or qualified.

The same subject in a resolution of nearly the same words was considered, debated, and incidentally passed upon by the last Senate, about two years ago. That was in these words:

"That a majority of the Senators duly elected and entitled to seats in this body is a constitutional quorum."

It will be observed that there is a difference, and a substantial difference, between the resolution that was then presented and considered and the one now under debate. The pending resolution is—

That a quorum of the Senate consists of a majority of the Senators duly chosen or qualified.

There is this difference between the two propositions: according to the former one, a Senator, to be a part of the quorum, must have been duly elected and must be entitled to a seat in the Senate; and unless that was the relation in which he stood to the body, he was not to be estimated in making up the quorum of the Senate. It might be and often is the fact that a man may in truth be admitted as a Senator; he may be allowed to take the oath of a Senator and his seat in the body and to act with it for the time, when he may not have been duly elected; and it was with a view to that state of case, I suppose, that the honorable mover of the present resolution has varied its language and made it read in the terms—

That a quorum of the Senate consists of a majority of the Senators *duly chosen* or *qualified*.

There is another material difference between the verbiage of the two resolutions. In the first one it was proposed to ascertain what the constitutional quorum was: "that a majority of the Senators duly *elected* and *entitled* to seats in this body is a *constitutional* quorum." The present resolution is, "that a quorum of the Senate consists of a *majority of the Senators duly chosen* or *qualified*." It is not absolutely certain that it was the purpose and office of the pending resolution to ascertain what the constitutional majority in truth is, or whether it was not the purpose of the mover to give a different principle of the quorum of the Senate than that which is prescribed by the Constitution.

I do not know with absolute certainty whether it is the intention of this resolution to declare what the Constitution is, or to modify the Constitution upon the point of a senatorial quorum, but I presume that the first is its true object, and I shall so treat it, for the obvious reason that a provision of the Constitution, in that or any other respect, as everybody knows, cannot be changed or modified by this mode of proceeding.

There were offered at the same time with the resolution now under debate, and in the same series, two other resolutions, which I will read:

Resolved, That if a majority of the presidential electors, duly appointed and qualified, vote for one person, he is the President.

Resolved, That if the election of President devolves upon the House of Representatives, and the votes of a majority of the States represented in the House be cast for one person, he is the President.

These propositions contemplate a most important and novel construction of the Constitution on three of its great and most essential powers. According to my poor opinion they are each in conflict with the provisions of the Constitution, and if they are adopted and go into practical operation they will materially alter the Constitution in all the important points to which they severally refer. I will devote my remarks, though, exclusively to the resolution declaring a quorum of the Senate. The third section of the first article, paragraph one, of the Constitution, says:

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

Section five of the same article reads, in the first paragraph:

"Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide."

The question is, what the Constitution and those who framed it meant by the "majority of each House" which they constituted a quorum to do business. I hold that they referred to the Senate and House as they had *ordained* them, to persons answering to the description and having the qualifications which they had made requisite for membership of them, to be chosen in the mode, by the constituent bodies, for the terms, and of the *number* which it in previous provisions had established for the two Houses respectively. Neither House was then in fact in existence, so that it was to the two potential bodies, to their abstract organization, from which it eliminated "a quorum to do business." The *quorum* and the *two Houses* were then equally abstract ideas. The Constitution had ordained in a previous clause:

"The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for six years."

And then in section five, same article, that—

"A majority of *each* [*House*] shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide."

There were then thirteen States, and each State being entitled to two Senators, the then potential Senate was as absolutely and certainly fixed at the aggregate number of twenty-six, and its quo-

rum to do business at at least fourteen members, as though the two matters had been provided for in one clause in these words:

The Senate, until there is a new State or States admitted into the Union, shall be composed of twenty-six members, of which the Legislature of each State shall choose two; and a majority of the Senate shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members in such manner and under such penalties as each House may prescribe.

If this had been the language of the Constitution a reasonable doubt could not have been raised that a quorum of the Senate to do business must be composed of a majority of its members, as the Constitution had ordained it and established its number. The language which it has employed is plainly of the same import and meaning: "The Senate of the United States shall be composed of two members from each State, chosen by the Legislature thereof," the States being thirteen; "and a majority of each [House] shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide," as definitely and certainly fixes the quorum of the Senate to do business to be a *majority* of the *number* of which the Senate should be composed. It could not be the majority of the Senate of *any less number;* if so, what less number? Where is it defined? How is it to be ascertained?

If the framers of the Constitution had intended that less than a majority of the whole number which they had provided to compose it should form a quorum to do business, they would have given some expression to that purpose, and probably in one of these forms: "The Senate of the United States shall be composed of two Senators from each State chosen by the Legislature thereof for six years; but a majority of the Senators qualified and duly elected," or "a majority of the Senators duly elected, shall constitute a quorum to do business."

The reasonable presumption is that the Convention did not intend that a *cabal* of both or either House of Congress should ever exercise so much of the legislative powers of the Government; and therefore required the quorum of both to do business to be a majority of the *whole number* of its members. It intended further that it should be certainly known at all times and beyond doubt or contingency what the quorum of each successive Senate and House was; so that less than that quorum might not from inadvertence or ignorance upon any question of the number of the members of either House undertake at any time to transact business. Both these ends would be certainly secured by the law of quorum for which I contend; and both of them would be often defeated by the rule of construction set up in the pending resolution or any other that could be devised.

Though the whole number of the House varies according to each successive census with the ratio of representation fixed at each decennial period, and the number of the Senate is enlarged two whenever a new State is admitted, still the *whole number* of both Houses never otherwise fluctuates, and is always definitely and certainly known. One more than half of that whole number being the quorum, a simple count of those present will demonstrate whether or not they form a quorum. But the majority of the members duly elected and qualified, or duly elected or having the proper returns of election, would be an uncertain basis upon which to determine the fact of the presence of a quorum, because all or either of those rules would require in addition that the Senators and Representatives computed should be living. There may occur vacancies, or may have been recent vacancies, in distant States, that may or may not have been filled, and concerning the true state of fact the House to which it may relate shall have no information, and its quorum upon this principle being fluctuating it might proceed to do business without having a quorum according to its own rule, and its action would be null and void. No such dilemma could arise under the other rule.

But the danger of the power of the two Houses being absorbed by a cabal or a minority and faction in them would be frequent and probable. Within the last twenty-five years three special sessions of a new Congress have been called by the President. The members of the House from more than half the States were elected before the President issued his proclamation to convene the two Houses; but in the other States, approximating half, no Representatives to the new Congress had been elected. According to this new principle of quorums the members then elected who might have been convened by the President would have formed a constitutional quorum; and being less than two thirds, and only about three fifths of the whole number of Representatives, and a majority of that number being a quorum, the whole power of the House of Representatives would devolve upon less than a third or even a fourth of the whole number of Representatives, against the distinct expression that it should not be exercised by less than a *majority* of the *whole*.

But the unsoundness of the principle of the proposed resolution is more strikingly illustrated by the present condition and number of members-elect to the Senate. The whole number of States, including those in rebellion and Virginia and West Virginia, is thirty-five. There are two gentlemen present admitted as Senators from West Virginia, and one from Virginia, the other, Mr. Bowden, having died since the commencement of this session. My opinion is that West Virginia was organized and admitted as a State into the Union contrary to the Constitution, and that the gentlemen who are here as Senators are legitimately no part of the Senate; and that the gentleman who is in this body as the surviving member from Virginia, consisting of the ten or twelve counties that claim to be the Ancient Dominion, and to have their seat of government at Alexandria, has no better warrant for his seat. But for the argument, conceding that Virginia and West Virginia are two of the United States, the whole number of the States being thirty-five, the aggregate number of the Senate is seventy members. The States that have not elected Senators to the present Senate are, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, and Tennessee, being ten; the remaining twenty-four are represented in this body, except Virginia, which has but one Senator, she not having filled the vacancy occasioned by the death of Mr. Bowden.

There are, then, forty-nine members elected to the present Senate, twenty-five of whom, by the resolution under consideration, constitute a quorum to do business. The legislative power of the Senate being vested in twenty-five Senators, would be wielded by a majority of that number, thirteen. But the principle of the resolution goes to this extent, that if only New England, or any less number of States, were to elect members of the Senate and the House, a majority of these Senators and Representatives respectively would constitute a quorum to do business, and a majority of those quorums could put in operation the whole legislative power of the Government. The New England States have twelve Senators and twenty-seven Representatives; and by this new constitutional law, if those States only were to elect members of Congress, seven of their Senators and fourteen of their Representatives would constitute quorums of the two Houses, and four of their Senators and seven of their Representatives would be authorized by the Constitution to assume the legislative power of the Government, and if their authority and acts were opposed, it would be treason and rebellion against the United States. The Constitution does not allow, and it was not the intention of the Convention that it should, any such absurd consequences.

According to the position to which I give in my adhesion and to which the practice of the Senate has conformed since the beginning of the Government, the Constitution fixed the quorum of the two Houses in harmony with the great fundamental principle of popular government, the right of not less than a majority of the people to govern, by requiring a majority of the component members of each to do business. Besides, that quorum is certain, fixed, and may be learned and known by all persons in the shortest time and simplest mode. The only fact to be ascertained is the whole number of the members of the Houses, respectively, and we are then informed precisely and infallibly what the quorum of each House is. This resolution proposes to substitute an unknown, variable, and accidental quorum that may be represented not only by less than a majority, but by a small and contemptible faction of the Houses respectively. And when this work of innovation and reduction of the quorum shall have commenced, what limits can be prescribed to its further extension? When factions, and Presidents, and ambitious men at the head of armies have strong motives to control and direct the action of Congress, this innovation and others to mold and fashion quorums, that may be devised, will bring the legislative department in the effigy of a constitutional form to their feet.

This construction is fully sustained by the debates in Convention on the point, which show plainly how that body understood this provision.

The report of its debates by Mr. Madison shows:

"Article six, section three, was then taken up.

"Mr. GORHAM contended that less than a majority in each House should be made a quorum; otherwise great delay might happen in business, and great inconvenience from the future increase of numbers.

"Mr. MERCER was also for less than a majority. So great a number will put it in the power of a few, by seceding at a critical moment, to introduce convulsions and endanger the Government. Examples of secession have already happened in some of the States. He was for leaving it to the Legislature to fix the quorum, as in Great Britain, where the requisite number is small, and no inconvenience has been experienced.

"Colonel MASON. This is a valuable and necessary part of the plan. In this extended country, embracing so great a diversity of interests, it would be dangerous to the distant parts to allow a small number of members of the two Houses to make laws. The central States could always take care to be on the spot; and by meeting earlier than the distant ones, or wearying their patience and out-staying them, could carry such measures as they pleased. He admitted that inconveniences might spring from the secession of a small number; but he had also known good produced by an apprehension of it.

"He had known a paper omission prevented by that cause in Virginia. He thought the Constitution, as now molded, was founded on sound principles, and was disposed to put into it extensive powers. At the same time he wished to guard against abuses as much as possible. If the Legislature should be able to reduce the number at all, it might reduce it as low as it pleased, and the United States might be governed by a junto. A majority of the number which had been agreed on was so few that he feared it would be made an objection against the plan.

"Mr. KING admitted there might be some danger of giving an advantage to the central States, but was of opinion that the public inconvenience on the other side was more to be dreaded.

"Mr. GOUVERNEUR MORRIS moved to fix the quorum at thirty-three members in the House of Representatives and fourteen in the Senate.

"This is a majority of the present number, and will be a bar to the Legislature. Fix the number low, and they will generally attend, knowing that advantage may be taken of their absence. The secession of a small number ought not to be suffered to break a quorum. Such events in the States may have been of little consequence. In the national councils they may be fatal. Besides other mischiefs, if a few can break up a quorum they may seize a moment when a particular part of the continent may be in need of immediate aid to extort, by threatening a secession, some unjust and selfish measure.

"Mr. MERCER seconded the motion.

"Mr. KING said he had just prepared a motion which, instead of fixing the numbers proposed by Mr. Gouverneur Morris as quorums, made those the lowest numbers, leaving the Legislature at liberty to increase them or not. He thought the future increase of members would render a majority of the whole extremely cumbersome.

"Mr. MERCER agreed to substitute Mr. King's motion in place of Mr. Morris's."

"Mr. ELLSWORTH was opposed to it. It would be a pleasing ground of confidence to the people that no law or burden could be imposed on them by a few men. He reminded the movers that the Constitution proposed to give such a discretion, with regard to the number of Representatives, that a very inconvenient number was not to be apprehended. The inconvenience of secessions may be guarded against by giving to each House an authority to require the attendance of absent members.

"Mr. WILSON concurred in the sentiments of Mr. Ellsworth."

"Mr. GERRY seemed to think that some further precautions than merely fixing the quorum might be necessary. He observed that as seventeen would be a majority of a quorum of thirty-three, and eight of fourteen, questions might by possibility be carried in the House of Representatives by two large States, and in the Senate by the same States with the aid of two small ones.

"He proposed that the number for a quorum in the House of Representatives should not exceed fifty nor be less than thirty-three; leaving the intermediate discretion to the Legislature.

"Mr. KING. As the quorum could not be altered, without the concurrence of the President, by less than two thirds of each House, he thought there could be no danger in trusting the Legislature.

"Mr. CARROLL. This would be no security against the continuance of the quorums at thirty-three and fourteen, when they ought to be increased.

"On the question of Mr. King's motion, that not less than thirty-three in the House of Representatives, nor less than fourteen in the Senate, should constitute a quorum, which may be increased by a law, on additions to the members in either House—Massachusetts, Delaware, ay—2; New Hampshire, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, no—9.

"Mr. RANDOLPH and Mr. MADISON moved to add to the end of article six, section three, 'and may be authorized to compel the attendance of absent members in such manner and under such penalties as each House may provide.' Agreed to by all except Pennsylvania, which was divided."—*Madison Papers*, vol. 3, pp. 1287–1290.

Mr. President, this debate shows this state of fact in the Convention: that the identical question now under consideration was before that body for its deliberation and decision, and every member of that Convention, so far as he expressed himself, explicitly, or so far as his understanding of the point can be inferred from the language I have read, regarded the effect and the plain language of the Constitution as it had been reported, to establish conclusively and without any doubt the principle that a majority of the whole number of the Senate, as the Senate had been organized by the Constitution itself, was required to constitute a quorum to transact business. It was the inconvenience and difficulty that might often arise to obtain a quorum, consisting of the *whole number* of the two Houses, that operated upon many members of that Convention so as to induce them to attempt to make a less number a quorum. Various propositions to that effect were offered, but all of them were voted down, and the Convention steadily adhered to the principle that a majority of the whole number of the two Houses should be required to do business. After having persistently refused to reduce the number which should form the quorum of each House, it added to the clause words giving to a less number than a majority of the whole a power to compel the attendance of absent members, which is further and strong evidence that it intended the quorum should be a majority of the whole number of both Houses as organized.

This question has arisen several times in the Senate. It first came up at the beginning of its first session in 1789, and how was it decided? The former President *pro tempore* of the Senate [Mr. FOOT] presented a most lucid and able paper on this subject when it was up before in July, 1862. I will take the liberty of reading from the authorities which he gathered and collated, or a portion of them, in the address that he caused to be read to the Senate on that occasion, and which had the effect of settling the question and inducing the Senate to lay the resolution to establish its quorum at a less number than the majority of the whole number which the Constitution had ordained for it, on the table. There were but eleven States that had then ratified the Constitution, and consequently there were but eleven States that were authorized to send Senators to the Senate.

"There being eleven States in the Union entitled to send twenty-two members to the Senate, of whom only twenty members had been elected by the States—New York not having elected them until the 15th of July, 1780—the Senate not having formed a quorum at the time appointed, continued to meet and adjourn from day to day until the 28th of March, 1789, when eleven members appeared, and although but twenty had been elected as above stated, they were still considered as less than a quorum. On the 6th of April, 1789, twelve members attended and were considered a quorum."

This construction of the Constitution was adopted immediately after its formation, and some of the men who gave it had been members of the Convention. There does not appear to have been any difference of opinion on the position that notwithstanding but twelve States had elected Senators, and consequently there were only twenty-four members in office, yet fourteen, a majority of the whole number of the Senate as ordained by the Constitution, were required by it to constitute a quorum to do business.

"January 4, 1790.—There being twelve States entitled to twenty-four members, of whom twelve appeared on the 6th of January, and were considered a quorum. In this case all the members had been elected by the States. But it is supposed that the seat of one of the Senators of Virginia (Mr. Grayson) had been vacated by his death, the date of which is not stated, but his successor was appointed 31st March, 1790."

As to this case of Mr. Grayson's vacancy there is some uncertainty about the facts. I concede that it seems to favor the position that *one half* of the *whole number* of the Senate formed a quorum; it does not tend to show that a less number would.

"November 3, 1794.—There being fourteen States entitled to twenty-eight members, of whom fourteen attended on the 17th November, the Vice President also being present—still not considered a quorum—but on the 18th November another member appeared and made a quorum."

This is another precedent which squarely and fully sustains the construction for which I contend.

The next precedent, occurring in 1797, is precisely to the same effect with the last one, and shows that the Senate refused to recognize one half of its whole number as a quorum. The two which follow, one in 1798 and the other in 1800, though not passing upon the question directly, conduce to sustain my position. The next precedent, in 1802, is in point, and shows that a majority of a full Senate was necessary to form a quorum:

"November 13, 1797.—There being sixteen States entitled to thirty-two members, of whom sixteen attended on the 21st November, but were not considered a quorum.

"December 3, 1798.—There being sixteen States entitled to thirty-two members, of whom fifteen attended on the 5th December, but were not considered a quorum. On the 6th December seventeen attended, and were considered a quorum.

"November 17, 1800.—There being sixteen States entitled to thirty-two members, of whom fifteen attended on 20th November; no quorum.

"November 21.—Nineteen attended, and the business proceeded.

"December 6, 1802.—There being sixteen States entitled to thirty-two members, and no quorum found until seventeen attended.

"November 5, 1804.—There being seventeen States entitled to thirty-four members; on that day the Vice President and thirteen Senators appeared; no quorum.

"On the 6th November seventeen members attended, and although one of the members had just resigned, and his successor was not elected until the 13th November, this number (seventeen) was not considered a quorum; but on the 7th November eighteen members attended, and were considered a quorum."

The preceding precedent of 1804 meets fully, and refutes absolutely, the principle of the pending proposition. So does the following one, presenting a parallel case, in 1812:

"November 2, 1812.—There being eighteen States, entitled to thirty-six members, of whom eighteen attended on that day, but were not considered a quorum. In this case one of the Senators of Louisiana had resigned some time previous to the session, and his place was not supplied until 1st December, 1812. On the 3d November twenty members appeared and the business proceeded."

This question has been decided diversely in the House of Representatives, and the argument of the late President *pro tempore* of the Senate, from which I have read the senatorial precedents, gives a good many from the Journals of the House; but their preponderance is decidedly in support of the position that a majority of the whole House also is necessary to constitute a quorum to do business. While I hold this principle to be certainly true of the House, I concede it is not so *clearly* so as it is of the Senate. The Constitution establishes the same rule for both Houses, and being so plainly the law, the law of the Senate is a weighty argument, and, in connection with so many others, conclusive that it is also the law of the House.

Mr. President, it seems clear to my mind that Congress cannot enact a valid law unless by a constitutional quorum of each House; and that all acts passed when there was not present such a quorum in both Houses would be void and of no effect. Any serious doubt on this point ought and should restrain the Senate from passing this resolution, at any rate until it has exhausted all means to procure the presence of a majority of its whole number to transact its business. This question may arise judicially in a great variety and number of cases; and if the courts should decide that legislative measures passed by both or either House when there were present less than a majority of its whole number, were void, it might produce great confusion, wrong, and mischief.

When the quorum of the two Houses was established by the Constitution, there were no Senators or Representatives in office or in being; but a Senate and House then existed potentially by the Constitution and as a legal entity. It was then, and in that state of fact, that the Convention declared what should be a quorum, not of *the Senators* but of *each House, Senate and the House*. It then provided, not that a majority of the *Senators* and a majority of the *Representatives*, but that a *majority* of *each House*, as they had already been ordained by previous sections of the Constitution then agreed upon, according to the numbers that had been declared and established as the membership and strength of each House, should constitute *its quorum* to do business. It seems to me that such is the plain import, meaning, and principle of the Constitution; that it was so molded, understood, and agreed upon by the wise and great men who framed it; received contemporaneously, and ever since, and uniformly by the Senate, that construction, and most generally by the House; and that the proposed resolution is another bold and reckless assault upon the Constitution, and if adopted will produce a vast amount of evil.

Mr. JOHNSON. It would be idle, Mr. President, to assert that the opinion which I am about to express is free from doubt, because the opposite opinion is entertained by many Senators, perhaps has been entertained by Senators who have heretofore been in this body. But at the last extra session of the Senate, without being aware that the Senate had come to the conclusion that a majority of the whole number of Senators who could be elected by all the States if all the States were in was necessary to form a quorum, I stated that my impression had always been that the true meaning of the Constitution in the clause which prescribes the quorum is that it had reference only to the Senators who are such, in other words to Senators elected, and I propose very briefly to try to make good that opinion, and to do so I shall address myself mainly to a reply to the honorable member from Kentucky, [Mr. DAVIS.]

In the first place, I ask the Senate's attention to the Constitution itself without reference to any decisions which have heretofore been pronounced. There are four clauses as I think in that instrument which bear upon the particular question under debate. The clause which gives rise to the discussion is that which is found in the fifth section of the first article. The other three clauses to which I propose to advert as bearing on the meaning of that clause will be found in the second section of the same article, and in the third section, and in the fifth article of the Constitution. The language of the clause prescribing the quorum is:

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

Now, I suppose it would be perfectly clear, that with reference to the House which is to pass upon the elections, returns, and qualifications of its own members, all that is meant is those who are members by election or by appointment, not those who have not been elected to the House of Representatives or who have not been appointed as Senators by the respective Legislatures. It assumes, consequently, that there is an existing body actually in office by virtue of an election which has already taken place, and that that existing body is the one which is to pass upon the elections, returns, and qualifications of the members. It evidently therefore, to repeat, assumes that members have been elected or profess to have been elected, that returns have been made of such election, and that there may arise in relation to such elections a question of the right of the member to take his seat on the ground that he does not possess the qualification which the Constitution or the laws of the United States prescribe. If those who are in the House elected, and no others, or to take the case of the Senate, if those who are in the Senate, Senators chosen by the respective Legislatures, and no others, are to pass upon the elections, returns, and qualifications of their own members, it would follow that the latter part of the clause, which provides for the number which is to constitute a quorum, is to be construed with regard to that House, for the language is "a majority of each shall constitute a quorum to do business." "A majority of each" of what? A majority of each of the Houses who have a right to judge of the elections, returns, and qualifications of the respective members. Then, if it be true that only those are authorized to judge of the elections, qualifications, and returns, who have been elected to the House or chosen to the Senate by the respective Legislatures, it would seem to follow logically that a quorum of that House is to be a majority of the same number and no other. If it had been the purpose of the Convention to prescribe that the House should only be considered as organized for the purpose of passing judgment upon the elections, returns, and qualifications of the members, when all should have been elected by the States, or when all should have been chosen by the respective Legislatures, then they would have so provided; but on the contrary, as seems to me to be manifest, all that they meant was that whenever there were persons elected in the one or

chosen in the other, a majority of the persons elected or chosen was to constitute the quorum of each House.

But if that clause was doubtful, considered by itself, I submit that the second and the third sections of the first article remove that doubt. The second section tells us who are the House of Representatives, and in these words: "The House of Representatives shall be composed of members chosen every second year;" not of members which the States have a right to choose, but of members actually chosen; and in relation to the Senate the language is that "the Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof."

It seems to me to be clear that by the true meaning of the Constitution the House of Representatives in the one case, and the Senate in the other, are to consist of those who have been chosen to the House or to the Senate, and nobody else. It would be an absurdity to say that the House of Representatives consists of members not chosen or that the Senate consists of Senators not chosen. The thing to be done under the Constitution was to bring into existence representatives of the States or of the people; representatives of the States in the vocation of Senators, representatives immediately of the people of the States in the person of the Representatives; but until Senators are chosen or Representatives are chosen, there is no House of Representatives and no Senate; that would seem to be clear.

The honorable member from Kentucky has referred us to the debates in the Convention. I have had occasion to consider those frequently and to refresh my recollection this morning. My friend from Kentucky, as I think, misapprehends the meaning of those debates. The question, what was to constitute a quorum, was before the Convention; how many, was the point to be decided. Having decided that the States should be represented in the Senate by two Senators from each State, and should be represented in the House of Representatives by members elected by the people in the way pointed out by the Constitution, and having ascertained, therefore, what would be the entire number which, if elected, would constitute the House, and if appointed by the Legislatures would constitute the Senate, it was suggested that to require a majority of the whole number might be very inconvenient. Then it was proposed to fix some number less than a majority of the whole; but in the debate upon the proposition to fix a number less than the whole, as well as upon the propriety of requiring a majority of the whole, the several speakers, to whose speeches my friend has referred, assumed that all would be elected to the House of Representatives and all would be appointed to the Senate by the respective Legislatures. That is evident from what the Senator, I believe, read; if he did not read it, it is here in the debate. It was said, in answer to the proposition to require less than a majority of the whole number, that no inconvenience could result from it, because they could give to the House the authority to send for the absent members and enforce their attendance. Mr. Mercer, for example, said that he was for a less number than a majority:

"So great a number will put it in the power of a few by seceding"—

A few what? A few members. Nobody else. They can break up the Senate or the House; there may be a factious minority; and such things have happened. It has been proposed here in the Senate of the United States to leave the Senate without a quorum for the very purpose of defeating a particular measure; and Mr. Mercer therefore insisted that it was all-important that a quorum should be made to consist of a number less than a majority of the whole in order to guard against the inconvenience or the mischief which would result from some of those who were members of the House by virtue of election and qualification, or members of the Senate, from seceding and breaking up the deliberations of either body and arresting the action of either body. How was that met? In the first place, as I have said, the objection assumes that there are members to leave the Senate—not members not chosen, for they cannot leave it, they have never been in it.

"Mr. RANDOLPH and Mr. MADISON moved to add to the end of article six, section three, 'and that may be authorized to compel the attendance of absent members in such manner and under such penalties as each House may provide.' Agreed to by all except Pennsylvania, which was divided."

How was that to be done? South Carolina has no Senators elected or chosen, and there is no power in the Constitution to force South Carolina to choose Senators.

Mr. DAVIS. Will the honorable Senator allow me to make a remark?

Mr. JOHNSON. Certainly.

Mr. DAVIS. The members of the Convention were then debating an inconvenience and a difficulty in doing business that was not certainly identical with the question now under discussion; but in debating that difficulty, in their argument they referred to the principle and to the fact of the provision of the Constitution, of what was and what would be a quorum to do business.

Mr. JOHNSON. I understand it. That amendment proposed by Mr. Madison and Mr. Randolph was offered after a speech had been made by Mr. Ellsworth, in answer to the objection of the inconvenience, the mischief, that might be the consequence of requiring a majority of the whole to constitute a quorum.

"Mr. ELLSWORTH reminded the movers that the Constitution proposed to give such a discretion with regard to the number of Representatives, that a very inconvenient number was not to be apprehended. The inconvenience of secessions may be guarded against by giving to each House an authority to require the attendance of absent members."

The whole debate then, I think I am justified in saying, assumes that they are dealing with those who have been chosen members of the one House or chosen Senators of the other. It was to meet that very apprehended mischief, that members chosen to each branch might break up the deliberations of each branch by—to use the language of the debaters—seceding, that Mr. Madison proposed the amendment to which I have just adverted, to give to each House the authority to compel the attendance of those who were bound to attend.

Mr. CARLILE. If the Senator will allow me to interrupt him just at this point, I desire to call his attention to the first decision that was made by the Senate as given in the memorandum presented at the last Congress by the then Presiding Officer, [Mr. FOOT.] That first decision is directly opposite to the argument that the Senator from Maryland is now making. There were then eleven States in the Union. Ten of them had chosen Senators, and one, the State of New York, had not chosen; and although eleven members were present, the Senate adjourned from day to day for the want of a quorum in consequence of that fact.

Mr. JOHNSON. The next succeeding precedent is directly the other way, so that there is a precedent each way; that is all; but I am speaking of it now independent of precedent. I shall speak of the precedents presently.

Mr. CARLILE. The precedents are all against the Senator.

Mr. JOHNSON. They are not, begging the member's pardon; and he is the only member that has said so.

Mr. CARLILE. The only precedent to which the Senator has referred as at all sanctioning the view which he is now attempting to enforce on the Senate is that which occurred in January, 1790.

Mr. JOHNSON. That is a very good one. Has there been none since?

Mr. CARLILE. None in the Senate since.

Mr. JOHNSON. I think there are, but I shall come to that presently. I have said, Mr. President, all that I proposed to say on the weight to be given to the debates in the Convention at the time the Constitution was adopted. I have said that there was a precedent in the Senate other than that to which the honorable member from Virginia had adverted which decides the very question as I have suggested it should be decided. The fifth article of the Constitution provides that "the Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution." It does not say how many are to constitute each House in passing upon constitutional amendments. The argument in relation to the quorum clause is that "the House" means the entire House that might be chosen, the entire Senate that might be selected, not that which has been chosen or selected. It will be seen that the language of the amendatory clause in relation to the manner in which amendments to the Constitution are to be proposed is identical, as far as the particular question is concerned, with the language of the clause which prescribes the number to constitute a quorum. The one says "a majority of each House;" the other says "two thirds of both Houses." There can therefore evidently be no difference between the meaning of the term "House" as used in the amendatory clause and the meaning of the term "House," as used in what I call the quorum clause. Then what in the view of the Senate is "the House," two thirds of which are to act upon constitutional amendments? Upon that fruitful topic and melancholy fruitful topic which has brought us into the condition in which we are, the institution of slavery, an amendment to the Constitution was proposed in 1861. I read from the Journal of the Senate of the 2d of March of that year:

"The Senate resumed, as in Committee of the Whole, the consideration of the joint resolution (H. R. No. 80) to amend the Constitution of the United States; and

The following amendment proposed by Mr. Pugh being under consideration"—

It is not necessary to read the amendment; various other amendments were proposed. Finally, on the 2d of March, 1861, the question was taken on the passage of the joint resolution:

"On the question, Shall the resolution pass?

"It was determined in the affirmative—yeas 24, nays 12."

Then the yeas and nays are given.

"The PRESIDENT (Mr. Polk in the chair) announced that the joint resolution was passed.

"Mr. TRUMBULL raised a question of order: whether the joint resolution, being a proposition to amend the Constitution of the United States, it did not require the affirmative vote of two thirds of the members composing the Senate to pass the same.

"The PRESIDENT decided that it required an affirmative vote of two thirds of the Senators present, only.

"From this decision Mr. TRUMBULL appealed; and

"On the question, Shall the decision of the Chair stand as the judgment of the Senate?

"It was determined in the affirmative—yeas 33, nay 1."

That could not have been done if the meaning of the word "House," as used in the quorum clause, is that it embraces all who could be elected to the one House or appointed to the other. If it meant that, then there must have been an affirmative vote of two thirds of the entire number; and yet with the single exception of the Senator from Ohio, [Mr. WADE,] who afterward said that he voted under a misapprehension, every member of the Senate voted to sustain that decision of the Chair; and the Senator from Illinois, [Mr. TRUMBULL,] although he called for the yeas and nays, voted in the affirmative.

Then, if it be true that the Constitution can be amended by a vote of less than two thirds of the entire number that the Constitution contemplates as composing the House or the Senate, it must be equally true that the quorum may consist of a less number than the majority of that whole number; and what is that? If two thirds of those present are all that are necessary in the one case, a majority of those who have been chosen in the other case is all that is required.

The great inconveniences of the decision under which we have been acting all along are manifest. My friend from Kentucky sees or thinks he sees great danger to States and to people by changing the rule. Is there no danger on the other side? Is not the Government to go on?

Mr. DAVIS. It has gone on.

Mr. JOHNSON. It is going on, I know, but going on how? Let yesterday answer, and let the day before yesterday answer.

Mr. DAVIS. And many days before the rebellion too.

Mr. JOHNSON. Then they were all here. But what is the hardship? Let me ask the honorable member what harm is South Carolina to receive and the people of South Carolina? What injustice is to be done them? Who keeps South Carolina from electing her Senators?

Mr. DAVIS. I do not expostulate here for South Carolina; I do for my own State, and I maintain that the business and proceedings of this Government so far as the interests of my State and of every loyal State in the Union are concerned, are deeply involved in the proper settlement of this question.

Mr. JOHNSON. Put it in another way, that would lead to this conclusion, which I am sure the honorable member does not mean: that the interest of the people of Kentucky will not be taken sufficient care of unless these seceded States are represented.

Mr. DAVIS. With the Senator's permission I will say that he draws his conclusion, not mine.

Mr. JOHNSON. I know it is mine.

Mr. DAVIS. My conclusion is that if a quorum, consisting of a less majority than a majority of all the members of both Houses, is allowed to do business, that state of legislation and that modification of the power of legislation will essentially add to the danger of the interests of my constituency.

Mr. JOHNSON. How? In what way? Suppose the independence of the confederate States was recognized to-day——

Mr. DAVIS. If it was, there would be an end to this Confederation, to this Union; it would stand dissolved, and every State would be thrown back upon its original sovereignty.

Mr. JOHNSON. That I deny.

Mr. DAVIS. That I maintain.

Mr. JOHNSON. That I deny, because if the honorable member is correct in that, if any one State could succeed, with the assent or against the opposition of the rest of the States, in getting out of the Union, the Union would be dissolved. Now, supposing the Union to be in existence—and I suppose I may assume that the Union now stands—how does it stand and why does it stand? It stands upon its own strength as represented by the loyal States. It stands maintained by the power of the loyal States. It stands in spite of South Carolina and those whom she has seduced to their ruin; and if those States were by some natural convulsion blotted out of material existence to-morrow, the Union would stand represented in her remaining States. There is nothing in the Constitution of the United States which requires for the existence of the Union that each State that comes in is to remain in forever; and yet the position of my honorable friend from Kentucky is that the moment any one State succeeds in getting out of, or is permitted to go out of, the Union, the Union is dissolved, and each State stands where it was before the Constitution was adopted by which the Union was formed. I protest, with all the respect I feel for the judgment and patriotism of the honorable member from Kentucky, that his proposition is wholly unfounded. I was about to say, Mr. President, if I am right, and I assume now that I am right, what has Kenutucky to apprehend? What has Maryland to apprehend? Are not both States represented in this Chamber and in the other House? From whom is danger to be apprehended to either State? From the other States that are equally loyal with ourselves and united with us as a band of brothers to maintain the Government?

Mr. DAVIS. I will ask the honorable Senator, with his permission, this question: does he maintain that the government of Maryland as it is about to be organized by the presidential proclamation and military interference will be legitimately organized?

Mr. JOHNSON. I do not see that that is the question before us in this debate. It has not been so organized that I am aware of. I rather think that Maryland is in the Union yet, and I am very much inclined to think that if she is enabled to maintain herself she means to remain in.

Mr. DAVIS. That does not answer my question.

Mr. JOHNSON. I cannot answer the question, because the occurrence has not happened.

Mr. DAVIS. I put it hypothetically.

Mr. JOHNSON. Is not Kentucky in the Union?

Mr. DAVIS. Yes, sir.

Mr. JOHNSON. I have heard a great deal about military interference in the State of Kentucky, and Kentucky ought to be out——

Mr. DAVIS. Her constitution has not been pulled down by an illegitimate power and another one erected for her by military interference—not yet awhile.

Mr. JOHNSON. It is pulled down and disregarded by military interference. If my honorable friend was elected by the use of military interference he ought not to be here.

Mr. DAVIS. I was not.

Mr. JOHNSON. I know you were not, but I was assuming it for the sake of the argument. I know it could not well happen.

Mr. DAVIS. I agree to your proposition.

Mr. JOHNSON. Mr. President, I have dedarted somewhat, being very anxious to answer any suggestion that falls from the Senator from Kentucky, from the argument with which I proposed to conclude.

My friend said in his speech that every law that shall be passed in virtue of such a construction as we put upon the Constitution by a vote in a body composed of less than a majority of the whole, will be a nullity, and every court will so hold.

Mr. DAVIS. I did not say that the courts would so hold. I gave it as my opinion that that was the true principle, and I said that if the courts so held, they would vacate the legislation as a matter of course.

Mr. JOHNSON. That amounts to the same thing. He says the courts ought so to hold, because that is the correct principle. If it be the correct principle, then the courts would so hold, because the courts are honest and intelligent.

Mr. DAVIS. In my judgment, that is the correct principle; but the courts might hold a very different opinion.

Mr. JOHNSON. I should think that would be very likely on this particular question.

Mr. DAVIS. And I suppose it might be very different from yours.

Mr. JOHNSON. That may be; they have often done so, very much to the disappointment of my clients.

If my honorable friend from Kentucky is right in his legal proposition, we are in a very bad way. The House of Representatives during the whole of last session and during the whole of this have been acting upon the view of the Constitution which I am maintaining, and most of the laws that have been passed have been unconstitutionally passed——

Mr. DAVIS. Will the honorable Senator permit me respectfully to propound to him another question? Does he maintain that a less number of either House of Congress than a constitutional majority may pass a law?

Mr. JOHNSON. No; but I say that there is a constitutional majority.

Mr. DAVIS. He agrees to the principle; he only differs as to the fact.

Mr. JOHNSON. What difference does it make, looking to the result which the Senator apprehends, whether we adhere to the past course of the Senate, or whether we adopt the present rule of the House of Representatives? Looking to that result, if the rule of the House is to require less than a constitutional majority, then so far as the validity of our legislation is concerned it is perfectly immaterial whether our view which requires that constitutional majority is sound or not: the laws are equally invalid. And yet I have not heard from anybody except from my honorable friend a suggestion that the legislation for the last two years, when the House of Representatives have been acting upon the rule that a quorum consists of a majority of the members elected, is invalid.

Suppose it be doubtful. It cannot be, I submit to my friend from Kentucky, so very clear. Then if it be doubtful, what should we do in the present condition of the country? Adopt that rule which the convenience of legislation requires, which the business of the country demands at our hands; and we are not without precedents. In the absence of any express constitutional provision in relation to a quorum, what would be a quorum? In the House of Lords three of the lords constitute a quorum; in the House of Commons at one time forty members out of a House of over six hundred members. Lately, I believe, they have increased the number to sixty, which constitutes a quorum.

Mr. DAVIS. That is no authority for the Congress of the United States.

Mr. JOHNSON. I know it is no authority; but I mention it for the purpose of showing that there is no great inconvenience, and that in the absence of any express and positive provision requiring a specific number to constitute a quorum we must be thrown upon what may be considered as the law of Parliament, and make that a quorum which we ourselves think should constitute a quorum.

Mr. DAVIS. I make my apology to the honorable Senator for having interrupted him, and with one more question shall not interrupt him further. Does the honorable Senator contend that if thirteen members of the Senate were to get together and were to assume to pass laws, those thirteen members could legitimately pass laws for the Senate of the United States, and that when they were so passed by thirteen members with all the other forms of legislation, they would have the validity of laws?

Mr. JOHNSON. No; I have not said any such thing. I have said that the Constitution required to constitute a quorum a majority of those who were elected to the House of Representatives or elected to the Senate; and that is the reading which I give to the only clause which prescribes the quorum.

Mr. DAVIS. I attempted to show that the principle might lead to that state of case, and that it was not an improbable state of case, when thirteen members would be authorized to assume the legislative powers of the Senate. The question that I propounded to the honorable Senator was this: if the Senate was placed in circumstances where thirteen members of the body would be assuming to act and acting for the body in passing its laws, would that action be legitimate according to the Constitution?

Mr. JOHNSON. It is very easy to put extreme cases about anything. The Senator might as well ask if one member was elected to the Senate he could constitute the Senate, and if one member was elected to the House he could constitute the House of Representatives. That is not the question which I was trying to discuss. What I mean to say is this: that according to my interpretation of the clause in question it requires only a majority of members; and until my friend can satisfy me that there are Senators entitled to seats on this floor who have not been chosen as Senators, or that there are members entitled to seats in the House of Representatives who have not been elected, whose names nobody has ever heard of or can hear of, because they are not in existence, I think I shall remain of the opinion which I stated when I rose to address the Senate.

Mr. DAVIS. I rise to make a remark. The clause of the Constitution which determines what proportion of the two Houses severally as it had ordained them should be necessary to constitute a quorum to do business did not then apply to a Senate or House of Representatives in the concrete, to a body of men composing a Senate and another body a House; no such bodies of men were then in existence. It applied to the Senate and the House which it had organized by previous provisions, and also to the quorum of each which it was then about to organize, as abstractions, merely constitutional and legal entities. The matter to be determined was what part of the numerical strength of each House should be required by the Constitution to form a quorum to do business. The plan of the Constitution reported to the Convention by its committee proposed it in these words:

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

A majority of what? Of each House? What was each House? Not the Senators and Representatives elected and chosen, but of the abstract Senate and House as they had been organized by principles that would give to each body a certain number of members; and the majority of the number of which each House was to be composed, it declared, should be a quorum to do business. When the question was under consideration in the Convention, there was no proposition to enlarge the quorum of the Houses beyond the majority of them respectively, but the inconveniences and obstructions to business resulting from such a large quorum were pointed out and enforced by several members, and sundry and different propositions were made to reduce the quorum below the majority, and they were all inflexibly voted down, and the objections against that large quorum were attempted to be obviated by giving to a less number than a majority the power to compel the attendance of absent members. If a less number had constituted a quorum, there would have been no reason for giving to them that power. The *rule*, the *principle* of the quorum of the two Houses is established by the Constitution; and that is, the majority of the Senate and not of the Senators chosen, and of the House of Representatives and not of the Representatives elected, constitutes the quorums to do business of the Senate and House respectively.

The PRESIDING OFFICER, (Mr. ANTHONY in the chair.) The question is on the adoption of the resolution.

Mr. CARLILE and Mr. DAVIS called for the yeas and nays, and they were ordered.

Mr. SHERMAN. At the suggestion of some Senators I will modify my resolution by striking out the words "or qualified;" so that it will read:

Resolved, That a quorum of the Senate consists of a majority of the Senators duly chosen.

The PRESIDING OFFICER. That modification can only be made by unanimous consent, the yeas and nays having been ordered.

Mr. SUMNER. I hope it will be made.

The PRESIDING OFFICER. The Chair hears no objection; and the question now is on the adoption of the resolution as modified.

The question being taken by yeas and nays, resulted—yeas 26, nays 11; as follows:

YEAS—Messrs. Chandler, Clark, Conness, Cowan, Dixon, Fessenden, Hale, Harding, Harlan, Howe, Johnson, Lane of Indiana, Lane of Kansas, Morgan, Morrill, Nesmith, Pomeroy, Ramsey, Sherman, Sprague, Sumner, Trumbull, Van Winkle, Wade, Willey, and Wilson—26.

NAYS—Messrs. Anthony, Buckalew, Carlile, Davis, Doolittle, Foot, Foster, Grimes, Henderson, Powell, and Riddle—11.

So the resolution was adopted.

BUREAU OF MILITARY JUSTICE.

The PRESIDENT *pro tempore*. The Senate will resume the consideration of the special order of the day, which is the report of the committee of conference on the disagreeing votes of the two Houses on the bill (H. R. No. 308) to establish a Bureau of Military Justice. The question is on concurring in the report of the committee, and upon that question the yeas and nays have been ordered.

The question being taken by yeas and nays, resulted—yeas 17, nays 20; as follows:

YEAS—Messrs. Anthony, Chandler, Collamer, Conness, Cowan, Dixon, Foot, Foster, Howe, Lane of Indiana, Lane of Kansas, Morgan, Powell, Ramsey, Sumner, Trumbull, and Wilson—17.

NAYS—Messrs. Buckalew, Carlile, Clark, Davis, Fessenden, Grimes, Hale, Harding, Harlan, Henderson, Johnson, Morrill, Nesmith, Pomeroy, Riddle, Sherman, Sprague, Van Winkle, Wade, and Willey—20.

So the report was non-concurred in.

Mr. WILSON. I now move that the whole subject lie on the table.

Mr. SHERMAN. Oh, no; move another conference.

Mr. WILSON. I move that it be laid upon the table, and I ask for the yeas and nays upon that motion. I hope that we shall lay it on the table, and then we can get up a new bill on some sound principle.

Mr. COLLAMER. The Senate has no right to get up a bill.

Mr. WILSON. I think it is in the power of the Senate to get up a bill in regard to that bureau.

The PRESIDENT *pro tempore*. The Chair will suggest to the Senator that the motion is not debatable.

Mr. SHERMAN. I think we had better have another conference.

Mr. CONNESS, (to Mr. WILSON.) Withdraw your motion.

Mr. WILSON. I cannot do it.

Mr. HALE. Order! I object to debate.

Mr. WILSON. I do not wish to violate the rule of the Senate, and I am much obliged to the Senator from New Hampshire for calling me to order.

Mr. HALE. If the Senator desires to debate it, let him withdraw his motion.

The PRESIDENT *pro tempore*. The Chair will inquire of the Senator from Massachusetts whether he desires the yeas and nays upon his motion?

Mr. WILSON. I withdraw the motion.

Mr. SHERMAN. What is the question now?

Mr. WILSON. Now, I believe, the subject is open for debate.

Mr. CONNESS. There is no question before the Senate.

Mr. FOOT. I move that the Senate insist on its amendments to the bill of the House, and ask for another committee of conference.

Mr. WILSON. It is now debatable, and I desire to present this question precisely and exactly as it is.

The House of Representatives passed this bill on the recommendation of the Secretary of War. It made Colonel Holt a brigadier general and gave him two assistants with the rank of colonel. It passed the House of Representatives with that recommendation without opposition. It was referred to the Committee on Military Affairs of the Senate. The committee, on investigation, desiring to save every dollar we could to the country, were led to believe that the assistants should be reduced to the rank of majors instead of colonels. When the bill came up for consideration a new theory must be sprung upon it. We could not give the general and the majors we proposed, or the colonels as the House bill had it, the pay and emoluments as we did everybody else; but we must single out Colonel Holt for degradation. We must fix a sum of money against these officers, though we never did anything of the kind before. We could not accept the committee's amendment. We must give these officers the rank of colonels.

But rank was not the question at issue between the two Houses. The simple question then was whether the general should have the pay and emoluments of a general, and whether the colonels we had made in preference to making them majors should have the pay of colonels or whether they should have a fixed sum. The Senate inserted a fixed sum for these officers. The House disagreed to our amendments, and committees of conference were appointed. You, sir, appointed the committee on the part of the Senate. I suppose it was appointed without any reference to or any thought of the opinions of the members of the Senate. I have no idea that the President of the Senate intended to make a committee that should do anything that was not just and fair. The Senator from Indiana, [Mr. HENDRICKS,] the Senator from Michigan, [Mr. HOWARD,] and myself were appointed on the committee. We met the committee of the House of Representatives in conference. Perhaps it is not for me to say what took place in that conference. The matter was fully discussed. The question was whether the committee would agree to those amendments or recede from them, and the committee finally agreed to recede from these two amendments of the Senate, which had never been placed before on any military bill.

The Senate has just decided by its vote that the policy of its amendments is to be adopted. If these officers are to be generals and colonels—and that we have settled; both Houses have agreed to that—then I say they ought to have the pay and emoluments of generals and colonels. If not, I think we had better drop the subject. If it is believed that these officers ought not to be military men—and how they can be anything else I do not know—we might make them judges, or give them some other title, and give them a fixed sum; or we can adopt a rule that shall take from all these other officers we have made the pay and emoluments that belong to their rank. I think, therefore, sir, we had better drop this bill and bring in a new bill. I cannot vote at any time to give officers the rank of generals and then vote away from them the pay we give others of the same rank.

Mr. HALE. I do not know and cannot conceive how the Senator from Massachusetts construes this matter into an attack upon Mr. Holt. I protest against any such personal motive being assigned to me, and I protest against the right of any man to say that. How does the Senator know who is to be appointed? The bill reads:

And the President shall appoint, by and with the advice and consent of the Senate, as the head of said bureau a Judge Advocate General.

Has the President told the Senator from Massachusetts that he is going to appoint a given man, and have the Senate told the Senator that they mean to confirm him? What right has he to assume that Judge Holt is to be the man? He may suppose so; but certainly, for legislative action neither he nor anybody else has the right to assume that it is to be Judge Holt.

Mr. WILSON. He is there now.

Mr. HALE. He cannot be there now, because there is no such office. The bill says he shall be appointed.

Mr. WILSON. He is there with the rank of colonel.

Mr. HALE. Mr. President, this bill is prospective entirely. Let me ask the Senator what are the pay and emoluments of a brigadier general? Where is the propriety of selecting a man for a civil office, a judicial office, the discharge of the duties of which requires him to sit in his office and do business, and putting him on the same footing as to pay and emoluments with a general who has to go into the field? Why should we allow him horses, and forage for horses and quarters and servants, and all these innumerable allowances which may or may not be proper for a general in the field? By what analogy, by what course of reasoning is it proper to make the same allowances to a man who performs judicial duties sitting in his office devoting himself to those duties?

Sir, as this matter has been put in this ungracious way, I do not choose to submit to it. I yield to no man in the high regard that I have for Judge Holt, for his spotless integrity, his untiring industry, his faithfulness, his fidelity, and his unsurpassed loyalty; but I do not choose to be led into a vicious course of legislation by my regard for any individual. I think that even for officers in the Army this is a vicious mode of compensating them. It ought to be carried no further than the absolute necessities of the service require it to be carried. Certainly, when you undertake to pay judicial officers who sit in their offices and perform judicial duties by the same rule that you pay officers in the field who are compelled to do their duties there, it seems to me you undertake to apply an analogy where there is no analogy from the nature of the case.

Sir, the officer that you propose to create here is a judicial officer entirely. He wants no arms, he wants no forage, he wants no horses, to enable him to discharge the high functions with which you charge him as a judicial officer.

The bill also provides that he shall appoint "such clerical force as in his judgment the interests of the service shall require." The next thing will be that those assistants must have the rank, pay, and emoluments of captains; the messengers the rank, pay, and emoluments of sergeants; and possibly those who sweep the office the rank, pay, and emoluments of corporals. It is trying to assimilate things where there is no similarity and no analogy to justify it. If you are creating a judicial officer, giving him judicial duties to perform, pay him as you do other judicial officers.

It is said that this is to degrade Judge Holt. If I knew that it was Judge Holt who was to be appointed I should consider it a degradation to vote that when he was to perform his judicial duties he must put on a chapeau and wear epaulets, and his compensation must be according to that of a brigadier general. I think the system is wrong, and here is a good place to commence to alter it. The other officers that the Senator from Massachusetts has named, the Quartermaster General, the Adjutant General, and Provost Marshal General, are all military officers, and by the very circumstances of the case are connected with the Army and have military duties to perform. I would not say a word or give a vote that should detract a feather's weight from the just reputation that is due to Judge Holt or any other man; but, sir, I think here is a good place to begin to set a precedent. When you make a judicial officer, pay him a salary. Does any man here know what the pay and emoluments of a brigadier general are? Take your Army Register, and you will find that they vary widely, sometimes more and sometimes less. Where is the propriety in giving this uncertain, irregular compensation to a judicial officer?

It is for these reasons that I opposed the report of the conference committee. I hope the motion of the Senator from Vermont will prevail; but I should not be very sorry if that should be voted down, and the vote should be taken on the motion of the Senator from Massachusetts and that should prevail. I am far from being certain that it would not be better to create a judicial tribunal and not undertake to make it ridiculous by tricking it out with the gewgaws and the rank, pay, and emoluments of a military officer.

Mr. WILSON. The Senator from New Hampshire, like all the rest of us, is likely to be mistaken sometimes in his facts and in his law. This bill says:

That the office of Judge Advocate General, created by the fifth section of an act entitled "An act to amend the act calling forth the militia to execute the laws of the United States, suppress insurrection, and repel invasion, approved February 28, 1795, and the acts amendatory thereof, and for other purposes," approved July 17, 1862,