

The **PRESIDING OFFICER**. It is not the practice of the Chair, and it is not required by the rules of the Senate, to call the attention of the Senate to any business upon the Calendar, except special orders, when the hour arrives for their consideration.

Mr. **DOUGLAS**. I understand it is the universal custom, when the Presiding Officer takes the Chair, to state the first business in order to be the reading of the Journal, then petitions, memorials, and reports, and then the Calendar, and to take it up in its order. But, sir, I will not occupy time. I can get at my object in another way, and the debate will not be, in my opinion, suppressed on the resolution. I withdraw the appeal.

SENATORS FROM THE SECEDING STATES.

The **PRESIDING OFFICER**. The Senator from Maine moves to proceed to the consideration of the resolution submitted by him yesterday.

Mr. **DOUGLAS**. I ask for the yeas and nays on that.

The yeas and nays were ordered.

Mr. **CLINGMAN**. As I wish to get at the resolution of the Senator from Illinois, I shall vote "nay."

The question being taken by yeas and nays, resulted—yeas 26, nays 13; as follows:

YEAS—Messrs. Anthony, Bingham, Chandler, Clark, Collamer, Cowan, Doolittle, Fessenden, Foot, Foster, Grimes, Hale, Harlan, Harris, Howe, King, Lane, Morrill, Simmons, Sumner, Ten Eyck, Thomson, Trumbull, Wade, Wilkinson, and Wilson—26.

NAYS—Messrs. Breckinridge, Bright, Clingman, Douglas, Hunter, Latham, Mason, Mitchell, Nesmith, Nicholson, Polk, Powell, and Rice—13.

So the motion was agreed to; and the Senate proceeded to consider the following resolution:

Resolved, That **ALBERT G. BROWN** and **JEFFERSON DAVIS** of Mississippi, **STEPHEN R. MALLORY** of Florida, **CLEMENT C. CHASE, JR.** of Alabama, **ROBERT TOOMBS** of Georgia, and **JERAM P. BENJAMIN** of Louisiana, having announced that they are no longer members of the Senate, and having withdrawn therefrom, their seats in this body have thereby become vacant, and the Secretary is directed to strike their names from the roll of members.

Mr. **FESSENDEN**. I wish to say but a word or two on this question. It will be recollected that at the last session a motion was made to amend the Journal, and an amendment offered to that by the Senator from Illinois, I think substantially the same with the proposition I have now offered, including, however, some other names. I have deemed it my duty to bring forward this proposition at the present time as exhibiting the position in which I consider the gentlemen whose names are enumerated to stand, in order to have the sense of the Senate upon it. The resolution simply declares their seats vacant. I followed the language of the Constitution, which declares that seats may become vacant "by resignation or otherwise," not stating in what particular manner. The resolution simply declares that, in consequence of certain matters which took place here upon the floor of the Senate, with which we are all acquainted, and the subsequent withdrawal of those Senators after the declarations made by them, their seats have thereby become vacant. I stated to the Senate, at the time when the matter was under consideration before that, in my judgment, the acts which took place here were a resignation. I have seen no sort of occasion to change the opinion I then expressed; but, inasmuch as it is not necessary to moot that question, I have simply declared in the resolution that, by the enunciation made, and the subsequent withdrawal, the seats have become vacant; and that the Secretary be directed to strike their names from the roll. It is perfectly obvious to the Senate that there must be some period when the Senate shall act on questions of this description. Seats may become vacant in various ways. The language of the Constitution is, "by resignation or otherwise," and upon that subject the Senate, unquestionably, is the proper judge; and I have brought this resolution forward in order that that question may be settled, one way or the other. I have no doubt about it myself; but every Senator will come to his own conclusion on the subject.

Mr. **BAYARD**. I desire to offer a substitute for the resolution. I move to strike out all after the word "resolved," and insert:

That **ALBERT G. BROWN** and **JEFFERSON DAVIS** of Mississippi, **STEPHEN R. MALLORY** of Florida, **CLEMENT C. CHASE, JR.** of Alabama, **ROBERT TOOMBS** of Georgia, and **JERAM P. BENJAMIN** of Louisiana, having announced that, by the secession of their respective States they were no

longer members of the Senate, and withdrawn therefrom, the Secretary is directed to omit their names in calling the roll of the Senate.

Mr. President, my objection to the resolution of the honorable Senator from Maine is, that it proceeds upon the idea that those Senators have resigned, and that the seats have become vacant by their resignation. Now, sir, I am perfectly aware that on one side of this Chamber most of the members hold that, by the act of secession on the part of the States, the seats became vacant; and it is denied on the other side that any such effect obtains. There has been no resignation by those Senators. I put in my resolution a statement of the facts as they occurred: that they avowed that, by the secession of their States, they were no longer members of the Senate. The majority of the Senate do not, by my substitute, recognize that fact as vacating their seats; but they have undoubtedly a right to omit calling their names. I wish to avoid any decision upon that question. I do not see that any practical good is to come from the decision of the question whether the effect of secession is to vacate the seats or not; but clearly there has been no resignation. Resignation is a plain and direct term. By "resignation or otherwise," the seat may be vacated. Gentlemen say that these seats are vacant by resignation, and not otherwise. The fact is, that there was no resignation. All that those Senators declared on this floor was, that by the act of secession of their States, they had ceased to be members of the Senate. That is denied on one side of the Chamber, and it is said that no such effect results from it. If you deny that, how can it be that their declaration of that effect constitutes a resignation? They did not intend to resign, and an act of resignation must depend on the intent of the party. The seat, then, is not vacant; but I propose to avoid that question by my substitute, and simply to declare on the state of facts as they occurred, that they, having made this declaration, and having withdrawn, their names shall be omitted in calling the roll, without deciding whether the seats are vacant or not. That you have an undoubted right to do when they are not present.

But suppose one of those Senators should return to this Chamber: could you decide that he had resigned? Surely not. He never did resign. Suppose he should change his mind as to the effect of secession, and come here and claim his seat: could you say that he was no longer a member of the Senate, unless you held that secession did vacate the seat? There was no resignation, no pretense of resignation; on the contrary, it was disclaimed by them all.

Now, Mr. President, it seems to me, that if the object is—and I suppose the only object is—to omit the form of calling the names of Senators whom we know, from their declarations, will not be here to answer, there is no necessity for the resolution in its present form. That object can be accomplished by the substitute that I have proposed. On the other hand, however, you assert, in the resolution as it stands, part of the declaration of the Senators who withdrew, and only part; and you say that, in consequence of that declaration, their seats are vacant. What does that come to? It is denied that the act of the constituent, the State which the Senator represents, can vacate his seat, and yet you declare that his declaration that the State has done that act does vacate his seat. Is that logical?

The members in retiring declared that they did not resign, but that their States had seceded; and, by reason of that act, they no longer considered themselves members of the Senate. You deny the effect of that act of secession. On what authority, then, is it that you can declare, without a resignation, that their seats are vacant?

There is no necessity whatever for the passage of the resolution in that form. The substitute which I have offered accomplishes all that is necessary for the purpose of avoiding the unnecessary calling of names on the roll of the Senate. I had hoped that the honorable Senators on the other side would accept the substitute, because it decides nothing; it neither affirms the effect of secession nor the right of secession; but simply directs, on the state of facts existing—the Senators having declared that they were no longer members of the Senate, and having withdrawn from the body—that the Secretary shall omit calling their names on the roll of the Senate. That is all; it leaves

the other question entirely undecided. Unless you can make the declaration of a member, as to the effect of the act of secession, a resignation, when he tells you that he does not mean to resign, and has not resigned, but that the action of his State has rendered his seat vacant, unless you choose to pervert his act entirely, you cannot declare the seat vacant, without recognizing the act. I submit, therefore, that the substitute ought to be adopted.

Again: the resolution, as it stands, embodies the name of **ALBERT G. BROWN**. If I am not greatly mistaken, **ALBERT G. BROWN** did not open his lips in the Senate in reference to withdrawal from it. All we know is, that he has not been in attendance since it was publicly known that the State of Mississippi had, by the action of her convention, withdrawn from the Federal Union. That is all we know as to Mr. **BROWN**, according to my recollection. I believe he was not present when the other Senators withdrew; he made no speech on the subject; he made no declaration of any kind to the Senate on the subject; he sent in no written resignation. Then how, and on what principle is it, that the Senate of the United States can determine that Mr. **BROWN** has resigned his seat in the Senate, unless they recognize the act of the State? I understand that, on the other side of this Chamber, they do not mean to recognize that act as having the effect of vacating the seat; and without a resignation, a death, or some other cause, the seat is not vacant unless the term has expired. The absence of a Senator does not vacate his seat; the withdrawal of a Senator from his seat does not vacate it. It may be the mal-performance of duty, but it does not disturb his right to come here and claim his seat again. And yet, what is the doctrine contended for by the honorable Senator from Maine? That the declaration of a Senator of the effect of an act of his State is equivalent to a resignation, when you say that act has no such effect. Cannot a man change his opinion as to the effect of an act? Does it affect his rights? If secession does not render the seat vacant, on what principle is it that the declaration of the mere Representative or Senator gives an effect to the act, which the act itself has not *per se*?

I submit to Senators that there is no necessity for the decision of this question in any way whatever. It can reach no practical result. I do not desire them to admit the right of secession, or to recognize the effect of secession. All I ask of them is, to leave the question undisturbed; and, with a view to facilitate the business of the Senate, simply, on the facts stated, to omit the calling of these names on the roll of the Senate. I think that is the wiser course, under the circumstances, unless it be the desire of any portion of the Senate to complicate the affairs of the country, already sufficiently complicated; to irritate passions already sufficiently aroused; and to afford additional chances for the utter destruction of the Union, when it is already sufficiently endangered.

I hope, Mr. President, that the Senate, if not the honorable Senator from Maine, will adopt the substitute that I have offered, because it contains a true statement of what occurred in the Senate; it recites the declarations of the Senators, and that the fact of withdrawal did take place; and then, without passing upon the question of the effect of the fact of withdrawal, without attempting to pervert a declaration into a resignation, which was not intended as a resignation in any sense, but was disclaimed as a resignation, proceeds to direct the Secretary to omit calling their names. I hope the Senate will adopt the substitute.

Mr. **MASON**. I am perfectly satisfied that the gentlemen whose names are recited in the resolution are not members of this Senate; and I am perfectly willing to vote for a resolution declaring that fact, and, with it, that their names shall be omitted from the roll. I presume—I think I may take it for granted—that the honorable Senator who offered the resolution meant no discourtesy to those who are named in it. It would seem to be implied that their names are to be stricken from the roll. Under any circumstances, I would suggest that the word "omitted" be used.

Mr. **FESSENDEN**. I have no objection to making that modification.

Mr. **MASON**. I am sure the Senator intended no discourtesy.

Mr. President, I say I would cheerfully—in deed, I should consider it incumbent on me to vote for a resolution declaring that these gentle-

men are not members of the Senate; and, as a consequence, that their names be omitted from the roll; and I shall vote for this resolution, should the amendment of the honorable Senator from Delaware prevail. But the resolution offered by the Senator from Maine, after reciting that they are not members of the Senate, undertakes to assign the reason; and the reason assigned is, in substance, that they have abdicated their seats; have renounced them; have declared that they are not members, and have withdrawn. And then it goes on further to allege that, notwithstanding that, those seats are only vacant; and thereby, as a necessary inference—a part of the reason—that there are seats on this floor now belonging to members when they shall be elected from those States; a position which I utterly deny. I cannot vote for the resolution in that form; because, were I to do so, I should be necessarily committed by the vote to a judgment on my part that those States which have withdrawn from the Union are yet members of the Union, and are entitled to send Senators here. That is the implication, and the necessary implication, from the resolution.

I will not go into an argument at all. The fact that those gentlemen are not members is true; and that their names should be omitted from the roll follows as a consequence. But, for the reasons assigned, I cannot vote for the resolution; because that would imply, in my judgment, as one of those voting in the affirmative, that their seats are vacant; when, in truth, there are no seats pertaining to either of those States. These are my views of the question.

Mr. BAYARD. Mr. President—

Mr. FESSENDEN. With the leave of the Senate, I will move the modification suggested by the Senator from Virginia—that those names be "omitted" from the roll. It now reads "stricken" from the roll.

The VICE PRESIDENT. The Senator cannot make the motion at present, as the Senator from Delaware is upon the floor.

Mr. BAYARD. I ask for the yeas and nays on the substitute I have offered.

The yeas and nays were ordered.

Mr. BAYARD. Let me suggest to honorable Senators another argument with reference to this question, which, I think, will satisfy them that my idea involved in the substitute is correct. Suppose a case where a Senator from any State of this Union was instructed by the Legislature to vote on a particular measure, or a particular series of measures, in a manner which he did not choose to assent to, and he did not believe it was in the power of the Legislature to instruct him, and yet, not choosing to resign, he determined to withdraw from the Senate, and he should rise in his place, and announce to the Senate: "My State has instructed me to vote in favor of a certain resolution; I deny the right of the Legislature to instruct me; I am elected for a fixed term, and I deny the right of instruction; I do not choose, under the circumstances, to resign my seat in the Senate; but I will withdraw from the Senate;" would that render his seat vacant? Is that a resignation? Is it not precisely parallel to the present case? These Senators declared that they did not resign; and resignation depends upon the act of the party; but they believed, as the honorable Senator from Virginia does, that the fact that the State had seceded rendered them no longer members of the Senate. The majority of the Senate do not believe that the act of secession has any effect whatever in vacating the seats. On what principle is it, then, or what cause is it, that renders the seat vacant, according to the declaration of that resolution? You say that the act of secession of the State has no such effect. Then, how can it be that the declaration of the member, that such is its effect, followed by a withdrawal, amounts to a resignation? I am unable to understand it. Resignation depends upon the intent and the will of the actor to resign the position which he occupies. I do not see how you can, under the circumstances, pass a resolution of this kind.

Mr. FESSENDEN. I have one single word to say in reply. I attach no kind of consequence in reference to this question to the action of the State, to its secession, or to any instructions it may give its Senators. The seat, in my judgment, could not be affected in that way; but a seat may be vacated by the Senator himself holding the posi-

tion. He may do it with or without a reason; he may give good or bad reasons, sufficient or insufficient; the matter is with him, in his own mind, and depends on his own action entirely. After being elected, I agree with the Senator from Delaware, the State has no power over him during the term for which he is elected—none at all, in my judgment. The Senator has power over himself, and may continue a member or not at his own will and pleasure; except so far as he may be operated upon by the body itself.

Now, sir, I stated the other day, what I state again, that a resignation need not be in writing. It depends upon no form of words. "It is a thing of itself to be inferred by the Senate, taken as the Senate may choose to look at it. The facts with regard to these cases were, that these Senators gave certain reasons for their action. With their reasons, I have nothing to do. If satisfactory to them, they are satisfactory to me. They declared, substantially, as I have set forth in the resolution, that they were no longer members of this Senate; some in one form of words, and some in another; and having made that declaration, they withdrew from the Senate, carried out their expressed purpose, and remain no longer members of the Senate of the United States. I take that as a resignation of their seats; perhaps other gentlemen may not; but I have avoided that difficulty. I have simply declared that they having made that announcement and carried their thought into action, the result is that the seats they held here are vacant, so far as they are concerned, nobody else being elected in their places.

I prefer that phraseology for the reason suggested by the honorable Senator from Virginia: that it recognizes the fact of the seats being vacant, and to be filled by those States whenever they choose to fill them. That suits my idea of the exact state of the case, and is respectful to the States themselves. I cannot coincide with my honorable friend from Delaware, when he says that this is, in any degree, offensive to the States themselves. In fact, it is quite respectful to the States. It is holding that there are seats here at their disposal, at any time when they choose to fill them, whether by one man or another, these same gentlemen or others, or leave them vacant, just as they please upon that subject. I hold, therefore, that the original resolution expresses the fact, and is in proper phraseology, and I hope it will pass instead of the one suggested by the honorable Senator from Delaware, which goes no length at all, except simply to correct the roll, which is not sufficient for the purpose.

Mr. BAYARD. I am unable to appreciate the force of the honorable Senator's argument. Resignation, I admit, does not require any particular form of language; but it does require intent, the intent of the actor to resign. On the contrary, the actor in this case tells you, "I do not resign, but I entertain an opinion that the effect of the act of my State prevents me from claiming a seat in the Senate, and therefore I withdraw." Suppose this case, sir—and there is nothing at all improbable in it: that the Senator himself did not believe that the act of secession vacated his seat; and yet, out of the deference he had for his constituents, he should say, "I will not remain here and vote as a Senator; I will withdraw from the Senate, although I do not think the State has that right;" but whether he thinks one way or the other, he does not mean to resign, for he so tells you; and yet you say it is a resignation, though you deny the validity of the act of the State. I am unable, Mr. President, to see how you can possibly construe a man's intent directly contrary to the language he uses. On what principle is it done? The vacancy of the seat in the Senate must be by some act which has that effect. Resignation, I admit, will have that effect; there is no doubt of that; but what then is the duty of the Senate? The President of the Senate ought to communicate to the State that the seat in the Senate is vacant, in consequence of the resignation of the Senator. That would be the course which your action would have to take. A Senator may suppose his State has not the power to secede, yet, in obedience to that confidence which exists between the constituent and the representative, he may say, "I will not remain and act in the Senate while my State holds that doctrine, though I think it wrong, and I therefore withdraw." Now, then, you must arrive at the conclusion that non-attendance of a

Senator in his seat amounts to a vacancy, or you have no right to declare that these seats are vacant. If a Senator chooses to absent himself until his term expires, or at the end of any Congress, should say, "I shall no longer attend the sessions of the Senate during my term; I do not intend to resign; but I mean to withdraw from the Senate for the residue of my term;" you have a right to compel his attendance under your rules; I admit you have a right to send your Sergeant-at-Arms for him; but the withdrawal of the Senator, accompanied by the distinct declaration that he does not resign—in other words, that he will not perform the duties, but does not resign his seat—cannot deprive him of his right to a seat in the Senate of the United States. He may change his mind, and come back to the Senate. On what principle, then, can you declare a seat vacant, where there has been no resignation, unless some subsequent fact occurred, which vacated the seat; and that is denied in the present case. There is nothing here but the act of withdrawal, accompanied with a declaration, and that declaration is inconsistent with resignation.

Further, as I said, if my substitute is not adopted, this question arises: the resolution before the Senate embodies a statement of fact which is not in itself correct, as Mr. Brown never made any declaration to the Senate whatever.

The VICE PRESIDENT. The question is on the adoption of the amendment proposed by the Senator from Delaware, on which the yeas and nays have been ordered.

The question being taken by yeas and nays, resulted—yeas 12, nays 26; as follows:

YEAS—Messrs. Bayard, Brockbridge, Bright, Chingman, Hunter, Mason, Mitchel, Nicholson, Poik, Powell, Rice, and Thomson—12.

NAYS—Messrs. Anthony, Baker, Bingham, Chandler, Clark, Collamer, Cowan, Doollittle, Douglas, Fessenden, Foot, Foster, Grimes, Harlan, Harris, Howe, King, Lane, Morrill, Simmons, Sumner, Ten Eyck, Trumbull, Wade, Wilkinson, and Wilson—26.

So the amendment was rejected.

The VICE PRESIDENT. Did the Chair understand the Senator from Maine as proposing to modify his resolution?

Mr. FESSENDEN. Yes, sir; I modify the last clause, so as to make it read:

Their seats in this body have thereby become vacant, and the Secretary is directed to omit their names from the roll of members.

Mr. BAYARD. I move to amend the resolution, by striking out the name of ALBERT G. BROWN. Certainly, Mr. Brown made no declaration of the kind recited in the resolution; and I suppose a resolution of the Senate ought not to recite as a fact that which does not exist.

Mr. FESSENDEN. I do not know why Mr. Brown's name should be stricken out.

Mr. BAYARD. Will the honorable Senator tell me that Mr. Brown ever stated to the Senate that he withdrew? If he did, I am misinformed. He did not open his lips in the Senate on the subject. He simply has not appeared in the Senate since the day his colleague made his declaration, or perhaps a day or two previous to that.

Mr. FESSENDEN. He stated in advance what he would do, I think, and retired from the Senate.

Mr. BAYARD. He never made any statement that he withdrew from the Senate.

Mr. FESSENDEN. I think he did.

Mr. BAYARD. The honorable Senator's resolution, as it stands now, declares Mr. Brown's seat vacant by resignation, when he has never made any declaration on the subject to the Senate.

Mr. FESSENDEN. I think—and that is the reason I put his name in—that Mr. Brown made a speech here one day stating in advance what he was about to do in consequence of certain action of his State, which he expected to take place. We were afterwards notified that that action had taken place, by his colleague, and they both withdrew. I conceived it to be the same thing entirely; I could not recognize any distinction between the cases.

Mr. BAYARD. I will only say that the honorable Senator from Mississippi [Mr. Brown] may, in the course of debate here, often have said what he would do; but that is not doing it. He did not declare that he had resigned his seat in the Senate, is very certain. Now, a declaration that a member might make prospectively of what he intended to do, certainly could not amount to

an act done, on any principle. It is no light matter to declare the seat of a Senator vacant on a supposition. The principle is a very dangerous one, to assume that a man has done an act, because he told you at an antecedent day that he would do it. He never did declare so to the Senate; he never did tell you he would withdraw; but he just chose to withdraw. He never did tell you that he resigned. The other Senators who are spoken of did formally announce their determination to withdraw from the Senate, in consequence of the action of their States; Mr. Brown never made such a declaration.

Mr. WILSON. I will not attempt to quote the language of Mr. Brown, but he did make some sort of a declaration in regard to this matter, and left the Senate. I remember it distinctly, and I suppose the debates will show the precise words he uttered. It will be remembered that, after his State went out, his colleague, Mr. DAVIS, was sick for several days, and could not attend the Senate. Mr. Brown said in substance, here in the Senate, near the spot where the Senator from Delaware now sits, that, owing to the action of his State, he should not take any further part in the Senate; and that he had seen his colleague, and his colleague agreed with him in regard to the matter. A day or two after, Mr. DAVIS came into the Senate, and made his farewell speech to the Senate, and left. It seemed that those Senators had held a consultation in regard to the matter, and Mr. Brown made a very brief statement of what he should do, and Mr. DAVIS, a day or two afterwards, came in and made a formal address to the Senate on the subject. That is my recollection of it.

Mr. JOHNSON. I wish merely to state a fact. The State of Mississippi passed her ordinance on the 9th of January. Senator DAVIS, on the 10th, appeared in the Senate and made his speech withdrawing from the Senate. I do not think that Mr. Brown made any declaration that he would withdraw from the Senate. He may have remarked that he should obey whatever his State did, in some preceding speech; but on the 9th of January, Mississippi withdrew, and on the 10th Mr. DAVIS appeared in the Senate, and made his speech of withdrawal. I do not think there was any declaration of Mr. Brown, after his State had withdrawn, stating that he would retire from the Senate. I therefore prefer that his name should be stricken out.

Mr. POLK. If this amendment is resisted on the part of the Senator from Maine, I shall ask for the yeas and nays. I do not think the Senate ought to avow as a fact a thing which did not actually occur.

Mr. DOUGLAS. I ask the Senator to withdraw the call of the yeas and nays for the present.

Mr. POLK. Certainly.

Mr. DOUGLAS. I wish to suggest an amendment that I think will obviate the difficulty. We now have doubts on questions of fact. Perhaps we can avoid any decision upon these controverted questions and accomplish the object, and put the resolution in such a form that all will vote for it. I propose that the resolution be amended so as to declare that these gentlemen "having ceased to be members of the Senate, the Secretary be directed to omit calling their names." I think we can have a unanimous vote for that. All agree that they have ceased to be members; some for one cause, and others for another cause. The main point is to settle that they are not any longer members of the body, and that their names shall be no longer called. I merely suggest it to the Senator from Maine.

Mr. FESSENDEN. I do not know that that settles that their seats are vacant.

Mr. DOUGLAS. Yes, "having ceased to be members." You may add the words, "and their seats having become vacant," if you choose.

The VICE PRESIDENT. Does the Senator from Missouri ask for the yeas and nays on the amendment of the Senator from Delaware?

Mr. POLK. If the Senator from Illinois offers his amendment, I do not think it desirable to ask for the yeas and nays on the other question. If that is adopted—and I shall cordially vote for it—there will be no necessity for this amendment.

The VICE PRESIDENT. The question before the Senate is on the amendment of the Senator from Delaware.

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

The yeas and nays were ordered.

Mr. COLLAMER. Modifications of form in relation to this resolution may require some little thought and reflection. It may be that it can be so arranged as to be agreed to all around. I think we had better take a little time about it, and I therefore move that the Senate proceed to the consideration of executive business.

EXECUTIVE SESSION.

The motion was agreed to; and after some time spent in executive session, the doors were reopened.

REPORTS FROM COMMITTEES.

Mr. WILSON. The Committee on Military Affairs and Militia, to whom was referred a communication of the Secretary of War, transmitting reports of Major Steen and Lieutenant Mullan, of the Army, relative to the movements of troops overland to the northern portion of the department of the Pacific, have directed me to report that it be printed.

The VICE PRESIDENT. It was the ruling of the Chair yesterday that no reports from committees on legislative matters were in order, and this comes within precisely that class of business.

SENATORS FROM SECEDING STATES.

The VICE PRESIDENT. The Senate had under consideration, when it went into executive session, a certain resolution which is now before it as unfinished business—the resolution submitted by the Senator from Maine, [Mr. FESSENDEN;] and the question before the Senate was on adopting the amendment offered by the Senator from Delaware, [Mr. BAYARD,] to strike out the name of ALBERT G. BROWN. That is the pending question.

Mr. FESSENDEN. I believe the yeas and nays have been ordered on that.

Mr. DOUGLAS. If the Senator will offer the amendment which I understand he means to propose, it will obviate the necessity of taking this vote.

Mr. POLK. I will state to the Senator from Maine, that if the amendment to which the Senator from Illinois refers as being in contemplation is the one that the Senator from Illinois suggested, it, if adopted, will avoid any necessity for this vote.

Mr. FESSENDEN. The Senator from New Hampshire [Mr. CLARK] is drawing a modification, which I suppose will be accepted by the Senator from Illinois, and to which I shall make no objection.

The VICE PRESIDENT. Still the question pending before the Senate is on the amendment to strike out the name of ALBERT G. BROWN.

Mr. DOUGLAS. That is withdrawn by unanimous consent, I understand.

The VICE PRESIDENT. If there be no objection, it will be so considered; and the Chair hears none.

Mr. CLARK. I suggest an amendment which may be satisfactory; to substitute for the resolution the following:

Whereas the seats of ALBERT G. BROWN and JEFFERSON DAVIS of Mississippi, STEPHEN R. MALLORY of Florida, CLEMENT C. CLAY, jr. of Alabama, ROBERT TOOMBS of Georgia, and JUDAH P. BENJAMIN of Louisiana, as members of the Senate, have become vacant: Therefore,

Resolved, That the Secretary be directed to omit their names respectively from the roll.

Mr. MASON. I do not recollect the language of the amendment offered by the Senator from Illinois; but I am informed, and I think correctly, that the language was, that these gentlemen have ceased to be members of the Senate. I cannot see any objection to that. Why they ceased, is a matter for history. The fact is, that they have ceased to be members. But the resolution, in its present form, recites that the seats they occupied are vacant, and it would result that there are seats here appropriate to Senators from those States which are vacant.

Mr. CLARK. I prefer this language, because it follows the Constitution in declaring that the seats have become vacant.

Mr. MASON. The Constitution, of course, means that the seats of Senators from States which are parties to the Union may become vacant; but when there are States outside of the Union, they can have no seats here. That is the difference between the gentleman and me.

Mr. CLARK. I do not think it is necessary

to go into that question. It is sufficient for us if we follow the language of the Constitution. Gentlemen may have their reasons, and I may have mine. We need not quarrel about the reasons. The fact is all we need declare.

Mr. BAYARD. The seats are certainly vacant.

Mr. MASON. Senators may have it in their own way. I shall not vote for it.

Mr. FESSENDEN. If I am at liberty to adopt this substitute as an amendment to the resolution I offered, I have no objection.

The VICE PRESIDENT. It is not within the power of the Senator to adopt it now. The resolution he offered is no longer within his control, votes having been taken upon it.

Mr. FESSENDEN. It may be done by general consent, I suppose.

The VICE PRESIDENT. If there be no objection, the Senator from Maine may adopt this as a substitute. Is there objection? The Chair hears none. The question, then, is on the resolution, as modified.

Mr. DOOLITTLE. I ask that it be read once more.

The Secretary read the resolution, as modified, as follows:

Whereas the seats heretofore occupied by ALBERT G. BROWN and JEFFERSON DAVIS of Mississippi, STEPHEN R. MALLORY of Florida, CLEMENT C. CLAY, jr. of Alabama, ROBERT TOOMBS of Georgia, and JUDAH P. BENJAMIN of Louisiana, as members of the Senate, have become vacant: Therefore,

Resolved, That the Secretary be directed to omit their names respectively from the roll of the Senate.

Mr. MASON. Will it be in order now to offer, as a substitute for that, the amendment proposed by the Senator from Illinois? This is now an original resolution, I understand.

The VICE PRESIDENT. The Chair thinks that would be in order.

Mr. MASON. Then I offer it.

Mr. JOHNSON. Instead of "whereas the seats have become vacant," I propose, if it is amendable, to say, "whereas they are now absent."

Mr. COLLAMER. That is not the constitutional requirement.

Mr. JOHNSON. The fact is, they are absent, and therefore we omit to call their names.

The VICE PRESIDENT. Does the Senator from Tennessee submit that amendment?

Mr. JOHNSON. No, sir.

The VICE PRESIDENT. The question then is on amending the resolution by striking out all after the word "resolved," and inserting what is proposed by the Senator from Virginia. It will be read.

The Secretary read, as follows:

That ALBERT G. BROWN and JEFFERSON DAVIS of Mississippi, STEPHEN R. MALLORY of Florida, CLEMENT C. CLAY, jr. of Alabama, ROBERT TOOMBS of Georgia, and JUDAH P. BENJAMIN of Louisiana, having ceased to be members of the Senate, the Secretary be directed to omit their names from the roll.

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

The yeas and nays were ordered.

Mr. COLLAMER. I have merely to say that that does not declare anything by which we are authorized to leave the names off. The Constitution declares that "vacancies" may "happen by resignation or otherwise." This does not declare that at all.

Mr. MASON. I am not aware that the Constitution requires that we should assign the reason why the seats are vacant. The Senate can determine that. If they are vacant by resignation, declare it; but if they are not occupied for other reasons, I do not deem it necessary to assign the reasons.

Mr. TRUMBULL. This amendment does not declare that they are vacant.

The question being taken by yeas and nays, resulted—yeas 10, nays 24; as follows:

YEAS—Messrs. Breckinridge, Bright, Clingman, Hunter, Mason, Mitchell, Nicholson, Polk, Powell, and Rice—10.
NAYS—Messrs. Anthony, Bingham, Chandler, Clark, Collamer, Cowan, Doolittle, Fessenden, Foot, Foster, Harris, Howe, Johnson, King, Lane, Morrill, Noyes, Simmons, Sumner, Ten Eyck, Trumbull, Wade, Wilkinson, and Wilson—24.

So the amendment was rejected.

The resolution was agreed to.

Mr. CLARK. I move that the Senate adjourn. The motion was agreed to; and the Senate adjourned.