

expenses of the Government for the year ending the 30th of June, 1862, and appropriations for arrearages for the year ending 30th of June, 1861; and

A bill (No. 26) making additional appropriations for sundry civil expenses of the Government for the year ending the 30th of June, 1862, and appropriations of arrearages for the year ending 30th of June, 1861.

REPORTS FROM COMMITTEES.

Mr. WILSON, from the Committee on Military Affairs and the Militia, to whom was referred a petition of citizens of Detroit, Michigan, praying that a pension may be granted to Clementine Fink, widow of Captain Theodore Fink, who died in the military service of the United States, asked to be discharged from its further consideration, and that it be referred to the Committee on Pensions; which was agreed to.

He also, from the same committee, to whom was referred the petition of Captain Roger Jones, of the United States armory at Harper's Ferry, praying the settlement of his accounts and indemnity for the loss of his private effects, and also that the men of his command may be indemnified for their losses, asked to be discharged from its further consideration, and that it be referred to the Committee on Claims; which was agreed to.

Mr. HALE. The Committee on Naval Affairs, to whom was referred the bill (S. No. 17) concerning the pay of the officers of the revenue cutter service of the United States, have instructed me to ask to be discharged from its further consideration, and that it be referred to the Committee on Commerce. These officers all being appointed by the Secretary of the Treasury, the Committee on Commerce, we think, is the appropriate reference. It was so ordered.

Mr. ANTHONY, from the Committee on Printing, to whom was referred a motion to print the petition of Edward Jarvis, Samuel G. Howe, and C. C. Felton, praying the establishment of a board of health for the Army, and that the authority of the volunteer sanitary commission may be recognized and increased, reported in favor of printing the usual number; and the report was agreed to.

Mr. FESSENDEN, from the Committee on Finance, to whom was referred the bill (H. R. No. 18) making additional appropriations for the support of the Army for the fiscal year ending June 20, 1862, and appropriations for arrearages for the fiscal year ending June 20, 1861, reported it with an amendment, and asked its immediate consideration; but gave way for the presentation of the credentials of Senators from Virginia.

COMMITTEE SERVICE.

Mr. POLK. I ask the Senate to excuse me from serving on the Committee on Claims. The Senate will recollect that when the committees were formed, my colleague was not here, and had not been qualified as a member of the Senate. I wish to resign my position upon the Committee on Claims, and ask the Senate to substitute my colleague in my place.

The motion to excuse Mr. Polk was agreed to.

The VICE PRESIDENT. In what manner shall the vacancy be filled?

Mr. FESSENDEN. By the Chair.

The VICE PRESIDENT. That will be done, if there be no objection. The Chair appoints Mr. Johnson, of Missouri.

Mr. SAULSBURY. I ask to be excused from serving upon the Committee on Pensions, and I hope the Senator from Missouri [Mr. Johnson] will be appointed in my place.

The VICE PRESIDENT. The Senator from Delaware moves that he be excused from further service upon the Committee on Pensions.

The motion was agreed to.

The VICE PRESIDENT. In what manner shall this vacancy be filled?

Mr. SAULSBURY. By the Chair.

The VICE PRESIDENT. If that be the pleasure of the Senate, the Chair will designate the Senator from Missouri, [Mr. Johnson.]

SENATORS FROM VIRGINIA.

Mr. JOHNSON, of Tennessee. It is with no ordinary pleasure that I rise to present the certificates of the Senators elect from the Commonwealth of Virginia, for the purpose of having them read at the desk; and I move that they be permitted to come forward, be qualified, and take their

seats. I look upon this as a favorable omen. The return of the Old Dominion to this body, I think, is indicative of future good, and the future restoration of the Union of these States.

The VICE PRESIDENT. The credentials will be read.

The Acting Secretary read them, as follows:

Virginia, to wit:

The Legislature of this State having, on the 9th day of July, 1861, in pursuance of the Constitution of the United States, chosen WAITMAN T. WILLEY, Esq., a Senator of this State, to fill the vacancy which has happened by the withdrawal and abdication of James M. Mason, Esq., I, Francis H. Pierpont, being Governor of the Commonwealth, do hereby certify the same to the Senate of the United States.

[L. S.] Given under my hand and the seal of the Commonwealth, this 11th day of July, 1861.

FRANCIS H. PIERPONT.

Virginia, to wit:

The Legislature of this State having, on the 9th day of July, 1861, in pursuance of the Constitution of the United States, chosen JOHN S. CARLIZ, Esq., a Senator of this State, to fill the vacancy which has happened by the withdrawal and abdication of Robert M. T. Hunter, Esq., I, Francis H. Pierpont, being Governor of the Commonwealth, do hereby certify the same to the Senate of the United States.

[L. S.] Given under my hand and the seal of the Commonwealth, this 9th day of July, 1861.

FRANCIS H. PIERPONT.

Mr. BAYARD. Before the Senate proceeds to swear in these gentlemen, I beg leave to enter my protest. I think these credentials ought to be referred to the Committee on the Judiciary. They involve very grave questions. You are undertaking to recognize a government of the State of Virginia, which is not the regular State government, even though that State government may be in what you call a state of rebellion. You are bound to take notice of the fact that Mr. Letcher is Governor of Virginia, and that his term of office, under the constitution and laws of Virginia, has not yet expired. If you say he is in rebellion, that does not authorize a portion of the people of Virginia to form a Legislature for the purpose of electing Senators to take seats in this body. You have no authority to create a new State out of a part of an existing State. I think the questions are very grave.

Of course, I know very well that you have the commanding majority in this House; but I think you had better pause and have an investigation before you undertake to swear in members under such an authority. I make the motion, before swearing in either of these gentlemen, that the credentials be referred to the Committee on the Judiciary. I have no personal feeling of any kind about this matter, but it seems to me to be a grave violation of the Constitution of the United States, and I must enter my protest against it. I make the motion that the credentials be referred to the Committee on the Judiciary.

The VICE PRESIDENT. The Chair did not distinctly hear the motion of the Senator.

Mr. BAYARD. My motion is to refer these credentials to the Committee on the Judiciary, before swearing in either of the appointees under them, on the ground that you have judicial notice of the fact, that the Governor of the State of Virginia is elected for a number of years which have not expired, and necessarily the question of authority in the body that undertakes to appoint, is a matter which ought to be inquired into in so grave a case as this. The case is precisely similar in principle to one that occurred in my own State early in the history of the United States. The Governor of the State undertook to make an appointment after the Legislature had met and adjourned, to a vacancy which had occurred antecedent to the meeting of the Legislature; and when the appointee presented his credentials here, they were objected to, and the matter was referred to a committee; and a report was made on it, and made adverse to the right of the party to take his seat. The principle of the case is precisely the same; it goes to the question of the authority to appoint. I think it ought to be referred.

The VICE PRESIDENT. The Senator from Delaware moves to refer the credentials to the Committee on the Judiciary.

Mr. WADE. I hope not.

Mr. SAULSBURY. It is a matter of indifference to me, sir, what disposition is made of the credentials of the proposed Senators from Virginia; but I wish to call the attention of the Senate to one fact, which, in my mind, shows the

propriety of the motion now made. These credentials, as read by the Secretary, state that, on the 9th day of July, the Legislature of the State of Virginia, owing to the abdication of Mr. Mason and Mr. Hunter, elected these gentlemen to seats upon this floor. No longer ago, however, sir, than yesterday, this body treated Mr. Mason and Mr. Hunter as members of the Senate of the United States. Yesterday you expelled those gentlemen from seats upon the floor of this Senate as members of the Senate. Then, at the time of this election by the new government of Virginia, there was no vacancy in the Senate of the United States from that State, according to the judgment of the American Senate. Yesterday morning, when you met, according to the judgment of a majority of the members here Mr. Mason and Mr. Hunter were members of this body. You treated them as members of this body; you exercised your power of expulsion upon them. Could you have expelled them, as members of the Senate, from seats on this floor, if they were not, at the time of the vote, in your judgment, actually members of this body? If they were, yesterday morning, members of the Senate of the United States—and you have treated them as such, and expelled them—can you now allow these gentlemen to be sworn in as Senators from the State of Virginia, when the credentials presented here show on their face that they were elected not to fill any vacancies; when the facts, as you have decided them, show that there was no vacancy in the Senate? For that reason, and for none other, I think the credentials should go to the Committee on the Judiciary.

Mr. JOHNSON, of Tennessee. I hope the motion of the Senator from Delaware will not prevail. These certificates from the Commonwealth of Virginia afford *prima facie* evidence that the election has taken place regularly, and that these gentlemen have been regularly certified here as the Senators from that Commonwealth. Is there any proof before this body, presented in any way, that the election has not taken place regularly, according to the Constitution of the United States and of the State of Virginia? The certificates themselves furnish *prima facie* evidence that these gentlemen are the Senators elect from the Commonwealth of Virginia. The other great fact is equally clear, without regard to what the Senate did yesterday, that these vacancies did exist on the 9th of the month, when this election took place. That fact is known to this body; it is known to the country. The late Senators from Virginia were not here. The vacancies did in fact exist when this election took place.

These are facts within the cognizance of this body. They are known to every member here. Here are the certificates of election of these gentlemen, and there is not a single scintilla of proof from any quarter that they are not the Senators, and have not been properly and regularly elected. There is no one else claiming the seats, no one making a contest for them. There is not a particle of evidence from any quarter that these gentlemen are not the Senators elect according to the forms of law and the Constitution.

How was it in the case from Indiana? There was a contest about the election of the Senators from that State a few years ago, and papers were presented protesting against their election before they were sworn in. They, however, came forward with their certificates, and were qualified, and the matter was investigated afterwards. It strikes my mind that it is clear and conclusive, upon the proof now before the Senate, that the gentlemen, whose credentials have been presented, are the Senators elect from Virginia; and there can be no objection to their being qualified and taking their seats. Then, if their seats be contested, or any proof presented that the election did not regularly take place, the subject can be referred to the Committee on the Judiciary, or the Senate can take such course as it thinks proper. Why should there be a reference of these credentials, when there is no intimation, no evidence in the world, except that these gentlemen are Senators from the State? It is known that the old State government is in rebellion, making war upon the Government of the United States. As it appears to my mind, there can be no reason, at this stage of the proceeding, why this reference should be made; and I hope that the Senators will be permitted to go forward and be qualified,

and take their seats according to the custom of the Senate.

Mr. SAULSBURY. I should like to ask my friend from Tennessee (for I esteem him such, and always have) whether, if those seats were vacant yesterday, the Senate of the United States could have expelled those gentlemen, Mr. Mason and Mr. Hunter? You regarded them as Senators yesterday, and expelled them. Now, I am frank to say, that if Mr. Mason and Mr. Hunter had appeared here yesterday, and claimed their seats on the floor of the Senate of the United States, and had attempted to take their seats, and a motion had been made to exclude them from the Senate, I would have voted for that motion, simply because they have been acting in hostility to the Government of the United States. If they had appeared here yesterday, and claimed their seats, I do not think the Senate should have admitted them to seats on this floor, because they had taken part with the State of Virginia against the constitutional authorities of the United States. That would have been ground for excluding them from their seats. But the Senate of the United States chose to treat them yesterday as members of this body and expelled them. If, in the judgment of this Senate, they were not members on yesterday, where was the power to expel them? You might have declared, as was proposed, that their seats were vacant; and for that I voted; but you chose to treat the seats not as vacant, but as filled, and as filled by Mr. Hunter and Mr. Mason; and you expelled them as members of this Senate. Now, Mr. President, if you turn to the certificates of election presented by the gentlemen now alleged to be Senators from Virginia, you will find that the date is antecedent to the time when you expelled the former Senators from this body. If it be true that on yesterday morning Mr. Mason and Mr. Hunter were members of this body, I ask can you recognize any certificate of election of the two gentlemen who now appear and claim seats upon this floor, when it appears upon the face of those certificates that they were elected, not to fill an existing vacancy, but elected, in fact, before, according to your own judgment and according to your own vote, any such vacancy existed?

It is upon this legal question, and this question alone, that I base my objection to these gentlemen being sworn in, and advocate the reference of the credentials to the Committee on the Judiciary. It is not from any desire to see Mr. Mason and Mr. Hunter returned here, because, if they were to come here, or had come here yesterday morning, I would not have voted for them to have seats upon this floor; but it is, that the Senate of the United States—of which, to be sure, I am one of the youngest and one of the humblest members,—should act in this matter according to the Constitution, and (I say it without offense) preserve the consistency of its own record.

Mr. TRUMBULL. Mr. President—

Mr. BAYARD. Will the honorable Senator allow me to make a single suggestion?

Mr. TRUMBULL. Yes, sir.

Mr. BAYARD. Mr. President, I do not purpose to argue this question now, I consider it a very grave one, much graver on account of the question involved in the recognition of the condition of things that exist in Virginia and the organization of a separate State government on the part of a portion of the State. That is a grave question, in my judgment. Then there is the other objection, that the Senate, two days after this alleged election took place, still treated the offices as held by two other gentlemen, and expelled them, which admits that they were then members on the 11th day of July. I ask, how an appointment could be made to a vacancy before the expulsion of the other Senators?

Mr. TRUMBULL. Mr. President, I think that we should not "stick in the bark" as to dates here. I presume the Senator from Delaware was elected before the vacancy which he filled existed. There is scarcely a Senator here that was not elected in advance, before the office became vacant. I recollect well that the Senators from Minnesota were admitted to seats upon this floor who were elected long before the State of Minnesota was a member of the Union. Nearly every new State which has come into the Union has elected her Senators before the State was admitted.

Now, let me put a case. A few years ago this

country was engaged in a war with Mexico. Suppose that one of the Senators from Delaware, instead of being loyal and true to his country, had turned traitor and joined the Mexican army and fought against the United States, and the Legislature of Delaware had been in session, knowing the fact that one of their Senators in this body was fighting against this country in the armies of its enemies: must the Legislature of Delaware wait till the Congress of the United States assembles, and the Senate, by a formal resolution, expels that Senator? Would not the Legislature of Delaware proceed at once to elect a Senator, and when Congress did convene, and a resolution was offered to expel the traitor to his country, would it be said, because the State of Delaware acted before Congress had convened and expelled the traitor, that therefore the other election should go for nothing, and that her Legislature must be convened and a new election held?

Sir, the guilt and the turpitude of the men who once sat as Senators here is far greater than it would have been in the case I have supposed. They have joined in a fratricidal war against their country. They have not joined a foreign enemy, but they have undertaken to stir up a domestic war. I do not think there is any necessity for their waiting till the formal resolution of expulsion was passed here. Why, sir, these credentials recite the fact that the former Senators have withdrawn and abdicated; and when the expulsion takes place, it may well have reference to the time of their withdrawal and abdication.

Now, sir, we have the credentials here fair on their face. They purport to be the credentials of Senators elected by the old Commonwealth of Virginia, sent by a person purporting to be the Governor of Virginia, and under the great seal of the State. This appears to be fair. But Senators say, "Oh, well; but we know this is not the Legislature of Virginia; there is another Legislature, and there is another man who is Governor." Well, if you are going outside of these credentials to rely on the knowledge which you have of the condition of things in the State of Virginia, then you know that the old Governor of Virginia and the old Legislature are in rebellion against the country. They are rebels and traitors in arms against the Government, and are not to be recognized as the government of Virginia, but are to be recognized as enemies and traitors, whom the whole power of this Government is now put forth to subdue and bring into obedience to the Constitution and the laws; and I would to God that the power was used to bring them to obedience.

Now, sir, as I said, I am not for "sticking in the bark" about this matter. Let us take the condition of things as it is. Here is the State of Virginia in rebellion. If you are going outside to inquire after the fact, you will ascertain that a portion of the people of that State have risen in arms against the Government; another portion of the people of that State are loyal to the Union; and the loyal men of Virginia have elected a Legislature and seek representation in the Congress of the United States. They are entitled to representation here, and the enemies of the country are not.

I think there is no necessity for referring this matter to the committee, unless there are some facts to be inquired into. On its face, this purports to be an election of Senators from the Commonwealth of Virginia. There is no objection to the form of it, and I do not know that any fact has been suggested by the Senator from Delaware that is to be inquired into. What fact does he propose to inquire into? If he goes to his general knowledge, is he not satisfied that what was the old Legislature of Virginia and its former Governor are now in rebellion against the Government? And will he recognize them as having any authority to send Senators here? I presume not. And if Virginia is in the Union, her loyal men and not her traitors have a right to be represented here. I trust, sir, that the Senators will be sworn in.

Mr. BAYARD. Mr. President, I do not mean to debate this question at all, because it comes upon me quite by surprise; but I confess I did not suppose it possible (though I saw in the papers a telegraphic announcement of the appointment of certain gentlemen by the members of what was called the Legislature of Virginia) that the Senate of the United States, especially with-

out a reference to a committee, or an investigation, would, in the present state of affairs, admit these gentlemen to seats. I know, however, that the majority exists in this Senate; and, if it is the determination of those to whom I stand opposed to admit these gentlemen as representing the State of Virginia, any struggle on my part would be vain. But as regards the remark of the honorable Senator from Illinois, in which he chooses to assume the utterly impossible supposition, of any Senator from Delaware, while holding the office of Senator from that State, committing treason against his country, I will answer it. Even if the fact occurred, the people of Delaware are a law-abiding people, and they would not seek to put down rebellion or punish treason except by law; and the Legislature of Delaware, the undoubted Legislature, if in session, if the fact were communicated to it that one of its Senators had abandoned the State, and gone into the southern revolution, would know that the authority to act upon that, previous to the expiration of his term, was in the Senate of the United States. They would not assume that the laws gave it to them. The Constitution does not give it to them. The power to declare the seat vacant in consequence of the act of the party, is in this body. They would require judicial evidence of his conviction for treason in order to vacate his seat. They would know that they had no authority to impeach him; the authority rests in the Senate of the United States. Therefore, in the case supposed, whatever may be the notions of law which exist in the State of the honorable Senator from Illinois, I answer him that, much as the State of Delaware would disapprove of such conduct, no Legislature of hers would so violate the Constitution of the United States as to undertake to make an election until the Senate of the United States had vacated the seat.

As regards the question of vacancy, the honorable Senator cannot escape from the plain, palpable distinction. Where has he ever known a case, in the whole history of this Government, where an election to a broken term was made by a Legislature before the vacancy existed? I understand very well that the Legislatures elect in anticipation of a term that is yet to be commenced. That is familiar with all the States. In those cases the Legislature elect antecedent to the commencement of the term for the whole six years; but under the construction of the Constitution which has obtained, it must be the Legislature in power last elected before the commencement of the term. In no case that I have ever heard of has the Legislature assumed a vacancy and undertaken to fill it before it actually existed.

Now, sir, according to your own decision, on the 11th day of this month these seats were full. If you had not pleased to expel, if the vote had failed for the want of two thirds, on what principle, regarding constitutional law, could you permit an election made on the 9th of July to take effect, and the persons elected to take possession of these seats, even though it were done by the legal Legislature of the State of Virginia? I put a stronger case, even. Suppose that the State of Virginia had not been among the revolting States, and one of her Senators had gone to another State and joined in the revolt of that State: I say that the State of Virginia would not have undertaken to usurp the powers that belong to Congress, in reference to officers of the United States—the right of impeachment in the House of Representatives, the right of expulsion in the Senate. The Senator not being a State officer, they would not have undertaken to declare that the act of the party, however guilty, vacated his seat, because they had no jurisdiction to do so. There can be no doubt about that, even supposing the Legislature to be the unquestioned Legislature of the State. Until Congress had acted, either by expulsion or impeachment, no Legislature of Virginia, if the term had not expired, would have undertaken the unconstitutional act of appointing to his place, although they might have passed a resolution of censure. That is my view of it.

As to the other question, it is far graver, and I am not prepared to go into it now. In my judgment, it is an utter abandonment of the whole form of your Government; it is, by the action of the Senate, recognizing insurrection in a State, for the purpose of overthrowing the government of the State, by a very small minority of its people.

I have merely asked, though, that this subject should be referred to the Judiciary Committee. I thought it too grave to be decided at once in this way. I did not desire even to open my lips on the questions involved. I still think them grave. I shall pursue the argument no further. Of course, it is for the Senate to decide; but I persist in my motion.

Mr. HALE. I do not want to occupy the time of the Senate; but there is a single remark that fell from the Senator from Delaware [Mr. BAYARD] of which I feel bound to take some notice. He says that the recognition of these gentlemen under the commission that they bear will be recognizing insurrection in a State. I deny it, sir; I deny it utterly. I say that a greater perversion of terms never could be used. It is because we will not recognize insurrection in a State, that we admit these gentlemen. The part of the State to which the Senator alludes are themselves in a state of insurrection, and it becomes this Government to recognize the loyal and the true men that still cling to the Union and support the Constitution, and call upon this Government to maintain its constitutional obligations and put down insurrection. Talk about precedents, sir! Why, the whole thing is new. These States have parted so far as they could, or the men under whose control they are have parted from their constitutional obligations. There is no precedent, because the world never saw such a state of things.

I hope that the Senate will not hesitate. Sir, this is no question of form, no question of ceremony; it is a question of life or death with this Republic, and with this Government. The men that are in arms against you are in arms against your very existence. The idea of your national life a day after you yield to their position, is absurd and inconsistent. Sir, this Government had borne and forborne until your forbearance was construed into pusillanimity; and during the last session of Congress the most insulting language that ever fell from human lips was uttered in reference to this very General Government; and the gentlemen for whom so much regard is now felt and expressed, sat by, counseled and advised with the man who told us that we had been smitten a staggering blow in the face that we dared not resent.

Yes, sir, that is exactly the way this Government has been treated; and it has come to the very last point, where it must either vindicate its existence by all the force that it commands, or it must go out in national disgrace forever. This is the day; this is the hour; this is the time; this is the experiment. Sir, it is the culmination of the great contest that has been going on through all time between despotism on the one side, and constitutional government and liberty on the other. That is the issue; and we are fighting the battle of all past ages and all coming generations. They all culminated in the experiment that we are making to-day. Sir, this war has been forced upon the country. Things went on until the last question that was left to it was to submit ignominiously, or, with all the energy that it could command, send its thrilling voice out to the millions that were subject to its control, and that—in their folly, I had almost said—believed they had a Government to defend them. And, sir, they have rallied as never a people rallied before; and I tell you, Senators, if you hesitate to meet the issue, to meet it in all its aspects, in all its contingencies here on this floor, on the field of battle, and every where, you are unworthy of the day and the hour in which God Almighty has permitted you to enact the part that He has assigned you in the great chapter of human destiny.

I am glad that I was born about the time I was, so that my lines fall here to-day. I am glad that my destiny is linked in the great contest that has been coming, and coming, and coming with every successive generation, and every successive experiment that the world has ever made in all the past. I feel to-day that the blood which has been shed on every battle-field is at issue in the contest that we are now carrying on. I feel that the blood of every patriot who has poured out his life on the scaffold, the worth of it and the effect of it are all in issue; and I feel, sir, that if we are faithful to the hour; faithful to the crisis; faithful to the duty; God will pour out on this nation the blessings that have been evoked by the prayers of the pious in all time past. It is no holiday contest in which

we are engaged. It is not the time to hunt up justices of the peace records to find precedents of form as to how we shall go along. We must accept the contest as it has come, anomalous in its character, destitute of any precedents in the past; but, I trust in God, destined to shed infinite light on the future. And, sir, at such a time, at such a day, and in such a contest, the only question I ask of any man is, "is your heart right; if it be, give me your hand; join with us in this great struggle;" and if there are loyal men in Virginia that are determined to stand by the cause of civil liberty in this hour of her peril, let them rally; let them form a constitutional Government as they best may; and let this Federal Government pour them out men and money if necessary to sustain them in their contest.

While I am up, I want to say another thing. The people of this country are exceedingly impatient in the manner in which this thing is carried on; and I do not know that that impatience will not be turned to indignation, if they find that when the loyal State of Virginia claimed her place here, the Senate hesitated and deliberated whether to admit them, lest it might conflict with some of the formal rights of the men whom we expelled yesterday or the day before. I will, on this occasion, repeat the emphatic language of a Senator whom I always used to listen to with pleasure—I have no doubt more pleasure than you are now listening to me—the late Senator from Missouri, (Mr. Benton.) Some one applied to him to retract a position which he had taken. "Sir," said he, "I take no backward step." I want that to be the motto of this Administration; I want that to be the motto of the Republican party in all its organization; and if we cannot put down this rebellion, let them put us down. The day for compromise has gone by. Sir, we have lived on compromises. It was our daily food constantly. No evil came up but a compromise was proposed, and the nature of it was just this: the party that is now in rebellion against the Government took everything that they could take and gave nothing back, and they called that a compromise! I think, for one, that that day has gone by. I have no compromise to offer, except the Constitution of the United States. It is good enough for me.

I have been led into these remarks, sir, not all of them exactly pertinent to the very question, but because I wanted this occasion to say some things in answer to other things that I have heard dropped upon this floor. I hope there will be no reference of this question. I hope that these gentlemen will be treated just exactly as my friend from Iowa [Mr. HARLAN] was treated when he came here. There was an objection raised to his admission, but the Senate swore him in; and, I believe, it was not until some twelve months afterwards that an investigation was had, and a party report was promulgated against him; and he was sent home.

But, sir, the Legislature of his State sent him back. The same course, as is suggested to me by my friend, was adopted in regard to another case which—I do not want to offend anybody's feelings or sensibilities—as those who remember anything about the humble course I took know, was one that I thought had not half the showing on the face of it that this case has; nothing like it. I refer to the case of the election of Senators from Indiana. It is well known that it was the opinion of a large body of the Senate—not of a majority, I grant—that those gentlemen had not even a *prima facie* right to a seat on this floor; but the Senate, I think in accordance with its almost universal practice, admitted them, swore them in, and then committed the case to the Committee on the Judiciary.

I hope the same measure of justice that was meted out to Iowa and to Indiana will be meted out to Virginia.

Mr. LATHAM. Mr. President—

Mr. BAYARD. Will the Senator allow me to say one word? I have not considered this matter before. I think it the gravest subject which can engage our attention. I think the admission of these gentlemen to seats, under the authority under which they come, is so grave a violation of the Constitution of the United States, that it will be the first act in subversion of your Government, which you say you are contending to preserve.

Mr. LATHAM. Mr. President, on my way

to resume my duties in this body, I learned of the action in western Virginia, and I formed a very erroneous judgment relative to the steps there taken. I at first supposed, from the limited information to which I had access, that the western portion of Virginia was seceding from the eastern, and setting up a distinct and independent government; and I came here prepared, if that was the case, to put my seal of condemnation on any such movement, as I had heretofore done relative to the movements of other southern States. I am determined, so far as I am concerned, to recognize in no manner, shape, or form, what I regard as the most damnable heresy that this country or any other could be afflicted with—the doctrine of secession. Such, however, I am glad to say, is not the fact in this case. The government which is represented on this floor by these gentlemen, has the same constitution of the Commonwealth of Virginia that that people have always had. The members of the Legislature who sent them here were elected on the 23d day of May, in accordance with the old law of Virginia; and if representatives from Accomac, Richmond, or any other portion of eastern Virginia, see fit to go to western Virginia to the Legislature that is there convened in accordance with the constitution and laws of the State of Virginia, and swear fealty to the Government of the United States and the Commonwealth of Virginia, they are entitled to seats in that body.

More than this, sir; the fact exists, without stopping to argue how it does exist, that there are vacancies upon this floor upon the part of the Senators from that State. You have these seats vacant. Two gentlemen appear at your bar, and present a certificate in due form; just exactly such a certificate as has been presented for three quarters of a century, admitting Senators upon this floor. It bears the great seal of the Commonwealth of Virginia, and you are bound, in accordance with all rules and precedents, to admit them to seats, in the absence of Senators from their State. If there is any question of propriety involved in the case, the Senator from Delaware, after they have taken their seats, can move to refer the question to the Judiciary, or any other proper committee, who can then inquire into all the facts connected with this election; but in the absence of any persons appearing to contest their right, and in the face of vacancies, you are bound, out of respect to the great seal of the Commonwealth of Virginia, to admit them upon this floor.

Under this view, I trust sincerely that the Senate will allow them to be sworn in, and take their seats on this floor; and then, if there is any question, let it be referred to the Committee on the Judiciary, to investigate into the facts, and let the whole history, and the manner in which they were allowed on this floor as members, go upon the record.

Mr. JOHNSON, of Tennessee. I will answer the question of the Senator from Delaware [Mr. SAULSBURY] by asking another question. Because the Senate, on the 11th of this month, voted for a resolution expelling certain Senators, he assumes the fact to be that no vacancy existed prior to that time. I want to ask the Senator the simple question, if the vacancy did not exist prior to that time?

Mr. SAULSBURY. If the Senator will allow me, I will answer him. In my judgment, the Senate had a right to treat the act of those Senators when they withdrew, if they chose so to treat it, as a vacancy. I voted the day before yesterday morning for a resolution declaring the seats vacant; I would have voted for a resolution declaring the seats vacant from the moment those former Senators withdrew from the Senate; but my opinion did not seem to accord with that of a majority of the Senate, and they treated the senatorial delegation from Virginia as being full. They, by solemn vote, expelled them from their seats upon this floor. I presume, if the Senate of the United States had considered that the seats were vacant before that time, they would not have assumed to expel men from this body who were not at the time members of the body. What I meant to say was this: that the Senate themselves have passed upon this question; the Senate have said that on Thursday morning there was no vacancy from the State of Virginia; and the Senate having said so, having decided so, I think it would be consistent for the Senate to adhere to

that position, or else it should reconsider the proceedings of that day, and adopt a resolution declaring the seats vacant from the time the Senators withdrew.

One word further, if the gentleman will indulge me, and I shall not detain the Senate longer. I wish to be distinctly understood, that in taking this position it has not been done from any sympathy for the Senators from Virginia, or with that portion of Virginia who have assumed to secede from the Union; because I believe with the Senator from California, that if there ever was a damnable doctrine, and one which is leading to the most dangerous and alarming consequences in this country, it is the doctrine of secession; and I, like him, will give no vote here or elsewhere to countenance it under any circumstances. At the same time, sir, I choose to make the objection I do, because I honestly believe that from the action of the Senate, and by the judgment of the Senate, they are estopped from saying that there was a vacancy in their body from Virginia prior to Thursday last.

Mr. JOHNSON, of Tennessee. It seems that the Senator and myself agree in the substance of what we have stated to the Senate. I understand him to admit the existence of the fact of a vacancy in the Senate of the United States from Virginia prior to the 11th of July, when the Senate passed the resolution to which he refers. If that fact exists, as it does, a mere reconsideration of the resolution now would not affect it one way or the other; for the passage of the resolution on the 11th did not do away with the fact.

Mr. SAULSBURY. Will my friend allow me a moment? I said that the Senate, being the judges of the election and qualification of their own members, had the right to treat the seats of the former Senators from Virginia as vacant from the time they withdrew; and if they had so treated it there would have been a vacancy.

Mr. JOHNSON, of Tennessee. Then the right of the Senate to treat it as a vacancy must grow out of the existence of the vacancy itself, which proves conclusively that the vacancy existed, and substantially commits the gentleman himself to the existence of a vacancy. But the question is not whether the Senate proceeds on the idea of a vacancy or not. A Senator, in tendering his resignation, frequently tenders it to the Legislature. It is not necessary to tender it to the Senate. It is for the Legislature of the State to determine that fact; and the Legislature of the Commonwealth of Virginia now proceed upon the existence of the fact. On the 9th day of July they assumed that vacancies existed in the Senate of the United States, occasioned by the withdrawal and abdication of R. M. T. Hunter and James M. Mason from the Senate of the United States. Is there a Senator upon this floor, of any party, who does not admit the existence of that fact? It is for the Legislature to determine. They have assumed what is true, that vacancies existed; and assuming that to be so, they have taken the regular steps, and have filled those vacancies. They have not been, as has been indicated here, elected for regular terms; but the Legislature have proceeded to fill vacancies which existed at the time of the election. That is the fact. If that fact did not exist, the reconsideration of the resolution adopted by this body would not bring it into existence; and the mere fact of the Senate passing a resolution, does not do away with the existence of the fact which the Legislature of the State of Virginia assumed to exist. There can be no question about that.

The case is clear in another point of view. According to the custom and usage of the Senate, here is *prima facie* evidence that an election has taken place, which entitles the members elect to appear and be qualified and take their seats; and then, in the event that any contest arises, it is competent for the Senate to refer it to the Committee on the Judiciary, or to any other committee, in its discretion, to ascertain all that may be necessary of the circumstances appertaining to the election.

I think, sir, there can be no question as to the existence of the fact of vacancies, and surely there can be none as to the power of the Legislature to fill the vacancies. That has been done. It is competent, under the Constitution, for each House constituting the Congress of the United States to judge of the elections, returns, and qualifications

of its members. That is a clear, general power; and, according to the uniform construction of this constitutional provision, it is our duty, upon the presentation of these certificates, no contest being made, to permit the Senators to be qualified and take their seats as members of this body.

The Senator from Illinois has referred to some cases that have heretofore occurred. Let me refer to some others. It is not long since Oregon was admitted as a State. Do we not remember that before her admission two gentlemen presented themselves here, were in the lobbies, were inside of the Senate, contending for seats as Senators of a State that was not then in the Union? If we were to construe the Constitution very strictly, or wanted to make an *ad captivum* argument, we might say that an election of Senators which took place prior to the admission of a State into the Union was not valid under the Constitution of the United States; but under the Constitution, the Senate having the general power to judge of the elections, returns, and qualifications of its members, they were permitted to take seats, notwithstanding they were elected prior to the admission of the State into the Union. How was it with the State of California? Her Senators were here for weeks anxiously waiting, impatiently waiting, for the Congress of the United States to admit California as a State. The election took place; they were here before the State was even in the Union; yet, dealing with the case under the general power of the Constitution, this body recognized, and admitted to seats here, Senators who had been elected prior to the admission of California into the Union.

Upon these precedents I might safely rely if the cases were parallel; but they are not parallel. Is there the slightest resemblance between the cases? I am not questioning the power in the one case, while I am contending for it in the other. I am merely contending that these precedents are much stronger than the case now before the Senate.

It seems to me that there is not much in what the Senator from Delaware [Mr. SAULSBURY] said as to the action of the Senate. The great fact exists. The action of the Senate one way or the other does not do away with the fact. There were vacancies here from the State of Virginia. The Commonwealth of Virginia, the loyal portion of it acting under the Constitution and the law, have proceeded to fill those vacancies, and have done it; and the gentlemen so elected not only have the right to take their seats, but it is the constitutional duty of this body, upon the presentation of this paper, regular in every particular, to admit them. This ought to be allowed simply as a matter of right; and I think the Senate and the other branch of Congress, in cases of this kind, should be inclined, even where there is doubt, to put the most liberal construction; and to give their action the largest margin it is possible to give. Will the United States stand by and see a loyal portion of a State, maintaining all the authorities, prevented from having a fair and equal participation in the Government, and to that extent favor and tolerate and sanction open rebellion and encourage insurrection in another portion of the same State? If there is a State government in existence as a part of this Confederacy, and that State government has sent Senators here with certificates made out in the usual and regular form, it is the duty of the Government to come up to the relief of the State of Virginia, the loyal portion of it, and take it by the hand, and sustain it against rebels and traitors who are trying to overthrow it and to overturn the Government. It is our duty, I repeat again, our constitutional duty, to sanction and sustain, as far as it is possible, the State government in making the great move that she has made, which I conscientiously believe will result in the overthrow of treachery and treason to the people of the United States. We should give them all the aid we can; we should stand by the loyal men; we should give them encouragement; we should develop the Union sentiment, so that it may, if possible, arrest and crush out a set of usurpers who have sprung up in the land, and are trying to override and tread beneath their feet the great majority of the people.

I say it is the duty of the Senate and the duty of the House of Representatives to stand by these loyal men, to stand by Virginia as long as she is loyal to the Constitution, to stand by the Union

sentiment, to stand by that sentiment in the State which is trying to sustain and will in the end sustain the supremacy of the Constitution and the laws. To refer the case to the committee without a single fact being presented, without one single reason being given, when there is no real objection made to these Senators taking their seats, strikes me as very singular. The form of the credentials is regular; they come from an organized Legislature loyal to the Government; the vacancies exist; and yet it is said these credentials must be referred. The session is nearly at a close; it will come to a close in a few days; and yet these gentlemen are to be kept out of their seats by the proposed reference of the case. Is any reason given for it? Is there any fact to be investigated? What is it for but delay? What is it for but to impede and to embarrass the Union sentiment that is rising and growing throughout the land? Whether it is intended for that or not, that is the effect it is calculated to have.

I trust and hope that the Senate will without hesitancy permit the Senators to be qualified and take their seats with their compeers in this body to battle with us for the preservation and for the existence of the Government, and against those who are making war upon it, and in the end help us to crush out a set of traitors who are attempting to overthrow the Government and all that is sacred and dear to man.

Mr. COLLAMER. It seems, Mr. President, that objections are taken to the reception, as members of this body, of the gentlemen who have presented their credentials. I think it will be difficult to find a precedent in the history of this body, by which men who presented papers *prima facie* good were not allowed to take their seats. I think the thing never did happen. They have been sometimes deprived of those seats afterwards, on investigation, but I have never known them rejected at first. So much for precedent.

There are two difficulties which are suggested in this case. First, it is said that this is a certificate coming from a new government of Virginia, a new organization separated from the rest of the State, but acting for the State as a State. This is in the nature of a judicial proceeding; we are now judging of the qualification of our members. It is not at all an uncommon thing in our highest tribunals, that points arise in the investigation of cases, where the court are constrained to say "that is a political question; with that the courts have nothing to do." For instance: whether a foreign Government recently commenced has become an independent people, whether in court it is to be treated and considered as a nation, is not a point on which the court can decide. That is a political question; and if the executive head of the Government has received ministers from that Power, recognized it as a Power on earth, the courts cannot go into the question whether he did it right or did it wrong. It is a matter of political action and the political power is what settles it, and we cannot examine into it any more.

In analogy to that, in this judicial proceeding, must we not be governed by the fact that the government of Virginia that has executed these papers, and sent them to us, is recognized by our Executive? They have called on him for militia, and have received militia from him. He recognizes them as the government of Virginia. It is a political question; it is settled. There is no occasion for our inquiring further into that. We, as a judicial body, on this question, have nothing to do with that. Here is the executive of that State, recognized by the Executive of this Government; there is the end of that subject. Whether a course of proceedings might be instituted among us to call on our Executive to know whether he did this rightfully or not, is altogether a different affair. They are *de facto* the Government recognized by us. We have no more to do with that.

The other point which gentlemen make is, that these certificates, on the face of them, show that this election was made before the resolution was passed in this body expelling the Senators from that State; and this the Senator from Delaware insists amounts to an inconsistency in our action, if we admit them. To my mind, it does not.

The substance of that resolution, and the undisguised true character of it, when it is fairly examined and reduced to plain and unqualified English, is, that we have declared those Senators guilty of treason. That is the amount of it. They

have adhered to the enemies of the United States; they have withdrawn themselves from our body, and have refused to sustain the Government. In plain, direct English, it amounts to declaring them guilty of treason, so far as we can do so; and in judging of the associations of our own body, we must pass sometimes upon a subject of that kind, whether murder, treason, or anything else. To be sure, it does not convict the person so that he may be hung; but it does convict him for all the purposes of our action.

Now, what is the common-law effect of treason? It is clearly that, when a conviction of treason takes place, it attains the blood and works a forfeiture from the time the act was committed, not the time the conviction was passed. Now, sir, if the recitals contained in the resolution which we passed be fairly examined, it will be found that they make it out that the men named in it were enemies to this Government; and it takes effect from the time that that was manifested in the way the resolution states; that is, at the commencement of this session. That is my view of that. That is an application of the analogies of law which relate to a subject of this kind.

In the next place, Mr. President, on that topic I have this to say: we treat this as the State of Virginia, for the reason I have already urged, if it needed any reason. If the State of Virginia—I care not when and how—has sent us here two new Senators, and the State of Virginia makes no objection to our act, and is content with it, and the seats are vacant, as we now have declared, I should not cavil much at allowing them to take their seats; certainly not until we hear from the State of Virginia that she is in some way discontented. I think she has a right to be heard here, and to send men here; and as long as she is contented with them, we ought to keep them here.

Mr. POWELL. I do not propose, sir, to enter into this discussion. I merely wish to enter my protest against this proceeding. My friend from California says that these gentlemen were chosen by a Legislature elected in accordance with the Constitution and laws of the State of Virginia. Is he not aware, is it not a fact judicially known to this Senate, that there is another person who was elected Governor of the Commonwealth of Virginia? I think it is a fact of public notoriety to the Senate, that the body assuming to be the Legislature of Virginia, which elected these gentlemen as Senators, was composed of gentlemen elected to that body from perhaps less than a third or a fourth of the State of Virginia. There are, I believe, more than one hundred and fifty counties in that Commonwealth, and I have seen no statement that more than thirty or forty counties of that State were represented in the legislative body that elected the gentlemen whose certificates have been presented. These facts, I think, all judicially know; and consequently, if you permit these gentlemen to take their seats here, you overthrow the Constitution and our form of government.

My friend from New Hampshire tells us that this is a contest between despotism and constitutional liberty. Sir, so far as I have witnessed the action of the Executive, and, I regret to say, some of the acts of this body, it does not seem to me that the Constitution is much regarded. This proceeding is, in my judgment, an overthrow of the Constitution and the forms of our Government. As I said the other day, we have but little left save the Constitution, and I invoke Senators to preserve that.

I do not rise for the purpose of discussing this question. I know that nothing that I could say would have any influence upon Senators opposed to me here; but I think it my duty to make a solemn protest against this proceeding. I shall simply content myself with calling for the yeas and nays on this question of reference. I think this subject should be referred, and should be investigated by the Committee on the Judiciary, and that they should report all the facts and the law arising in reference to it, and then the Senate could act with full information on this, to my mind, most grave and important subject.

The VICE PRESIDENT. Upon the question of reference the yeas and nays are demanded.

The yeas and nays were ordered.

Mr. TRUMBULL. I rise merely to call the attention of the Senate to one or two precedents as to whether a vacancy could be recognized by the

State authority. It will be perceived that these credentials state that Mr. Willey is chosen a Senator to fill the vacancy which has happened by the withdrawal and abdication of James M. Mason. Now, I find, in looking over the volume of Contested Elections, that in 1790, "John Walker, of Virginia, appointed by the Governor in the place of John Mason, who had refused to act, produced his credentials and was admitted to his seat" in the Senate. There the Governor appointed a Senator in the place of one who had refused to act, and the appointee was admitted to the seat. The Senator from Delaware [Mr. SAULSBURY] says these persons have refused to act, but his trouble is that we expelled them last Thursday. We had refused to act before that day; but they need not wait in the State of Virginia till the Senate acts. They could recognize the vacancy. The Governor of Virginia, in 1790, recognized the vacancy occasioned by the refusal to act, and appointed a Senator who submitted his credentials and was sworn in as a member.

Mr. SAULSBURY. If the Senator from Illinois will allow me, the case to which he now refers, from Virginia, was a case where the person appointed had never acted as a Senator; had never been a member of this body. The appointment was tendered to him—that is what I gather from what the Senator reads—and he refused to accept it. He never had been a Senator, and therefore there was no vacancy, so far as he was concerned. He had never been a Senator, and never had a seat to vacate.

Mr. TRUMBULL. Mr. President, it is very clear that, if that were so, the Governor would have had no right to make the appointment. It is only in cases of vacancy that he can appoint; and if the office was never filled, the Executive could not appoint at all.

Mr. SAULSBURY. Will the Senator look at the record and see?

Mr. TRUMBULL. I have read the record to the Senator, and if he had paid attention he would have heard it. Here it is:

"APRIL 26, 1790. John Walker, of Virginia, appointed by the Governor in the place of John Mason, who had refused to act, produced his credentials, and was admitted to his seat."

The Governor of Virginia could not appoint, except in a case where there was a vacancy. Another case will be found which arose in the State of Maryland, in 1791. In that case Mr. Pinckney, who was a member of the House of Representatives, resigned his seat. There is no distinct evidence of the resignation, however; but the Governor of Maryland ordered an election, and a Mr. Mercer was elected. Mr. Giles objected to Mr. Mercer taking his seat, upon this ground. He said:

"Two questions occurred in this business; the one, whether a person appointed to represent his State in Congress has the power of resignation; the other, whether that appointment can be resigned to the Executive of a State government, and whether the Executive be authorized to accept the resignation, and issue a writ for a new election. If the report were received, as it then stood, he observed that it would authorize the Executive of every State to judge of all vacancies, and of the circumstances that may cause vacancies. He hoped the House would take time to consider the subject."

"Mr. SNEY observed that this was no new case; that there were members sitting in the House who had been elected in lieu of others who had resigned; he adverted to the inconvenience that must ensue to the State of Maryland from the delay, as that State would be deprived of the voice and support of one of her members. He thought it a new and very strange declaration to say that a member had not a right to resign. Such a doctrine must affect the privilege of every free citizen."

On motion, however, the House came to the following resolution:

"Resolved, That John F. Mercer is entitled to take his seat in this House as one of the Representatives from the State of Maryland."

Thereby deciding that the Governor of Maryland could decide whether there was a vacancy which he could fill. The House of Representatives had not acted upon it. Now, the Legislature of the State of Virginia could decide whether there was a vacancy in that State; whether they had Senators or not. They did decide, on the 9th day of the present month, it is said. We decided that the persons who formerly held the seats were guilty of crimes which justified their expulsion from the Senate, on Thursday. But, sir, that decision has relation, as has been well said by the Senator from Vermont, to the time when they committed the criminal act. The

State of Virginia acted upon them before we did. It is not necessary, in case of a death, that the Senate of the United States should meet, and have official knowledge of the death, and communicate that fact to the Governor of a State, and notify him that a vacancy exists, before the Governor of the State can take official notice of the vacancy, and fill it; or in case of the death of a member of the House of Representatives, the Governor need not wait until Congress convenes, and the Speaker informs him of the vacancy. Neither need the Legislature of Virginia, when her Senators had turned traitors, wait until the Senate of the United States should declare it; and that they were unworthy of seats here; but they had a right to act upon the vacancy, and fill it, which they have done. The fact that we did not take cognizance of the matter until after they acted cannot invalidate an election which was valid when it was made, even according to the reasoning of the Senator from Delaware; for he says the seats were vacant at that time, and if we had only voted yesterday that they were vacant, why then these persons would be entitled to their seats here. Well, because we voted differently, and expelled the other Senators—

Mr. BAYARD. The honorable Senator does not refer to me?

Mr. TRUMBULL. I am referring to the Senator's colleague.

Mr. SAULSBURY. Allow me to correct the Senator. I did not say that then they would be entitled; for I never noticed or referred to the other question behind this question of vacancy. What I said was this: that the Senate of the United States being the judges of the election and qualifications of their own members, day before yesterday, for the first time, passed as judges upon the fact whether Mr. Mason and Mr. Hunter were members of this body; and, by passing a resolution to expel them on that day from the Senate, they recognized them then as members of the Senate. What I said was that, if the Senate had chosen previously to Thursday last to declare these seats vacant, they could have done so under the same power of being judges of the qualifications and election of their own members.

Mr. TRUMBULL. I understood the Senator to say—and I believe he did say—that he would have voted to declare their seats vacant. I believe he did vote on Thursday for such an amendment.

Mr. SAULSBURY. I did.

Mr. TRUMBULL. Then, the Senator stands in this position before the country: he voted that their seats were vacant. If they were vacant, then the Legislature of Virginia had a right to fill them. There is no question about that. As to whether this body was the Legislature or not, is not the point that the Senator from Delaware has made. He is sticking us to the time. He wants to send these Senators back to be elected over again to-morrow. The great point which he thinks is to break up the Government, and which is dangerous to the liberties of the country, is, that they were elected the day before yesterday, instead of being elected to-day. That is his great point.

Mr. SAULSBURY. If the Senator will allow me—

The VICE PRESIDENT. Does the Senator from Illinois give way?

Mr. TRUMBULL. After I get through, the Senator can have an opportunity, if he wishes, to reiterate his statement. He voted that the seats were vacant; that the vacancies existed. If the vacancies existed, the legitimate Legislature had the right to fill them. He does not deny that, does he? Then, so far as his point is concerned, it amounts to nothing but simply this: that the Senate has voted to expel them; but, because it did not vote to expel them before, when they deserved it, therefore these gentlemen, who have been elected Senators, must go back and be re-elected again, although the cause of the expulsion of the old Senators existed, and although the Legislature of Virginia, the body to elect Senators, determined that they had abdicated their seats.

Mr. SAULSBURY. Only one word more, sir, for the purpose of putting myself right. I hope the Senator from Illinois did not wish to put me in any other position than that which I occupy. There have been two grounds of objection made in this body to these gentlemen taking their seats without a reference of their credentials to the Committee on the Judiciary; for that is the im-

mediate question before the Senate, whether the credentials shall be referred to the Committee on the Judiciary. One of the points is, that the Senate of the United States having declared, on Thursday, the expulsion of the former Senators from this body, by that vote recognized that on that day the two former Senators were members of this body. There was another ground of objection raised to which I did not refer, and to which I do not choose now to refer, and that was the power of this new Legislature of Virginia to elect Senators upon this floor.

The Senator from Illinois seems to think that he has placed me in a wonderfully inconsistent attitude before the country. His speech, or his attempt at that, would have been very well, if I had had the honor of being an opposing candidate before some popular assemblage for popular suffrage. It falls far short, however, of an argument addressed to cool-headed, clear-headed men, upon questions of law. He seems to think that because I voted the other day to declare the seats vacant, therefore I had declared that they were vacant before that day. Does the fact that I voted on Thursday to declare that the seats were vacant, establish the fact that I voted they were vacant before that day? Now, sir, had the Senator offered a resolution on the first day of this session, or the day after Mr. Mason and Mr. Hunter withdrew from this body, declaring their seats vacant, and I been in this body, I would certainly have voted for it. Why would I have voted for it? Because as one member of this body—which body has the right to decide, as I said before, upon the election and qualifications of its own members—I should have the right so to vote. But they did not raise the question as to whether Mr. Mason and Mr. Hunter were members of this body until Wednesday. True, I voted on Thursday to declare the seats vacant. The gentlemen on the other side voted not to declare them vacant. Did they mean by that to say that they were not vacant? No; they chose another mode. They chose to vote to expel them. As to the propriety of expulsion, I have only to say, that those Senators ought not, if they had appeared here on Thursday, to have been allowed to take their seats, and the Senate, acting in its capacity of judging whether its members had committed such offenses as to preclude them from a seat on this floor, would have the right to say that they should not take their seats; and I would have so voted, because they now adhere to a State which is in rebellion, as I hold, to the Government of the United States.

I think, therefore, there is no inconsistency at all in my record; but that there is an inconsistency in the record of the Senator from Illinois, who on Thursday treated these seats as existing, and these gentlemen as members of the body, and voted to expel them. What does he say? That that expulsion may have reference back to some antecedent time. Then, sir, according to the logic of the Senator from Illinois, you can expel a man from this body who had ceased to be a member twenty years ago, and say it related back to that time. That is the Senator's reasoning upon this subject, and as far as I am concerned, he is perfectly welcome to whatever *calad* and renown such a mode of argumentation may give him before the country.

In conclusion, Mr. President, I have only to say, that this is a judicial question, as the distinguished Senator from Vermont has said, and a great deal has been said upon it much more appropriate to another theater and upon a different subject. This is a legal, constitutional question. It is not a question to excite popular feeling. It is not a question in the discussion of which these galleries, or the multitude of the great American people, must be addressed. What is the point before the court? Confine your argument to that. I protest against any inference being drawn from what I have said in the discussion of a constitutional question, that I favor the right of the former Senators to seats upon this floor. I declare before God and man, that had they appeared here at the opening of this session, much as I esteem one of those gentlemen, and as kindly as he treated me as a member of this body, I would not have voted them permission to take their seats on this floor; and I never will vote for any other man who has withdrawn from this body and taken part against his Government, to return to be a member of the body, until that sin has been purged.

Mr. BAYARD. Mr. President, I see, at least I fear, with no disrespect to the Senate, that the consideration of the grave question involved in the admission of those gentlemen to the seats on this floor which they claim under these certificates is about to be disposed of now by the majority of the Senate, although I think it would be wise that the regular course should be taken in regard to it. I shall therefore, though entirely unprepared, endeavor to state my views upon it distinctly but briefly; for I do not mean, inasmuch as it is the determination of the majority of the Senate to settle this question now, to detain them.

There are two questions involved in this matter. The minor one, and far the minor one, is, whether these seats—without reference at all to the much graver question—were vacant when this election took place, supposing the body making the election to be the lawful Legislature of Virginia after the vacancy occurred in the body. Now, sir, what is the question there? It is very simple. A Senator of the United States is elected for a fixed term of six years. He can be removed in but two ways against his will. He may resign at any time; and his resignation is made to the Governor of his State. The act of resignation vacates the seat in itself. He may die. Death vacates the seat, and the Governor can appoint if the Legislature is not in session; but no Legislature of a State, no Governor of a State, can undertake to terminate his office during the term for which he is elected by any action of theirs. Though elected by the Legislature, he is not within their control as regards his office. The control over that office is in the Senate of the United States. The Senate may expel a member. If the House of Representatives impeach him, the Senate may judicially condemn him, and so vacate his office; but the seat is not vacant without resignation, without death, without expulsion, or without a verdict according to the judgment of the Senate vacating the seat under the result of an impeachment.

Sir, nothing of this kind has happened in this case; but the Senate of the United States, on the 11th day of this month, did vacate the seats by expelling those members from the body. I have no doubt of the right of the Senate to vacate the seats by their order, but the Senate alone could do it. On what authority or principle could the Legislature of Virginia, supposing it to be a perfectly valid Legislature—supposing it to be a legal Legislature, which we were bound to recognize—undertake, in anticipation of such an act, before the act had been taken, to elect Senators when there were Senators still having a right to their seats, though those Senators might not be present in this body; though those Senators might be charged with crime of any character? It is not for the Legislature to determine that the charge of crime constitutes a vacating of the seat. The Senate alone can undertake to determine that. If, then, there was no vacancy, there was no authority, either in the Governor, during the recess of the Legislature, to appoint, the term having commenced and been filled; nor was there any authority in the Legislature, when in session, to elect other Senators, until after the 11th day of July. I desire to have the action of the Committee on the Judiciary on that point.

The next and graver question is this: whether you have in this certificate anything you can acknowledge, on the facts you are judicially to notice, that would give any one a title to a seat in this Senate, and to vacate seats. As I stated to the Senate at its special session, my theory and doctrine is, that though the act of a State withdrawing from the Union, or secession, is an act of revolution, is a breach of that compact upon which this Government is founded; though it gives, if without reason—and we have the right to judge of that—just cause of war, yet in its effect it puts the State out of the Union. Therefore, according to my theory, there could be no Senator from Virginia in this body until, by war, you have compelled her to return to her allegiance to this Government. I understand your view of the Constitution to be, that the State is still in the Union; that you mean to execute the laws; that you mean to repress the insurrection. Can you, consistently with the Constitution of the United States, if that State is still in the Union, refuse to recognize judicially, as your courts all do, what is the constitution of Virginia? What are the

laws of Virginia? Who is the executive of Virginia? John Letcher was elected the executive of Virginia, and you all know it; and his term of service has not expired, under the constitution and laws of Virginia. What authority can the name of Mr. Pierpont attached to that certificate give to it as an evidence of the act of the executive of Virginia certifying to you that an election has been held? The honorable Senator from California told us that the Legislature were elected on the day fixed by the laws of Virginia, but he forgot to tell us anything about this fact, that no vacancy exists in the office of her Governor. No election for Governor has been held under the laws of the State of Virginia. If Virginia is still a State of the Union you are trampling on her constitution and her laws, if you undertake to recognize as the act of the State of Virginia the act of a small minority of her people. You are running directly counter to your own doctrine, with respect to the rights of the States of this Union as against the General Government.

Mr. President, I will not pursue this argument further, because I never yet believed that it was worth while to persist against an unquestioned majority in a contest on any matter, the moment I saw what the development of things was. I have the right to ask a vote of the Senate. If they choose so to decide, of course, being the majority, the responsibility rests with them. But, in my conscientious conviction, on your own theory, you are violating the Constitution of the United States when you undertake to recognize the existence of Mr. Pierpont as the executive of Virginia, when no law of Virginia has authorized his election as Governor; when the constitution of Virginia has never authorized his election as Governor; that you are in this case, as I said, creating an insurrection in that State, or acknowledging an insurrection in that State; while on my theory, the State, by revolution and the action of her people, being out of the Union, of course no Senator from Virginia can take his seat on this floor. It was on that ground that I was willing to declare the seats of these gentlemen vacant; but I did not think it necessary to expel them.

Now, sir, I know very well that it is a very unpleasant thing to stand in opposition to a large majority of the body of which you are a member, and more especially during an excited state of feeling in the country, and when the majority of the people have sustained the general course of the party to which you are opposed; but a man is bound to carry out his honest views and his convictions of the structure of the form of his Government. As regards this particular question, it has nothing to do with war measures whatever. It will not restore the State of Virginia one hour sooner to this Union; it will not prevent bloodshed; it will not have any available effect upon this war; and yet it is trampling upon the Constitution. If you expect to maintain this Union by trampling on the Constitution, I think you will fall into a great error as to the result of your action.

Sir, I am not in the habit of making professions. I believe I have loved and do love this Union, and prize its value as much as any man who sits upon this floor. I may differ from them in regard to the state of revolution and civil war that now exists, and what is the wisest course for the peace and happiness of my country in the future. I may believe that it is better to let a portion of this Confederacy sever from us, than to run the risk, by civil war, of consolidating this nation into a single government, which inevitably ends in a military and unrestrained despotism. I think so, honestly. I challenge the motives and I impugn the character of no man that differs from me as to that; but I should be false to every principle of my nature; I should be false to my own sense of duty to my country, whether I stood alone here, or whether I had a large majority to back me by their votes, if I feared to utter and defend those sentiments which I think alone can preserve this Government from utter subversion.

Mr. TEN EYCK. A word, sir, and but a word; for I would not stand for a minute in the way of the restoration of Virginia to her ancient rights and dignity.

I rejoice that the Senator from Kentucky has called for the yeas and nays; but for a different reason from that which influences him. He be-

believes that the action we are about to take will be an infraction of the Constitution, and he wishes to stand upon the record as opposing it. I believe it to be an act which will sustain the Constitution and the Union, and I desire that my vote upon it shall stand upon the records of this Senate forever and for ay. I could wish that it could be recorded in letters of brass or of iron, enduring as this Government, which, I believe, will be perpetual!

The Senator from Kentucky stands forth as the champion of the Constitution. In a speech which he made two days ago, the whole burden of his song was "the infraction of the Constitution;" the President had done no act, save one to which he called attention, since the 4th day of March last, which was not a violation of the Constitution. Sir, it appeared strange to me that, at the time he held the Constitution in his hand and addressed that noble apostrophe to it which thrilled the heart of every listener, it never occurred to him that the Constitution had been violated in any manner by other men or in any other way. He had most strangely forgotten the transactions which called one hundred thousand men on the wings of the wind to this capital for the purpose of protecting the Constitution and preventing the overthrow of the Government.

I understood the Senator from Kentucky to admit, however, that the President had done one constitutional act, and that was, the issuing of his proclamation calling for seventy-five thousand men for the rescue of the capital. I ask this champion of the Constitution and the laws how it is that he and his beloved Kentucky did not respond to that call? How is it that the riflemen of Kentucky, the noble-hearted men of Kentucky, the men whom we have loved and admired in times past, did not rush to the safety and protection of the country, their capital, and the Union? I desire a frank answer from the Senator, if he is prepared to give it. He yields no answer. Is it because of another heresy which exists, that neutrality is lawful? Does he believe that neutrality is in support of the Constitution, the Government, and the laws? I must say I fear it is in this respect with our country as with our God—those who are not for it are against it. Mr. President, while I, a humble Senator from a State which has held many doctrines in common with the people of Kentucky and Indiana and many other of the border States, rejoiced at the great outburst of the patriotism of the people, it was with pain and sorrow that I saw that no Kentuckian responded to the call, and that her Senator now here upon this floor sees nothing but infractions, violations, and disruptions of the Constitution by the President.

Mr. POWELL. The honorable Senator from New Jersey puts a question to me, to which I will with pleasure respond. Before I do that, however, I will correct a misapprehension of the Senator. He says that, in a speech I made the other day, I declared that the President had done but one constitutional act since the 4th of March. The Senator was greatly mistaken when he made that assertion. I spoke of no acts of the President other than those specifically set forth in the resolution then under debate, and it was in regard to the acts of the President embraced in that resolution that I thought probably one was constitutional; that depending, however, upon the purposes for which the President intended to use those seventy-five thousand men. I made that qualification.

The Senator, as I understand him, asks me how the State of Kentucky, consistently with her duty to the Constitution, refused to obey this call? I will state to the Senator and to the country, the view that Kentucky took of that question, as far as I am advised. Kentucky believed that this call for seventy-five thousand men was not necessary for the defense of the capital or of the public property. She believed that the calling forth of such an immense armament was for the purpose of making a war of subjugation on the southern States, and upon that ground she refused to furnish the regiments called for. The Senator seems to be a little offended at the neutrality of Kentucky. Sir, Kentucky has assumed a position of neutrality, and I only hope that she may be able to maintain it. She has assumed that position because there is no impulse of her patriotic heart that desires her to imbrue her hands in a brother's

blood, whether he be from the North or the South. Kentucky looks upon this war as wicked, unrighteous, and unnecessary. Kentucky believes that this war, if carried out, can result in nothing else than a final disruption of this Confederacy. She hopes, she wishes, she prays, that this Union may be maintained. She believes that cannot be done by force of arms; that it must be done by compromise and conciliation, if it can be done at all; and hence, being devoted truly to the Union, she desires to stay this war, and desires measures of peace to be presented for the adjustment of our difficulties.

That is the neutrality of Kentucky, and that I understand to be the reason why she assumes to be neutral. It is the first time in the history of that proud Commonwealth that she ever failed to respond to the call upon the country for volunteers; she never was called upon to fight a public and foreign enemy that her true and gallant sons did not rush to the standard of the country in numbers so great that many had to be turned back. In other wars, the war of 1812, and the war with Mexico, twenty times more men than could be taken were presented; and she would be ready to do it again, if it were a war against a foreign enemy; but she has no desire to shed the blood of a brother, whether of the North or South. I think her position is one that should be admired and esteemed by all patriotic men, by all Christian men, by all men who love their country and love the Union. She stands in an attitude, if possible, of a peacemaker, between the belligerents North and South, and I hope she may be permitted to maintain that attitude. It was one not taken out of any hostility to the Government; she took it because she believed it was the only means possible by which these difficulties could be averted, our country saved, the Union restored, and our people once more made prosperous, contented, and happy.

I am aware that the position of my State is not palatable to gentlemen who rush fiercely on to this war. I am aware, also, that persons in the extreme South perhaps are not satisfied with the condition of Kentucky. They think we ought to unsheath our sword at once, and make common quarrel with them. We have chosen to act differently, and we will, with the blessing of God, maintain our position of neutrality. This immense armament called out by the President looked to us as if this were to be a war of subjugation, and not one in defense of the public property. For that, in addition to the other reasons I have stated, we wished to present, if possible, a barrier between the fierce conflicting elements, North and South, and restore peace to this country.

I have thus stated, very briefly, the reasons why my State has assumed this position. I will also tell the Senator, that when he asserts that I have proclaimed that all the acts of the President, save one, are unconstitutional, he greatly misunderstood me, for I spoke specifically of the acts of the President mentioned and set forth in the resolution under debate; and I stated that the call for seventy-five thousand volunteers, if for the sole purpose of protecting the capital and defending the public property, if they were called out for the time prescribed by the Constitution, was constitutional; but if those men were called out for the purpose of making war upon States, of reducing States and subjugating them to the condition that the Senator from Oregon said the other day he was willing, if necessary, they should be reduced to, and send Governors from other States to govern them, that it was unconstitutional. I hope the Senator is satisfied with my answer.

Mr. TEN EYCK. Just one word in reply. I did not mean, in the slightest possible degree, to misrepresent the Senator from Kentucky. I understood him to declare what I represented him to have declared, and such was the understanding of other Senators on this floor; but if I misrepresented him, or misunderstood him, it was owing to the remoteness of my position from him, which did not enable me to hear distinctly what he said.

In regard to the question of neutrality, I simply used the words of the gallant Rousseau, in the State Senate of Kentucky, who declared there boldly, with his "foot upon his native heath," that neutrality was treason. I contend that, under our Constitution and form of government, it can be nothing else, for such as are not for us are

against us; and those who assume a position in direct antagonism to the constituted authority of the Government, and reject its authority, rebel against that authority; and, although they may claim they are doing it for the sake of peace, they are most sadly mistaken in their duty.

The Senator says that this is a war of subjugation. I declare that the men in our Army whom I know—and I know many of them from the North—come for no other purpose than to suppress insurrection; and huge as it may be, it is nothing but insurrection. The Jersey men who are here, the New Yorkers who are here, the Ohioans who are here, and all the men who are here from north of Mason and Dixon's line, are not here for the purpose of carrying a war of subjugation into the southern portion of the Union; they are here solely for the purpose of protecting the Union and the Government. They are here for the purpose of making no raid upon southern rights, or interfering with any southern institution; but they are here in obedience to the call of the constituted authorities of their country for the purpose, originally, of protecting this capital founded by Washington, the sacred home and stand-point of the Government. They are here, and are moving onward, for the purpose of rescuing the noble-hearted, loyal men of Virginia, Tennessee, North Carolina, and loyal men everywhere south of us, from oppression and subjugation; ay, the loyal and true-hearted men of Kentucky even, who are ready and willing to stand forth and do battle for the Union, the Constitution, and the laws; for this, and nothing else.

Mr. DOOLITTLE. Mr. President, this question has been discussed at considerable length, and I believe is understood by Senators, and I desire that we may come to a vote upon it. The circumstances of the country are such that what we need are deeds, more than words.

The question being taken by yeas and nays, resulted—yeas 5, nays 35; as follows:

YEAS—Messrs. Bayard, Bright, Polk, Powell, and Sausbury—5.

NAYS—Messrs. Anthony, Bingham, Browning, Chandler, Clark, Collamer, Cowan, Dixon, Doolittle, Fessenden, Foot, Foster, Grimes, Harlan, Harris, Howe, Johnson of Tennessee, Kennedy, King, Lane of Indiana, Lane of Kansas, Latham, McDougall, Morrill, Pomeroy, Rice, Sherman, Simmons, Sumner, Ten Eyck, Trumbull, Wade, Wilkinson, Wilmet, and Wilson—35.

So the motion to refer the credentials to the Committee on the Judiciary was not agreed to.

The VICE PRESIDENT. The Senators will now advance and take the oath of office.

The oath prescribed by law was administered to Mr. CARLILE and Mr. WILLEY, and they took their seats in the Senate.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. ETHERIDGE, its Clerk, announced that the House had passed a bill (No. 28) to authorize the employment of volunteers to aid in supporting and defending the Government; in which the concurrence of the Senate was requested.

The message further announced that the House had concurred in the amendment of the Senate to the bill (H. R. No. 16) further to provide for the collection of duties on imports, and for other purposes.

ENROLLED BILL SIGNED.

The message further announced that the Speaker of the House of Representatives had signed an enrolled bill (H. R. No. 16) further to provide for the collection of duties on imports, and for other purposes; and it was signed by the Vice President.

THE LOAN BILL.

Mr. FESSENDEN. I am directed by the Committee on Finance, to whom was referred the bill (H. R. No. 14) to authorize a national loan, and for other purposes, to report it back to the Senate with some few amendments. It is very important that this bill should be disposed of as soon as possible; and as the amendments to it are mostly verbal, with one exception, which will be easily understood by the Senate, I ask the unanimous consent of the Senate to consider the bill now.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. No. 14) to authorize a national loan, and for other purposes.