IN SENATE.
TUESDAY, May 3, 1864.

Prayer by the Chaplain, Rev. Dr. SUNKEL.

Mr. COWAN presented a memorial of agriculturists, miners, and manufacturers of Pittsburg, Pennsylvania, praying for the emancipation of all the enslaved in the State, and for the enforcement of foreign immigration, which was referred to the Committee on Agriculture.

Mr. E. P. HALE presented, by Mr. SHEPHERD, a memorial of Francis A. Gibbons and F. E. Kelley, praying for remission for money alleged to have been illegally drained from the State treasury in the comptroller of light-houses in California and Oregon in the year 1853; which was referred to the Committee on Claims.

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

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

Mr. COWAN presented a petition of the citizens of Ohio, praying for the establishment of military stations to be called General C. Hamilton, widow of Captain Fowler Hamilton, United States Army, deceased, praying for pensions which was referred to the Committee on Pensions.

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

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

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

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

REPAIRS FROM COMMITTEES.

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

Mr. HARRISON, from the Committee on Public Lands, to whom the subject was referred, reported a bill (S. No. 265) for the disposal of coal lands, and of town property, in the District of Columbia, which was read and passed to a second reading.

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

Mr. HENDERSON, from the Committee on the District of Columbia, to whom was referred a bill (H. R. No. 270) to incorporate the "Home for Friendless Women and Children," reported it adversely.

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

ARMY APPROPRIATION BILL.

Mr. FESSENDEN. The Committee on Finance, to whom was referred the section of the House of Representatives on the amendment to the bill (H. R. No. 198) making appropriations for the support of the Army for the year ending June 30, 1865, is directed to move that the Senate agree to the amendment of the text of the original bill proposed by the House of Representatives, which is the substitution of two words for one word and for one letter. Changes in the sense, the word "Army" having been inserted in a clause of the original bill in place of "army," which will change the sense very much, and embarrass the Department. In regard to the amendments of the Senate, in one of which the House of Representatives objects, the committee recommend that the Senate insist on its original amendment. Then there are several amendments concurred in with amendments of the Senate. It is desired to impress on the Senate the fact that the Senate adhere to amendments of the House of Representatives, insist on our amendments, and not for a compromise.

The PRESIDENT pro tempore. The first question will be on agreeing to the amendment proposed by the House of Representatives to the original text of the bill, which is on page 2, line eight, to strike out "Army" and insert "army," and to insert a comma after "accommodation.

The amendment is agreed to.

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

Mr. PESSCHE, from the Chair. The Chair proposes to appoint the committee.

The PRESIDENT pro tempore. That course will be pursued if there be no objection. The Chair hears no objection.

Mr. PESSCHE, Mr. WILSON, and Mr. HANDESON were appointed members of the Senate.

BILLS INTRODUCED.

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

MESSAGE FROM THE HOUSE.

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

The message further announced that the House of Representatives had agreed to the amendments of the Senate to the bill of the House (No. 31) making a grant of lands to the Lake Superior and Mississippi Railroad Company, for the purpose of building a railroad from St. Paul to Lake Superior.

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

A bill (No. 136) for the benefit and better management of the Indians;
A bill (No. 283) to extinguish the Indian title to lands in the State of Wisconsin for agricultural and mineral purposes;
A bill (No. 414) for the relief of the estate of B. F. Kendall;
A bill (No. 452) for the relief of the Wes, Povirai, Kashwaki, and Pankakeh Indians, of Kansas.
A bill (No. 414) for the removal of certain angry bands of Indians from the State of Wisconsin.
A bill (No. 426) to authorize the President of the United States to negotiate with certain Indians of middle Oregon for a relinquishment of certain rights secured to them by treaty to the Commissioners of the United States.
A joint resolution (No. 71) for the relief of Thomas J. Galvointh, of Minnesota, to the Committee on Indian Affairs.
A joint resolution (No. 22) relative to pay of staff officers of the Lieutenant General.

CONSTITUTIONAL QUO WAM.

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

Mr. SHERMAN. I am very anxious to obtain the decision of the Senate on the question of a quorum in order to expedite the business that is a privileged question, according to the decision of the late President of the Senate. I trust the Senate from Wisconsin will allow me to submit a motion that the Committee on the J
dictory be discharged from the consideration of the House as a quorum of the representatives and that we may settle that question this morning. I do it simply to expedite business. I think if the resolution that it is proposed to the Senate to get rid of his bill much better, and enable us to dispose much better of all the business of the Senate. I will submit that motion, with his consent.

Mr. HOWE. Very well.

Mr. FOSTER. Before the question is taken, I should like to say that the resolution has been considered in the Committee on the Judiciary, and that an expression of opinion adverse to its passage was made by a majority opposing the concurrence in the minority. At the last meeting of the committee prior to the absence of the chair, and in consequence of the illness of his family it was discussed, and I suppose it was supposed the Senate were in special haste in regard to the matter it was laid by until another meeting of the committee, which will occur to-morrow.

Mr. SHERMAN. In making the motion I did not wish for a moment to reflect on the Judiciary Committee. I know that the chairman of the committee was detained from the Senate by the death of his son, and yet the motion was made by the death of one member of his family and the absence of another; and another member of the committee is also absent. I therefore made the motion in the interest of the Senate of the United States, without any desire to trouble the Senate with any further discussion on the subject.

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

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

Mr. FOSTER. The resolution was agreed to, and the Senate proceeded to consider the resolution referred to us by Mr. SHERMAN on the 7th of March last.

Resolved, That a quorum of the Senate consists of two senators chosen by the Senate of the United States or House of Representatives. The point was distinctly made, and the Senate by an almost unanimous vote—a vote of 23 years to 1—decided that it was only necessary to require a quorum of two thirds of those present.

I say then, Mr. President, on the ground of grammatical construction, on the ground of precedent, and I might add on the ground of necessity, the construction I put upon the Constitution in the plain one. The framers of the Government decreed that representation should be broken up and this Government disorganized by the absence of representatives of none of the States equal to a quorum of the Senate. We have no such ground. We are not just in that critical condition when we cannot call for a division on a question. We are not afraid to call for a division, we insist upon it, and, as far as I am concerned, for that reason we shall be left without a quorum. At 5 o'clock last night on the passage of an important bill we were left without a quorum. Under these circumstances I deem it my duty to bring the question to the attention of the Senate with the hope that we may now have a vote upon it.

Mr. FOSTER. I am not about to delay the Senate from the vote which the honorable Senator from Ohio wishes to have taken. I expressed many views briefly on this subject and the Senate should be again presented to the Senate; I do not desire to have the discussion prolonged. I should like to vote upon it.

Mr. SHERMAN. I give notice of my intention to bring up the Senate to the vote of the honorable Senator from Ohio last night on the resolution of the other day. I have investigated and understand the subject of the previous views, and then, so far as I am concerned, I should like to vote upon it. But to press a vote this morning, on so many minutes' consideration, it is an important question as this, involving the number of Senators that constitute a quorum, and I am sure that the gentlemen who constitute a quorum to do business, it seems to me would be precipitating one of the most important questions that has been engaged. I suppose no gentleman expected this subject to come up for debate this morning, unless the gentlemen of the Senate.

Mr. SHERMAN. I gave notice of my intention.
The CONGRESSIONAL GLOBE.

May 3, 1861.

The CHAIRMAN: The Senate will now proceed to the consideration of the unfinished business of the day, to-wit:

Mr. HOWE. Mr. President, I now move that the Senate proceed to the consideration of the unfinished business of the day, to-wit: the motion of the gentleman from Kentucky to postpone until a quarter after twelve o'clock the consideration of the unfinished business of yesterday.

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

The motion was agreed to.

CLAIMS OF WISCONSIN.

Mr. HOWE. Mr. President, I now move that the Senate proceed to the consideration of the unfinished business of the day, to-wit: the motion of the gentleman from Kentucky to postpone until a quarter after twelve o'clock the consideration of the unfinished business of yesterday.

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The motion was agreed to.
The President pro tempore. Objection being made to its present consideration, it lies over under the rule.

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

Resolved, That the Secretary of the Interior be directed to inform the Senate what disposition has been made of the $2,000,000 which was authorized to be spent for the construction of a railroad from the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State, the error in the engrossment of the bill having been corrected.

BILLS BECOME LAWS.

The message further announced that the President of the United States had approved and signed on the 3d instant the following acts: An act (H. R. No. 47) for the relief of William C. Walker, for 1855, and an act (H. R. No. 388) for the relief of Jesus Williams.

HOUSE BILL REFERRED.

The bill from the House of Representatives (No. 3457) for the 3d session of the 56th Congress, for the construction, preservation, and repairs of certain fortifications and other works of defense for the year ending the 30th of June, 1865, was read twice by its title, and referred to the Committee on Finance.

NAVAL APPROPRIATION BILL.

The Senate proceeded to consider its amendment (No. 1550) to make the necessary and proper appropriations for the naval service for the year ending the 30th of June, 1865, disagreed to by the House of Representatives, and the handbill of the House to the first amendment of the Senate thereto, and ask a conference on the differences thereon.

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

The President pro tempore appointed Mr. Hale, Mr. Van Vechten, and Mr. Welles, to consider the differences.

CONSTITUTIONAL QUORUM.

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

The President pro tempore. The Senate will remain in the same posture until the close of the present day's business.

Mr. MCDUFFIE. I think it is necessary we should be enabled to properly debate the subject.

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

Mr. SHEARMAN. It is in the report.

Mr. HARLAN. It is not in the report.

Mr. SHEARMAN. The resolution go ever, and I will look into the matter.

The President pro tempore. The resolution will lie on the table.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. McPherson, its Clerk, announced that the House of Representatives had passed the bill of the Senate (No. 149) to provide for the pay of soldiers in the United States Army, with amendments in which it requested the concurrence of the Senate.

The message further announced that the House of Representatives had agreed to some and disagreed to other amendments of the Senate to the bill of the House (No. 3457) making appropriations for the naval service for the year ending the 30th of June, 1865, and it had agreed to the first amendment of the Senate to the said bill, but that it had disagreed to the Senate amendment in which it requested the concurrence of the Senate.

The Senate was informed that the House of Representatives had insisted on its disagreement to the amendment of the Senate to the bill of the Senate, (No. 149) for making appropriations for the support of the Army for the year ending the 30th of June, 1865, and for other purposes, insisted on by the Senate, inserted in the amendments to the seventh and eight hundred amendments of the Senate, disagreed to by the Senate, agreed to the conference asked by the Senate on the differences of the two Houses thereto, and had appointed Mr. Thaddeus Staves of Pennsylvania, Mr. Robert C. Schenck of Ohio, and Mr. Ammi D. Bunker of Illinois, managers on its part.

The message further announced that the House of Representatives had passed a bill (No. 201) making appropriations for the construction of certain fortifications, and repairs of certain fortifications and other works of defense for the year ending the 30th of June, 1865, in which it requested the concurrence of the Senate.

The message also returned to the Senate the bill of the Senate (No. 149) for the pay of soldiers in the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State, the error in the engrossment of the bill having been corrected.

The President pro tempore. The Senate may insist on the special order being taken up.

The President pro tempore. The Senate will remain in the same posture until the close of the present day's business.

Mr. MCDUFFIE. I think it is necessary we should be enabled to properly debate the subject.

Mr. SHEARMAN. It is in the report.

Mr. HARLAN. It is not in the report.

Mr. SHEARMAN. The resolution go ever, and I will look into the matter.

The President pro tempore. The resolution will lie on the table.

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

"The Senate shall be the judge of the elections, returns, and qualifications of its own members, and a majority of the remaining Senators may constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent Senators, in such case, by the authority of a Senator or Senators pro tempore of the Senate, for such period as they may fix."
to do business at least fourteen members, as though the two senators had been provided for in one clause in these words: The Senate, or a new State or States admitted into the Union, shall be composed of twenty senators of which the Senate of each State shall be composed of two senators, of which one shall be chosen of the inhabitants of each State, and the other by the legislature thereof. This provision of the Constitution had ordained it and established its number. The language which it has employed is plain, precise, and necessary. The Senate of the United States shall be composed of two members from each State, chosen by the legislature thereof. The number of Representatives of a majority of each House [shall] constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide, as definitely and certainly fixes the quorum of the Senate to do business to be a majority of the number of which the Senate should be composed. It could not be the majority of the members, for it was necessary to have a less number. Where is it defined? How is it to be ascertained?

If the framers of the Constitution had intended that the quorum of the whole number which they had provided to compose it should form a quorum to do business, they would have given the exact number of the two members of the Senate, immediately in one of these forms: "The Senate of the United States shall be composed of two senators from each State;" the whole Senate being the legal Senate for twenty years; but a majority of the Senators qualified and duly elected, or "a majority of the Senate and House of Representatives," shall constitute a quorum to do business.

The reasonable presumption is that the Constitution intended that the quorum of both Houses of Congress should be less than the whole number of the senators, and therefore provided the quorum of both Houses to be a majority of the whole number. The Senate is a body of less importance, and less business, than the House of Representatives. If the Senate has no less than a majority, the House of Representatives, of which the Senate is dependent, will have no less than a majority. So great a number will put it in the power of a few, by recording a single vote, to reduce the power of each House, and to endanger the Government. Examples of overreaches have already happened in some of the States. He was for the Senate to the Legislature to fix the quorum, as in Great Britain, where the requisite number is small, and no inconvenience has implicated the hesitancy of 3.

Cochran Marsh. This is a valuable and necessary part of the Constitution: in this extended and complicated government, with a great diversity of interests, it would be dangerous to the stability of the Government if the Senate should number only two or three persons. If the House of Representatives should number only a thousand people, and the House of Representatives, a thousand people, and the Senate had only two or three members, it would be as dangerous as it was in the former days, and it would be as necessary to have a quorum of at least five or six men. The Constitution has so provided for the Senate in this regard as much as for the Senate to have some several senators, and restraining the power of the Senate by having only one vote in this body.

If he had brought a motion to amend the cause that is to be amended, he would have brought it and disposed of it in that manner. He had brought a motion to amend the cause that is to be amended, and it was in the power of the Senate to amend it. He did not bring the motion to amend the cause that is to be amended, and it was in the power of the Senate to amend it. The motion to amend the cause that is to be amended, and it was in the power of the Senate to amend it. He did not bring the motion to amend the cause that is to be amended, and it was in the power of the Senate to amend it.

Mr.Stamp moved to fix the quorum at thirty members in the House of Representatives and fourteen in the Senate. It was a majority of the present number, and was a number that would be much more than the number of persons necessary to conduct the business of the Senate or House of Representatives.

Mr. Eakins opposed the motion. It would be a number of persons that no one to the people that no one could be imposed on them by a few men. He recommended the motion to the Senate to propose to give it a discretion, to the number of the Representatives. A great inconvenience of sometimes being guarded against by giving to each House an authority to re-
Mr. Randles and Mr. Madison moved to add to the end of the very pertinent and most ground-breaking motion: "The whole number of the Senate formed a quorum; it does not tend to show less than a necessary number, namely an interest in the Constitution, and was considered a quorum."

Mr. President, I agree to your proposal, in order to make the motion of the Senate agrees with the Constitution, and that the proposed resolution is another bold and reckless assault upon the Constitution, and if so, will produce a worse effect."

Mr. Johnson. It would be idle, Mr. President, to assert that the opinion which I am about to express is free from doubt, because the opposition to the Constitution has not been in the same body. But it should be distinctly understood that I am not aware that the Constitution had come to the conclusion that a majority of the whole number of Senators could and would be represented by less than the whole number of the States were in need of a quorum, I stated that my impression had always been that the true meaning of the Constitution in the paragraph prescribing that each Senator should have reference only to the Senate which was, in other words to Senators elected, and I propose very briefly to try to make good the proposition, and to do so I shall address myself mainly to a reply to the honorable member from Kentucky.

In the first place, I ask the Senate’s attention to the Constitution itself without reference to any decisions which have heretofore been pronounced. That Constitution contains the instrument which bears the particular question under debate. The clause which gives rise to the discussion is that which begins the first section of the first article.

The other clause to which I propose to advert is that which clause was inserted in the second section of the same article, and in the third section, and in the fifth article of the Constitution.

The language of the clause prescribing the quorum is:

"Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each constituent shall be necessary to a valid quorum of the House."

Now, I suppose it would be perfectly clear, that with reference to the House which is to pass upon the elections, returns, and qualifications of its own members, all that is required is that a majority of the House elected by the States who are members by election or by appointment, not those who have not been elected to the House of Representatives who or who have not been appointed as Senators by the respective Legislatures. It assumes, consequently, that there is an existing body actually in office by virtue of an election which has already taken place, and that that existing body is the one which is to pass upon the elections, returns, and qualifications of its own members. It evidently therefore, to repeat once more, that members who have been elected or profess to have been elected, that returns have been made of such elections, that they have presented petitions, that such elections a question a right of the right member to take his seat on the ground that he does not believe that it has been made of the election or the laws of the United States prescribe.

If those who are in the House elected, and no so provided, but on the contrary, as seems to me to be manifest, that all they means was that wherever there were persons elected in the one or
chosen in the other, a majority of the persons elected or chosen was to constitute the quorum of the House. But if that clause was doubtful, considered by itself, I submit that the second and the third section of the sixth article of the third section tells us who are the House of Representatives, and in those words: "The House of Representatives shall be composed of Senators from each State, chosen by the Legislature thereof."

It seems to me to be clear that the true meaning of the Constitution the House of Representatives, and the Senate in the other, are to consist of those who are chosen to the House or the Senate, and nobody else. It would be an absurdity to say that the House of Representatives consists of members not chosen or that the Senate consists of Senators not chosen. The thing to be done under the Constitution was to bring into existence representatives of the States or of the people; representatives of the States in the vacancy of Senators; of the people in the vacancies of Representatives; but until Senators are chosen or Representatives are appointed, there is no House of Representatives in the Senate, or no Senate that was chosen or appointed. The honorable member from Kentucky has referred us to the debates in the Convention. I have not yet had the opportunity, as yet, to refresh my recollection this morning. My friend from Kentucky, as I think, misapprehends the meaning of the first section of the third section, the one that was to constitute a quorum, was before the Convention; how many, was the point to be decided. Having Senators or States should be represented in the Senate by two Senators from each State, and should be represented in the House of Representatives by members elected by the people in the Senate, and the Senate having been adjourned and having ascended, therefore, what would be the entire number which, if elected, would constitute the House of Representatives? That was the question that the Legislature would constitution the Senate, it was suggested that to require a majority of the whole number might be very inconvenient. Then it was proposed to fix some number less than a majority of the whole; but in the debate upon the proposition there was in the whole, as well as upon the propriety of requiring a majority of the whole, the several speakers, to whom my friend has referred, assumed that all would be elected; and a majority of the representatives were appointed and would be appointed to the Senate by the respective Legislatures. That is evident from what the Senator from Kentucky, I think, very likely, in the debate. It was said, in answer to the proposition to require less than a majority of the whole number, that the inconvenience would have resulted from it, because they could give to the House the power to demand the Senate to select those absent whom they considered the absence of the Senate. Mr. MCNERS, for example, said that he was for a lesser number than a majority: "so great a number will put it in the power of a few by accident."

A few what? A few members. Nobody ever before they can break up the Senate or the House; there may be a facitious majority; and such things have happened. It has been proposed here in the Senate, and in the House, not to require a quorum without a quorum for the very purpose of defeating a particular measure; and Mr. MCNERS and Mr. JOHNSON and Mr. CARLILE have said that there was not another power of the House which would result from some of those who were members of the House by virtue of election and qualification, or members of the Senate, from ascending and becoming members of the House, and acting on both bodies and the action of either body. How was that met? In the first place, as I have said, the objection to the power of determining the election of the Senate, the power of entrusting the Senate, the Senate—members not chosen, for they cannot leave it, they have never been in it.

Mr. CARLILE, Mr. MCNER S moved to add to the end of article seventh, section one, that "in case of a tie decision of both Houses." There can therefore evidently be no difference between the meaning of the term "tied" as used in the amending clause and the meaning of the term "tie" as used in the quorum clause. The word "tie" as used in what I call the quorum clause. Then what is the review of the Senate in the House? "Two thirds of the members present to act upon the amendment". Upon that fruitful topic and materially fruitful topic which has brought us into the controversy in which we are engaged, an amendment to the Constitution was proposed in 1861. I read from the Journal of the Senate of the March of 1861, the amendment proposed by Mr. Pugh being unmoved.

It is not necessary to read the amendments; various other amendments were proposed. Finally, on the 3d of March, 1861, the question was taken only: "Agreed to the Joint Resolution;" and the following amendment proposed by Mr. Pugh being unmoved.

It was determined in the affirmative—yeas 56, nays 12.2.

Then the yeas and nays are given.

Mr. POULT in the chair announced that the joint resolution would receive its first reading. Mr. POULT raised a question of order whether the joint resolution had not been the subject of the consideration of the United States, it did not require the affirmative vote of two thirds of the entire number; and so the amendment was to pass the Senate. The Senate therefore decided that it required an affirmative vote of two thirds of the Senators present, only. Mr. MCNER S moved to recommit the amendment, and on the question, shall the debate be limited to one hour and as a judgment of the Senate.

It was determined in the affirmative—yeas 35, nay 1.

That could not have been done if the meaning of the word "House," as used in the quorum clause, that it entitles one to be elected to the one House or appointed to the other. If it meant that, then there must have been an affirmative vote of two thirds of the entire number; and so the amendment from Ohio, Mr. ADAMS, who afterward said that he voted under a misapprehension, every member of the Senate to sustain that decision or the Senate, and the Senate from Illinois, Mr. THOMAS, although he called for the yeas and nays.

Then, if it be true that the Constitution can be amended by a vote of less than two thirds of the states, then the Senate contemplates as amending the House or the Senate to be equally true that the quorum may consist of a less number than the majority of that whole number, what is to be said of those present are all that are necessary in the one case, a majority of those who have been chosen in the others is all that is necessary. The great inconveniences of the decision under which we have been acting all along are manifest. My friend from Kentucky seems to think it is necessary to put the States to do what is to be done by the Senate. Mr. JOHNSON, they then were all here. But what is the hardship? Let me ask the honorable member what harm is to South Carolina to receive the power of the South Carolina to elect it? What injustice is to be done them? Who keeps South Carolina from electing her Senators?

Mr. CARLILE. Valid, the Senator elected there who has been chosen, the entire Senate might be selected, not that which has been chosen or selected. It will be seen that the language of the amendment is in relation to the manner in which amendments to the Constitution are to be proposed is identical, as far as the particular question is concerned, with the language of the clause which prescribes the number of senators who constitute a quorum. The one says: "a majority of the members of both Houses"; the other says: "two thirds of both Houses." There can therefore evidently be no difference between the meaning of the term "two thirds" as used in the amending clause; and the meaning of the term "tie" as used in the quorum clause. In what I call the quorum clause. Then what is the review of the Senate in the House? "Two thirds of the members present to act upon the amendment." Upon that fruitful topic and materially fruitful topic which has brought us into this controversy in which we are engaged, an amendment to the Constitution was proposed in 1861. I read from the Journal of the Senate of the March of 1861, the amendment proposed by Mr. Pugh being unmoved.

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

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

Mr. JOHNSON. How? In what way? Suppose the independance of the Confederate States was taken away and put into the hands of the Senate; that body might be thrown back upon its original sovereignty.

Mr. JOHNSON. That I deny.

Mr. DAVIS. That I maintain. If I deny, because if the honorable member is correct in that, if any one State could succeed, with the assent or against the opposition of the rest of the States, in getting out of the Union, the Union would be dissolved. Now, supposing the Union to be in existence—and I suppose I may assume that the Union now stands—how does it stand and why does it stand? It stands upon its own strength as represented by the States, acting through the representatives by the will of the loyal States. It stands in spite of South Carolina and those whom she has delivered to their ruin; and if those States were by some means or other isolated out of general existence to-morrow, the Union would stand represented in her remaining States. There is nothing to prevent the States or parties in those States from doing what they please. That is the principle which requires for the existence of the Union that each State that comes in is to remain in forever; and yet the Union may be dissolved by the will of the States. I am in Kentucky that the moment any one State succeeds in getting out of, or permitted to go out of, the Union, the Union is dissolved, and each State stands or falls where it was before the Constitution was adopted by which the Union was formed. I protest, with all the respect I feel for the judgment of the House, I protest against the method of a man from Kentucky, that his proposition is wholly unfounded. I was about to say, Mr. President, if I am right, and I assume now that I am right, what has Kentucky to apprehend? What has Maryland to apprehend? Are not both States represented in this Chamber and in the other House? From whom is danger to be apprehended to either State? From the other States that have not yet come within the pale of confederacy, or with us as a band of brothers to maintain the Government?

Mr. DAVIS. I will ask the honorable Senator, if he will, in this question does he maintain that the government of Maryland as it is about to be organized by the presidential proceedings and by interference will be legitimately organized?

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

Mr. DAVIS. That does not answer my question.

Mr. JOHNSON. I cannot answer the question, because the question has not been presented.

Mr. DAVIS. I put it hypothetically.

Mr. JOHNSON. Is not Kentucky in the Union?

Mr. DAVIS. Yes, sir.

Mr. JOHNSON. I have not heard a great deal about the influence in the Senate of Kentucky, and Kentucky ought to be out.

Mr. DAVIS. Her constitution has not been pulled down by any illegitimate power and another one put forth by military interference, nor yet awhile.

Mr. JOHNSON. It is pulled down and disregarded. "If a humble member was elected by the use of military interference he ought not to be there."

Mr. DAVIS. You know not, but I was assuming it for the sake of the argument.

Mr. JOHNSON. Mr. President, I have debated somewhat, being very anxious to answer any suggestion that falls from the Senator from Kentucky, from the argument with which I proposed to conclude the debate of the United States, and that when they were so passed by thirteen members with all the other forms of legislation, they would have their action.

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

Mr. DAVIS. I attempted to show that the principle might lead to that state of case, and that it was improper that thirteen members would be authorized to assume the legislative powers of the Senate. The question is: the provisions of the Constitution under which it is that if the Senate were placed in circumstances where thirteen members of the body would be assuming to act and acting for the body, and doing its legis- lating, would that action be legitimate according to the Constitution?

Mr. JOHNSON. It is very easy to put extreme cases about anything. The Senator might as well ask if one member was elected to the Senate he could constitute the Senate, and if one member were elected to the House of Representatives, that he could constitute the House of Representatives. That is not the question which I was trying to discuss. What I have in mind is this: that the interpretation of the clause in question it requires only a majority of members; and until my friend can satisfy me that there are not to be added to the House of Representatives, who have been elected and have their seats on board or in the Senate, I think I shall remain on the opinion which I submitted to and to which I referred my County.

Mr. DAVIS. I rise to make a remark. The clause of the Constitution which determines what constitutes the Senate of the two Houses has ordained them should be necessary to constitute a quorum to do business did not then apply to a Senate or House of Representatives in the case of either body of Congress composing a Senate and another body a House; no such bodies of men were then in existence. It applied to the Senate and the House which it had organized by previous provisions, and also to the quorum of each which it was then about to organize, as abstractly, in the House of Representatives of the United States. The matter to be determined was what part of the numerical strength of each House should be the quorum for the purposes of the House to do business. The plan of the Constitution reported to the Convention by its committee proposed in these words: "The House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of the number of each House shall constitute a quorum to do business."

Mr. JOHNSON. A majority of what? Of each House? What was each House? Not the Senators and Representatives elected and chosen, but of the abstract Senate and House as they had been organized by principles that would give to each body a certain number of members; and the majority of the number of each House was to be constituted, it was declared, should be a quorum to do business. When the question was under consideration in the Convention, there was no proposal to enlarge the quorum of the House of Representatives by a majority of them respectively, but the inconveniences and obstructions to business resulting from such a large quorum were pointed out and enforced by several members, and sundry and different propositions were made to reduce the quorum below the whole, and they were all impracticable so long as the opposition was not extinguished and the objections against that large quorum were attempted to be obviated by giving to a large number of the Members of Congress the power to compel the attendance of absent members. If a less number had constituted a quorum there would have been no reason for giving to them that power. The basis of the principle on which both Houses is established by the Constitution; and that is, the majority of the Senate and not of the House of Representatives. "A majority of the number of each House shall constitute a quorum to do business of the Senate and House respectively."

Mr. JOHNSON. Mr. President, I have debated somewhat, being very anxious to answer any suggestion that falls from the Senator from Kentucky, from the argument with which I proposed to conclude the debate of the United States, and that when they were so passed by thirteen members with all the other forms of legislation, they would have their action.
The PRESIDENT OFFICER. (Mr. Anthony in the chair.) The question is on the adoption of the resolution. Mr. CARLILE and Mr. DAVIS called for the yeas and nays. Mr. SHERMAN. At the suggestion of some Senators I will modify my resolution by striking out one word to make it read thus: "That the resolution will be ordered to the President of the Senate." The PRESIDENT OFFICER. That modification is in order by unanimous consent the yeas and nays having been ordered. Mr. SUMNER. I hope it will be made.

The PRESIDENT OFFICER. The Chair hears no objection; and the question now on is the adoption of the resolution as modified. The question being taken by yeas and nays, resulted—yeas 17, nays 20; as follows:


So the resolution was adopted.

BUREAU OF MILITARY JUSTICE.

The PRESIDENT pro tempore. The Senate will now proceed to the consideration of the annual report of the Secretary of War for the year just closed, as also the bill (H. R. No. 380) to establish a Bureau of Military Justice. The question is on coming in the report of the committee, and upon the question yeas and nays have been ordered.

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


So the report was non-concurred in.

Mr. WILSON. I move now that the whole subject be referred to the table.

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

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

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

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

The PRESIDENT pro tempore. The Senate will adjourn to the Senate that the motion is not dilatory and unduly

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

Mr. WILSON. (to Mr. WILLSON). Withdraw your motion.

Mr. WILSON. I cannot do it. I demand the Order. I object to debate.

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

Mr. HALE. If the Senator desires to debate it, he has a motion on the table.

The PRESIDENT pro tempore. The Chair will inquire of the Senator from Massachusetts whether he desires the yeas and nays upon his motion. Mr. WILSON. I withdraw the motion. Mr. SHERMAN. What is the question now?

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

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

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

Mr. SHERMAN. This is a debatable subject, and I desire to present this question precisely and exactly as it is.

The House of Representatives passed this bill on the recommendation of the Secretary of War. It made Colonel Holt a brigadier general and gave him two regiments of which he was to be general in chief; passed the House of Representatives with that recommendation without opposition. It was referred to the Senate. A committee on investigation, desiring to save every dollar we could to the country, were led to the belief that the assistants should be reduced to the rank of colonels in the pay and emoluments of a general.

When the bill came up for consideration a new theory must be sprung upon it. We could not give the general any more emoluments than the colonels as the House bill had it, the pay and emoluments as we did everybody else; but we must not let Colonel Holt for degradation. We must fix a sum of money against these officers, though we never did anything of the kind before, and accept the House's amendment. We must give these officers the rank of colonels. But rank was not the question at issue between the two Houses. The simple question then was whether the general should have the pay and emoluments of a general, and whether the colonels we had made in preference to making them majors should have the pay of colonels or whether they should have a fixed sum. The Senate inserted a fixed sum for these officers. The House disagreed to the fixed sum in the Senate and this question of the necessity of conferences were appointed. You, sir, appointed the committee on the part of the Senate. I suppose the reference was made for the purpose of any or any thought of the opinions of the members of the Senate. I have no idea that the President of the Senate intended to make a committee that should go there, but that he meant to have the committee appointed. If the Senator from Indiana, [Mr. HENDERSON], the Senator from Michigan [Mr. HOWARD], and myself we were to not appoint the committee to meet the committee of the House of Representatives in conference. Perhaps it is not for me to say what we think of the proceedings of the Senate. The matter was fully discussed. The question was whether the committees would agree to those amendments or not to those amendments. We had agreed to recede from these two amendments of the Senate, which had never been placed before on any military bill. The Senate has just decided by its vote that the policy of its amendments is to be adopted. If these officers are to be generals and colonels—and that we have settled: both Houses have agreed to that—then I say they ought to have the pay and emoluments of generals and colonels. If not, I think we had better drop the subject. If it is believed that these officers ought not to be military men—and how can they be anything else if they are not military officers, that they will not do them any other justice, and give them a fixed sum; or we can adopt a rule that shall take from all these officers a sum of money other than the emoluments that belong to their rank. I think, therefore, sir, we had better drop this bill and bring in a new bill. I cannot vote at any time to validate the Senate's report. We must vote away from them the pay we give others of the same rank.

Mr. E. HALE. I do not know and cannot conceive how the Senator from Massachusetts can bring this matter into an attack upon Mr. Holt, and protest against the rule that is assigned to me, and I protest against the right of any man to say that. How does the Senator know who is in my State? The bill renders me as the President shall appoint, by the advice and consent of the Senate, the head of said bureau a Judge Advocate General. Has the President told the Senator from Massachusetts that he is going to appoint a given man, and has the Senate told the Senator that the President has given no right has he and does he to assume that Judge Holt is to be the man? He may suppose so; but, certainly, for legislative action neither shall I have the right to assume that it is to be Judge Holt.

Mr. WILSON. He is there now.

Mr. HALE. He is there now. He is there now, because there is no much office. The bill says he shall be appointed.

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

Mr. HALE. President, this bill is preposterously

for a civil office, a judicial office, the discharge of duties which have nothing to do with the military, nor with the pay or emoluments of a brigadier general. Mr. HALE. To pay a man in the high regard that I have for Judge Holt, for his spotless integrity, his untiring industry, and his fidelity, and his unsurpassed ability; but I do not think a Senator can be led into a vicious course of legislation by my regard for any individual. I think that even for officers in the Army you must make compensating them. It ought to be carried farther than the absolute necessities of the service require it to be carried. Certainly, when you undertake to pay judicial officers who sit in their offices and perform judicial duties by the same rule that you pay military officers in the field and perform military duties there, it seems to me you undertake to apply an analogy where there is no analogy for it. Sir, the officer that you propose to create here is a judicial officer entirely. He wants no arms, he wants no horses; he does not want to pay his officers, to equip his troops, or anything which you charge him as a judicial officer.

The bill also provides that he shall appoint "such general and judicial forces as the necessity of the service shall require." The next thing will be that these assistants must have the rank, the pay, and emoluments of captains; the messengers of the rank, pay, and emoluments of sargeants; and some who sweep the office the rank, pay, and emoluments of the sargeants. You cannot simulate things where there is no similarity and no analogy to justify it. If you are creating a judicial officer, giving him judicial duties to perform, pay him as you do another judicial officer.

It is said that this is to degrade Judge Holt. If I knew that it was Judge Holt who was to be appointed I should consider it a degradation to vote that when he was to perform his judicial duties he must put on a chapeman and wear epaulettes, and his compensation must be according to that of a brigadier general. I think the system is wrong, and here is a good place to commence to alter it. I believe that military officers that the Senate ches the names, the Quartermaster General, the Adjutant General, and Provost Marshal General, are not chosen by the military, but by the army, and by the very circumstances of the case are connected with the army and have military duties to perform. I would not say a word or give a vote that should destroy the President's will, that is my duty; but, sir, I think here is a good place to begin to set a precedent. When you make a judicial officer, pay him a salary. Does any man here know what the pay and emoluments of a brigadier general are? Take your Army Register, and you will find that they vary widely, sometimes more and sometimes less. Where is the propriety in giving a man, irregular compensation to a judicial officer?

It is for these reasons that I opposed the report of the conference committee. I hope the motion of the Senator from Vermont (Mr. CHITTENDEN) that I should not be very sorry if that should be voted down, and the vote should be taken on the motion of the Senator from Mississippi that should prevail. I am far from being certain that it would not be better to create a judicial tribunale, but I am not under the necessity of tricking it out with the Gawgaws and the rank, pay, and emoluments of a military officer.

Mr. SULLIVAN. Colonel Holt, like all the rest of us, is likely to be mistaken sometime in his facts and in his law. This bill says:

This act of Judge Advocate General, created by the fifth section of an act entitled "An act to establish the military government of the United States, suppress insurrection, and repel invasion," approved February 26, 1863, and the new amendatory to the same, approved July 17, 1863,