THE CONGRESSIONAL GLOBE.

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and cherish the rights of mankind. The boom of cannon on the plains of Lexington shook a continent, and bore an obscure militia colonel from the shades of Mount Vernon to the highest pinnacle of earthly glory, to stand forever on that proud pedestal, peerless among men, while it called Stark from his granite hills, Putnam from his plow, and Greene from his blacksmith's forge, to immortal fame.

The iron hail beating on the walls of Sumter again shakes a continent, and the genius of history is recording the names of those born not to die. The country's martyrs in this hour of its trial will live forever. Their tombs will be the hearts of the great and good of all time; their monuments the granite hills of a nation rejoicing in freedom. Whether the night of our adversity is to be long or short, there can be no doubt of the final dawn of a glorious day; for such is the physical geography of the continent that between the gulf and the lakes there can be but one nationality. No matter what changes may be wrought in its social organization, its territorial limits will continue the same. The traditions of the past and the hopes of the future have crystallized in the American heart the fixed resolve of "one Union, one country, and one destiny" from ocean to ocean. No human power can change that destiny, any more than it can stay the tide of the father of waters as it rolls from the mountains to the sea.

"Freedom's battle, once begun,
Bequeathed from bleeding sire to son,
Though baffled oft, is ever won."

Better one war, though it cost countless lives and untold treasure, than a dismembered Union, with its endless border conflicts and final anarchy and ruin. If the people between the gulf and the lakes cannot live together in peace as one nation, they certainly cannot as two. This war, then, must, in the nature of things, be prosecuted till the last armed rebel is subdued and the flag of our fathers is respected on every foot of American soil.

Gentlemen, invoking on you and our common country the blessings of divine Providence, and wishing you each and all a long and happy life, not in the unmeaning compliment of the day, but in sincerity and truth, I declare the House of Representatives of the Thirty-Seventh Congress adjourned *sine die*.

SENATE—SPECIAL SESSION.

SPECIAL SESSION.

IN SENATE.

WEDNESDAY, *March* 4, 1863.

The Secretary (JOHN W. FORNEY, Esq.) called the Senate to order, and read the following proclamation of the President of the United States:

By the President of the United States of America.

A PROCLAMATION.

Whereas objects of interest to the United States require that the Senate should be convened at twelve o'clock on the 4th of March next, to receive and act upon such communications as may be made to it on the part of the Executive:

Now, therefore, I, ABRAHAM LINCOLN, President of the United States, have considered it to be my duty to issue this my proclamation, declaring that an extraordinary occasion requires the Senate of the United States to convene for the transaction of business at the Capitol, in the city of Washington, on the 4th day of March next, at twelve o'clock at noon on that day, of which all who shall at that time be entitled to act as members of that body are hereby required to take notice.

Given under my hand and the seal of the United States, at Washington, the 28th day of February, in the year [L S.] of our Lord 1863, and of the independence of the United States of America the eighty-seventh.

ABRAHAM LINCOLN.

By the President:

WILLIAM H. SEWARD, *Secretary of State.*

Of the Senators whose terms did not expire on the 3d of March, 1863, there were present: From the State of—

Maine—Hon. William Pitt Fessenden.
New Hampshire—Hon. Daniel Clark.
Vermont—Hon. Jacob Collamer.
Massachusetts—Hon. Henry Wilson.
Rhode Island—Hon. Henry B. Anthony.
Connecticut—Hon. La Fayette S. Foster.
New York—Hon. Ira Harris.
New Jersey—Hon. John C. Ten Eyck.
Pennsylvania—Hon. Edgar Cowan.
Delaware—Hon. Willard Saulsbury.
Maryland—Hon. Thomas H. Hicks.
Virginia—Hon. John S. Carlile.
Kentucky—Hon. Garret Davis and Hon. Lazarus W. Powell.
Missouri—Hon. Robert Wilson.
Ohio—Hon. John Sherman.
Indiana—Hon. Henry S. Lane.
Illinois—Hon. William A. Richardson and Hon. Lyman Trumbull.
Michigan—Hon. Jacob M. Howard.
Wisconsin—Hon. Timothy O. Howe.
Iowa—Hon. James W. Grimes and Hon. James Harlan.
Minnesota—Hon. Morton S. Wilkinson.
Kansas—Hon. James H. Lane and Hon. Samuel C. Pomeroy.
California—Hon. James A. McDougall.
Oregon—Hon. Benjamin F. Harding and Hon. James W. Nesmith.

Mr. FESSENDEN. Mr. Secretary, in conformity with usage, I offer the following resolution:

Resolved, That the oath of office be administered to Hon. SOLOMON FOOT as Senator elect from the State of Vermont by Hon. LA FAYETTE S. FOSTER; and that he be, and is hereby, chosen President *pro tempore* of the Senate.

The Secretary put the question on the resolution; and it was adopted *nem. con.*

Mr. FOSTER thereupon administered to Mr. FOOT the usual oath to support the Constitution of the United States; and Mr. FOOT took the chair as President *pro tempore*.

The PRESIDENT *pro tempore*. Senators elect and Senators whose term commences under a re-election at this time will receive the oath of office in the order in which their names will be called by the Secretary.

The Secretary called the names of those Senators whose credentials had been heretofore presented, as follows:

Hon. James A. Bayard, of Delaware.
Hon. Lemuel J. Bowden, of Virginia.
Hon. Charles R. Buckalew, of Pennsylvania.
Hon. Zachariah Chandler, of Michigan.
Hon. James Dixon, of Connecticut.
Hon. James R. Doolittle, of Wisconsin.
Hon. Thomas A. Hendricks, of Indiana.
Hon. Reverdy Johnson, of Maryland.
Hon. Edwin D. Morgan, of New York.
Hon. Lot M. Morrill, of Maine.
Hon. Alexander Ramsey, of Minnesota.
Hon. William Sprague, of Rhode Island.
Hon. Charles Sumner, of Massachusetts.
Hon. Benjamin F. Wade, of Ohio.

As their names were called, Mr. BOWDEN, Mr. BUCKALEW, Mr. CHANDLER, Mr. DIXON, Mr. DOOLITTLE, Mr. JOHNSON, Mr. MORGAN, Mr. MORRILL, Mr. SUMNER, and Mr. WADE advanced to the desk singly, and the President *pro tempore* administered to each the usual oath to support the Constitution of the United States, and he took his seat in the Senate.

Messrs. BAYARD, HENDRICKS, RAMSEY, and SPRAGUE were not present.

Mr. TEN EYCK presented the credentials of Hon. WILLIAM WRIGHT, elected by the Legislature of New Jersey a Senator from that State for the term of six years, commencing this day. The credentials were read; the usual oath to support the Constitution of the United States was administered to Mr. WRIGHT, and he took his seat in the Senate.

On motion of Mr. WILSON, of Massachusetts, it was

Ordered, That a committee of three be appointed to wait upon the President of the United States and inform him that the Senate has assembled in pursuance of the call of the President of the 28th ultimo, and a quorum being present, the Senate is ready to receive any communication he may be pleased to make; and that the President *pro tempore* appoint the said committee.

The PRESIDENT *pro tempore* appointed Mr. WILSON of Massachusetts, Mr. HOWE, and Mr. NESMITH, the committee.

Mr. TRUMBULL. I desire to call the attention of the President of the Senate and of the Senate itself to an act of Congress approved on the 2d of July, 1862, which declares:

"That hereafter every person elected or appointed to any office of honor or profit under the Government of the United States, either in the civil, military, or naval department of the public service, excepting the President of the United States, shall, before entering upon the duties of such office, and before being entitled to any of the salary or other emoluments thereof, take and subscribe the following oath or affirmation."

Then follows the oath or affirmation, which I will read:

"I, A B, do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought, nor accepted, nor attempted to exercise the functions of any office whatever under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto. And I do further swear (or affirm) that to the best of my knowledge and ability I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

"Which oath, so taken and signed, shall be preserved among the files of the court, House of Congress, or department to which the said office may appertain."

As a matter of practice, I apprehend that the appropriate way of doing this would be for the Secretary to draw up this oath, and let it be subscribed and sworn to by each Senator elected after the passage of the act. Of course it applies to those only, for the language is "hereafter every person elected or appointed." I do not know that any motion in regard to it is necessary further than calling the attention of the Presiding Officer and of the Senate to the law. If a motion be regarded as necessary, I make the motion that the Secretary be directed to prepare the oath, and present it to each Senator who has been elected since the passage of the act.

The PRESIDENT *pro tempore*. The Chair presumes it is sufficient to call the attention of Senators to that duty, and that that duty will be performed as required by law.

Mr. HICKS. I suppose one oath subscribed by the various Senators would be sufficient.

Mr. TRUMBULL. As a matter of convenience, one oath would be sufficient for all, I think.

Mr. FOSTER. I move that until further order of the Senate the hour of meeting be twelve o'clock, meridian, of each day.

The motion was agreed to.

Mr. WILSON, of Massachusetts. The committee, appointed for that purpose, have waited upon the President of the United States and informed him that the Senate was organized and ready to proceed with business; and the President directed the committee to say that he would communicate with them to-morrow.

Mr. FOSTER. I move that the Senate do now adjourn.

The motion was agreed to; and the Senate adjourned.

IN SENATE.

THURSDAY, *March* 5, 1863.

Prayer by the Chaplain, Rev. Dr. SUNDERLAND.

The Journal of yesterday was read and approved.

Mr. LANE, of Indiana. I desire to have the oath of office administered to my colleague, Hon. THOMAS A. HENDRICKS, who is present.

The usual oath to support the Constitution was administered to Mr. HENDRICKS, and he took his seat in the Senate.

Mr. ANTHONY. My colleague, Hon. WILLIAM SPRAGUE, is present, and I ask that the oath of office be administered to him.

The usual oath to support the Constitution was administered to Mr. SPRAGUE, and he took his seat in the Senate.

APPOINTMENT OF COMMITTEES.

Mr. ANTHONY. I offer the following resolution, and ask for its present consideration:

Resolved, That the President *pro tempore* be authorized to appoint the standing committees of the Senate for this session, and also the members of joint committees.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FESSENDEN. I move to strike out all after the word "resolved," and insert:

That, for the purposes of this session, the standing committees be continued as constituted at the last session of the Senate, and that the President *pro tempore* be authorized to fill vacancies wherever the same may be necessary.

Mr. ANTHONY. I hope the resolution will not be amended. It is in the usual form that has always been passed here.

Mr. FESSENDEN. There is nothing binding about the form. Because it happened to be the form on another occasion, there is no reason why we should adopt the same now. There is no law that I am aware of rendering it necessary that a resolution of one session should be expressed in the same words that a similar resolution was in before. For many reasons, for the purpose of meeting the ideas gentlemen have on the subject, and expressing so far as it can be expressed on the face of the paper the distinct understanding as it exists, I think the amendment I propose is very much better (being the same in substance) than the resolution proposed by the Senator from Rhode Island.

Mr. ANTHONY. I hope the resolution will pass as it was offered. If the Senator from Maine persists in the amendment, I shall ask for the yeas and nays.

Mr. FESSENDEN. I have no objection.

Mr. SAULSBURY. I should like to know from the Senator from Rhode Island if he means to confine the resolution to this extra session alone?

Mr. ANTHONY. Undoubtedly. The committees can only be appointed for this session, and I desire to state that in offering this resolution, which is for the convenience of the Senate, I intend that it shall only apply to this session. I presume there can be no doubt that the committees will be constituted in the way in which the Senator from Maine suggests, which is the proper way, the natural and the obvious way, but I see no necessity for having the resolution in any different form from that in which it has always passed before.

Mr. SHERMAN. If the resolution of the honorable Senator from Rhode Island shall pass, it will be in the usual form, and the usual course will be pursued hereafter, and the committees of the last Congress, with the changes now made, will be continued at the next session of Congress. I want, by some definite change in the language, to show that the committees that are now organized shall not continue at the next session. In my judgment they ought to be reorganized completely, and I would not consent to either of the resolutions proposed but that the resolution of the Senator from Maine will be a clear indication that the committees are to continue only for the present session, and that at the next session of Congress we shall reorganize them entirely. That is the only reason why I shall vote for the amendment offered by the Senator from Maine.

Mr. FESSENDEN. There is another objection to the resolution; and that is, that it implies that the President *pro tempore* is to appoint the committees; that he is to exercise the power of remodeling the committees as he pleases. There is no idea of conferring any such power upon the President. I should be opposed to it utterly. The Senate has always exercised the authority for many years of appointing its committees, and has not conferred the power on the Presiding Officer, and does not design to do so in any way. The resolution confers that power, and seems to imply that the appointments are to be of the same character that they have been heretofore, substantially to continue during the Congress as long as it may remain. Now, sir, none of us will consent to that. We could not ask Senators on any side of the Chamber to do it. It is very well understood that this is a mere executive session; and for the purposes of this executive session it is better that the committees, so far as they have been heretofore constituted, should be continued, with the power in the President to fill up vacancies from the new members. It saves time, in the first place. The President, if he is to go through this matter, must necessarily take considerable time to do it, and I should be opposed to that; and, with the Senator from Ohio, I am clearly of opinion that if we adopt a resolution conferring this power upon the President and continue these committees, it should be in such a form as clearly to negative any idea that it is to be considered either in courtesy or on any other ground at all conclusive or even argumentative upon the permanent constitution of the committees of the body for the business of the Senate. That is the reason why I offered the amendment, in order to negative at once any such presumption in the mind of anybody, and merely to continue the committees for our own convenience as they are for this short session, at which nothing but executive business can be done. In my judgment it is very much better to keep the power in the hands of the Senate, and we ought not in any case to put on record the fact that we conferred the power of modeling the committees of the body on the President *pro tempore*, with all the respect that I entertain for the President personally.

Mr. SAULSBURY. I wish to make a suggestion to the majority, and that is this: when the committees shall have been permanently organized by the majority, so far as their side of the Chamber is concerned, I think it is nothing but justice that the minority should be consulted and have the privilege of selecting their members upon the committees. That used to be the case years ago, when parties were not the same in this Chamber, in reference to the majority and minority; but it is a thing which was omitted in the formation of the committees at the last session. When the committees shall be permanently organized, after the majority shall have selected such of their own party as they wish to be members of the respective committees, the minority should have the privilege of selecting such of their own members as are to go upon the committees.

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from Maine.

Mr. ANTHONY. I have no sort of objection, on the contrary I am in favor of the understanding that the appointment of the committees for this session shall be no precedent, no argument, no color, even, for their reappointment at the next session; but I do not see how the amendment of the Senator from Maine looks any more to that than the original resolution. It looks to me like a mere factious opposition to the resolution. I see no reason whatever for the amendment, and I hope the Senate will sustain me in the resolution as I have offered it; and upon that I ask for the yeas and nays.

Mr. FESSENDEN. The language of the honorable Senator from Rhode Island is certainly very singular and very inexcusable. What right has he to talk to me about a factious opposition? A factious opposition to what, sir? To the honorable Senator from Rhode Island. I constitute, I take it, as large a faction as he does. If it may go to the dignity of a party, I think the Senator sets himself up as a party to dictate what must be done. Very well; I have a right, I take it, to amend his proposition, to even venture to offer an amendment without being accused of faction because I happened to be opposed to a proposition offered by the honorable Senator from Rhode Island. That is a very singular state of things, if I cannot do so. I have the same object in view. I wish to negative a conclusion, and I take it I am acting properly in doing so.

Mr. ANTHONY. I think no one will deny that the Senator from Maine is as large a faction as any other Senator or any other two Senators here. I will not dispute that proposition.

Mr. FESSENDEN. Quite as large as the Senator from Rhode Island.

Mr. ANTHONY. A great deal larger. I very seldom obtrude myself upon the Senate, and very seldom make any personal remarks. I think the opposition of the Senator to this resolution—and my friends around me know why—is very singular indeed.

The PRESIDENT *pro tempore*. The question is on the amendment moved by the Senator from Maine.

Mr. ANTHONY. I ask for the yeas and nays on the amendment.

The yeas and nays were ordered; and being taken, resulted—yeas 14, nays 22; as follows:

YEAS—Messrs. Bowden, Collamer, Cowan, Davis, Fessenden, Foot, Harding, Morrill, Nesmith, Powell, Sherman, Wilson of Massachusetts, Wilson of Missouri, and Wright—14.

NAYS—Messrs. Anthony, Buckalew, Carlile, Chandler, Dixon, Doolittle, Foster, Harlan, Harris, Hendricks, Howard, Johnson, Lane of Indiana, Lane of Kansas, McDougall, Morgan, Saulsbury, Sprague, Sumner, Ten Eyck, Trumbull, and Wade—22.

So the amendment was rejected.

Mr. SAULSBURY. I suggest to the Senator from Rhode Island to insert the word "extra" before the word "session," so as to remove any doubt.

Mr. ANTHONY. I have no objection to that.

Mr. TRUMBULL and others. "Executive session."

The PRESIDENT *pro tempore*. The Chair will suggest that "special session" would be the better term.

Mr. ANTHONY. That will do.

The PRESIDENT *pro tempore*. The mover of the resolution accepts the modification.

The resolution, as modified, was agreed to.

OATH OF OFFICE.

Mr. SUMNER. I offer an additional rule to be adopted by the Senate:

The oath or affirmation prescribed by act of Congress of July 2, 1862, to be taken before entering upon the duties of office, shall be taken and subscribed by every Senator in open Senate before entering upon his duties.

The PRESIDENT *pro tempore*. It requires unanimous consent to consider the proposition at this time.

Mr. DAVIS. I object to any such rule as that.

The PRESIDENT *pro tempore*. It lies over.

COMMITTEE ON AGRICULTURE.

Mr. SHERMAN. I give notice that to-morrow, or some subsequent day, I shall move to add to the standing committees of the Senate a Committee on Agriculture.

EXECUTIVE SESSION.

Mr. DOOLITTLE. If there is no business pending in open session, I move that we proceed to the consideration of executive business.

Mr. TRUMBULL. I am not aware that there is any business in executive session. If anybody has any business for an executive session, I have no objection to it.

The PRESIDENT *pro tempore*. The Senator from Wisconsin moves that the Senate now proceed to the consideration of executive business.

The motion was agreed to; and, after some time spent in the consideration of executive business, the doors were reopened, and the Senate adjourned.

IN SENATE.

FRIDAY, *March* 6, 1863.

Prayer by the Chaplain, Rev. Dr. SUNDERLAND.

The Journal of yesterday was read and approved.

Hon. JAMES A. BAYARD, of Delaware, being present, the usual oath to support the Constitution of the United States was administered to him by the President *pro tempore;* and he took his seat in the Senate.

APPOINTMENT OF COMMITTEES.

The PRESIDENT *pro tempore* announced the appointment of the committees under the resolution adopted yesterday, as follows:

On Foreign Relations—Messrs. Sumner, (chairman,) Foster, Doolittle, Davis, Johnson, Bayard, and Harris.

On Finance—Messrs. Fessenden, (chairman,) Collamer, Sherman, Howe, Cowan, McDougall, and Hicks.

On Commerce—Messrs. Chandler, (chairman,) Morrill, Wilson of Massachusetts, Ten Eyck, Saulsbury, Trumbull, and Morgan.

On Military Affairs and the Militia—Messrs. Wilson of Massachusetts, (chairman,) Lane of Indiana, Howard, Nesmith, Morgan, Sprague, and Bowden.

On Naval Affairs—Messrs. Hale, (chairman,) Grimes, Sherman, McDougall, Johnson, Ramsey, and Sprague.

On the Judiciary—Messrs. Trumbull, (chairman,) Foster, Ten Eyck, Harris, Howard, Bayard, and Powell.

On the Post Office and Post Roads—Messrs. Collamer, (chairman,) Dixon, Trumbull, Johnson, Ramsey, Bowden, and Buckalew.

On Public Lands—Messrs. Harlan, (chairman,) Clark, Pomeroy, Carlile, Harding, Ramsey, and Hendricks.

On Private Land Claims—Messrs. Harris, (chairman,) Sumner, Morrill, Howard, and Bayard.

On Indian Affairs—Messrs. Doolittle, (chairman,) Wilkinson, Lane of Kansas, Harlan, Nesmith, Davis, and Wilson of Missouri.

On Pensions—Messrs. Foster, (chairman,) Lane of Indiana, Howe, Pomeroy, Saulsbury, Buckalew, and Bowden.

On Revolutionary Claims—Messrs. Wilkinson, (chairman,) Chandler, Lane of Kansas, Nesmith, and Wright.

On Claims—Messrs. Clark, (chairman,) Howe, Pomeroy, Anthony, Hicks, Harding, and Hendricks.

On the District of Columbia—Messrs. Grimes, (chairman,) Dixon, Morrill, Wade, Anthony, Richardson, and Wright.

On Patents and the Patent Office—Messrs. Cowan, (chairman,) Sumner, Harris, Saulsbury, and Carlile.

On Public Buildings and Grounds—Messrs. Foot, (chairman,) Anthony, Chandler, Saulsbury, and Wilson of Missouri.

On Territories—Messrs. Wade, (chairman,) Wilkinson, Hale, Lane of Kansas, Carlile, Wilson of Missouri, and Richardson.

To Audit and Control the Contingent Expenses of the Senate—Messrs. Dixon, (chairman,) Clark, and Harding.

On Engrossed Bills—Messrs. Lane of Indiana, (chairman,) Sumner, and Harding.

On Printing—Messrs. Anthony, (chairman,) Harlan, and Powell.

On Enrolled Bills—Messrs. Howe, (chairman,) Cowan, and Saulsbury.

On the Library—Messrs. Collamer (chairman) and Fessenden.

MECHANICAL PATENT OFFICE REPORT.

Mr. ANTHONY submitted the following resolution; which was referred to the Committee on Printing:

Resolved, That ten thousand copies of the mechanical report of the Patent Office for 1861-62 be printed for the use of the Senate.

PRINTING OF LAWS.

Mr. ANTHONY submitted the following resolution; which was referred to the Committee on Printing:

Resolved, That four thousand copies of the acts and joint resolutions of the third session of the Thirty-Seventh Congress be printed for the use of the Senate.

BOUND DOCUMENTS.

Mr. ANTHONY. I offer a resolution, and ask for its present consideration:

Resolved, That the number of sets of documents, such as journals, reports, and miscellaneous documents, bound in calf for the use of Senators, be limited to the number of Senators entitled to receive the same.

The practice now is to bind sixty-eight copies of these reserved documents. Of course those beyond the number of Senators actually entitled to receive them are piled away in the lumber rooms. It is rather an expensive work. This is to reduce the number.

The resolution was considered by unanimous consent, and agreed to.

OATH OF OFFICE.

Mr. SUMNER. As the Senate seems to have very little to do, and as I see the Senator from Kentucky in his seat, I desire to call up the resolution I offered yesterday in the form of a new rule of the Senate.

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

The Secretary read it, as follows:

Resolved, That the following be added to the rules of the Senate:

The oath or affirmation prescribed by act of Congress of July 2, 1862, to be taken before entering upon the duties of office, shall be taken and subscribed by every Senator in open Senate before entering upon his duties.

The PRESIDENT *pro tempore*. The question is on the adoption of this resolution as among the standing rules of the Senate.

Mr. DAVIS. I am opposed to the adoption of that resolution. I have sent down for a couple of books, and in a few minutes I will be ready to take up my opposition to it.

Mr. SAULSBURY. I move that the further consideration of the resolution be postponed until to-morrow.

Mr. SUMNER. If there is any particular reason for that, I shall agree to the postponement; but if there is no reason, I think we had better go on with its consideration. I do not know how much time the Senator from Kentucky wishes to occupy. The Senator opened the case in one word the other day when he said that he regarded the act of Congress as unconstitutional. Now, it strikes me that what is to be said on that is in a nutshell, and I cannot conceive that there will be any necessity for protracted discussion.

Mr. SAULSBURY. I think that it is proper under the circumstances to postpone this resolution, to give time for consideration in reference to the matter. I made the motion to postpone it until to-morrow with no view of preventing the Senate from acting upon it at this session, if they choose. This extraordinary session was convened for the purpose of transacting executive business, and it would hardly be wise to occupy to-day in the discussion of the resolution, for it certainly will be discussed. No injury can arise to the public from postponing it until to-morrow.

Mr. SUMNER. The answer to the Senator from Delaware is, that the statute to which the resolution refers requires that "every officer shall take and subscribe" a certain oath "before entering upon the duties of his office." That raises the question on the threshold; but, as I understand, the Senator proposes that the question shall be postponed until another day—to another session, if you will—and that the Senate shall proceed with their duties without taking the prescribed oath. I do not know what conclusion the Senate will come to upon the proposition now before them, but it seems to me it ought to be decided before we proceed to any other matter.

Mr. SAULSBURY. The answer to that is that every Senator upon this floor has been sworn in as a member of this body, and taken the oath prescribed by the Constitution; every member on this floor has already entered upon the duties of his office and answered to his name. Those who were not members at the organization of this body took an oath, which was a part of their duty, and every member of the body voted on the business which was before the Senate yesterday. We have all entered, therefore, upon the duties of our office; and so the objection made by the Senator from Massachusetts, that it is necessary to take this oath before we can enter upon the discharge of our duty, falls. Why, Mr. President, you were elected President of this body by the members of the Senate before any oath was taken. Motions were made in this body yesterday. A motion was made to go into executive session, which was as much a part of the duty of the members of this body as any other motion which could be made; and therefore it is utterly impossible to contend that we must take this oath before entering upon our duties as Senators. I make the suggestion—it is not a matter of so much importance to me; in fact, I care but very little about it—to postpone this resolution until to-morrow, simply for the purpose of considering it, and considering what shall be done in reference to the resolution when it shall come up.

Mr. BAYARD. This session is intended to be, I presume, an executive session. The object is to dispatch business in relation to nominations and appointments of the President, and treaties, if there be any such to come before the body. Every one knows that the Senate is never as full during the period of a special called session as at other times. Several Senators who have been elected are not able to be here; many are obliged at the close of a regular session to go home. The body is always less in numbers than at any other period. Apart from that, this resolution necessarily must give rise to discussion. There are grave questions involved in it. I will suggest one. The language of the law is, that every civil officer under the Government of the United States is required to take a certain oath. In the case of Blount, I think, the argument which was presented, and very powerfully presented, and, if I recollect rightfully, sustained by the committee, if not by the Senate, was that a Senator was not a civil officer under the Government of the United States within the meaning of its laws. He is an officer appointed by his State, and forming a part of the Government; he is not an officer under the United States. That was the construction given and the argument was a very powerful one. That question requires to be looked into. I do not pass any opinion upon it; I do not mean to say that it is a right construction, but it is one that is open to argument; it will lead to discussion.

Then there must arise a further question on the subject of legislation for the purpose of imposing an additional qualification on a Senator, which is certainly a very grave question, not in regard to the particular act in this case or the oath required, but a grave question as regards the precedent to be set, as regards the power of Congress to interfere with the qualification of members of either branch of the Legislature, imposing different ones from those which the Constitution itself imposes.

All these questions must be opened necessarily to discussion, and unless it is the desire to prolong the session of the Senate, I think it would be wiser to leave the question until the body is full at the next session of Congress, and gentlemen can consider all these matters in the meantime. I think that would be the wisest course.

Mr. DAVIS. What I have to say against the resolution will not occupy me a very great length of time. I would as soon make my remarks against the rule that is proposed this morning as at any other time. Some gentlemen wish the matter to be postponed until to-morrow morning. With the concurrence of the friends of the proposed additional rule, I am willing to make my remarks this morning, with the understanding that then the matter shall lie over until to-morrow morning.

Mr. SUMNER. Very well; just as the Senator pleases. I do not wish to press the resolution contrary to the disposition of Senators, but as there seemed to be very little for us to do now I thought it might be best to proceed with its consideration, for it is important to have it decided one way or the other.

Mr. DAVIS. I am entirely willing to proceed to say what I have to say in opposition to the proposed rule this morning.

Mr. SUMNER. Just as the Senator pleases; or if the Senator prefers it should go over until to-morrow morning, I am entirely willing.

Mr. DAVIS. With the concurrence of the Senator from Delaware, I will proceed with my remarks, with the understanding that then the matter will lie over until to-morrow morning.

Mr. SAULSBURY. Very well.

Mr. DAVIS. Mr. President, I opposed somewhat perseveringly the law that was passed at the

last session of Congress imposing this oath. When the question was first decided in the Senate, the Senate, by a majority of 20 to 18, rejected the bill upon argument. I have forgotten whether it was upon the return of the bill from the House of Representatives, or upon what stage of proceeding the Senate afterwards passed the law; but I recollect distinctly that in the first action which the Senate took upon the subject it voted to reject the law by a vote of 20 to 18.

Now, sir, as I intimated yesterday morning, I am opposed to the adoption of this additional rule, because I think that the law which authorizes and requires it is flagitiously unconstitutional. What does the additional rule amount to? Simply to the imposition of a test oath. That is the matter in a few words. Is it competent for the Senate of the United States to pass a law authorizing and requiring a test oath to be taken by the members of the two Houses of Congress? I recollect that the honorable Senator from Massachusetts, [Mr. SUMNER,] at the last session, admitted[although not in very precise and distinct terms, that he had been opposed to the execution of the fugitive slave law in the city of Boston under Mr. Fillmore's administration.

Among the examples which I put in my argument against this bill when it was pending, was this: suppose the members who passed the fugitive slave law had required that every member of Congress before taking his seat should take an oath to uphold and to assist in the execution of that fugitive slave law. I hold it would have been just as competent for the Congress which passed the fugitive slave law to have imposed such an oath as it was for this Congress, at its last session, to have imposed the oath now under consideration. What would gentlemen then have said? What would the honorable Senator from Massachusetts then have said, if a law had been passed imposing upon him and every member of the Senate the necessity of taking that oath? I suppose, sir, that he would have assumed at once that such a law as that would have been unconstitutional; and that such would have been its character I entertain no doubt.

If this body and the other House, by law, have a right to impose a test oath in one form, and in relation to one matter, they have in relation to any matter and in any form that they may deem proper, except so far as it is expressly inhibited by the words of the Constitution. What would prevent Congress from passing a law requiring every member of the two Houses to sustain the Administration? If we go on progressing as we have been proceeding for some few years, it would not be at all strange that we should be brought exactly to that condition of things and to that identical proposition. The majority in the Senate have a great aversion to the "copperhead Democrats." In the vicissitudes of party politics, suppose that within three or four years the copperhead Democrats get possession of the Government, in the executive and in the legislative departments, and they come up with their test oaths for the purpose of sustaining their school of politics and principles; are gentlemen ready to admit that they will not have the constitutional power to do so? They would have as much power to impose their forms of oath, to secure their party ends, as there was in the last Congress to pass this law. I will read the law; it is not long:

"*Be it enacted, &c.*, That hereafter, every person elected or appointed to any office of honor or profit under the Government of the United States, either in the civil, military, or naval department of the public service, excepting the President of the United States, shall, before entering upon the duties of such office, and before being entitled to any of the salary or other emoluments thereof, take and subscribe the following oath or affirmation: 'I, A B, do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted nor attempted to exercise the functions of any office whatever under any authority, or pretended authority, in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.'"

Now, sir, to that oath, in all its forms and in every point which it comprehends, if it was attempted to be imposed upon me by any legitimate authority, I should not take the least exception; and if I should be forced to take it, which I do not expect to be, I know I could take it with as clear a conscience as any man in this body. But I hold that the Congress has no power to pass a law imposing such an oath; that it would be a most mischievous precedent, one entirely without the competence of Congress to impose; and that it would be subject through the indefinite future to the most flagrant abuse from the precedent and principle which it would adopt, and therefore I am opposed to it.

Sir, I will examine the law a moment or two. I took my seat here and was qualified in December of last year; and what right has the gentleman from Massachusetts to attempt to impose a rule of the Senate which will require me now to take that oath?

Mr. SUMNER. It is not retroactive.

Mr. DAVIS. I think the Senator proposed to tender one.

Mr. TRUMBULL. The act says "hereafter."

Mr. DAVIS. It does not affect me now; but if I was ever to be elected to another office it might affect me hereafter; and I care not what party or what power attempted to impose such an oath upon me, I would resist it by all the power, by all the resources that I could command.

Sir, Congress exercises a delegated, limited power. What authority in the Constitution is there that delegates to Congress, either directly or by necessary implication, or as an auxiliary power, the authority to impose a test oath? I say that Congress has no such power. That, then, is one distinct objection to the validity and the constitutionality of the law. Congress has no power to impose a test oath upon the members of Congress. The same objection in another form is this, that it is adding another qualification which is necessary to authorize a man to be admitted to a seat in the Senate or in the House of Representatives. The decision read when this measure was before Congress at its last session, by the Senator from Illinois, is no authority whatever to sustain the constitutionality of the law. Every conclusion which it authorizes, and every argument which may be adduced from it, is of a contrary tendency. I have that decision before me, and as it is not long I will read it.

Mr. SUMNER. What is the case?

Mr. DAVIS. The case of Barker *vs.* The People in error to the General Sessions of the Peace in the city of New York:

"From the return to the writ of error, it appeared that Jacob Barker, the plaintiff in error, in February, 1822, was indicted at the General Sessions for sending a challenge to David Rogers to fight a duel. The indictment contained five counts; the first four counts were founded on the act, passed the 5th of November, 1816, entitled 'An act to suppress duueling,' (Session 40, chap. 1,) which declares that if any person shall challenge another to fight a duel, &c., or shall accept a challenge to fight a duel, &c., or shall be the bearer of a challenge, &c., such person shall be deemed guilty of a public offense; 'and, being convicted thereof, shall be incapable of holding or being elected to any post of profit, trust, or emolument, civil or military, under this State.' A *nolle prosequi* was entered on the fifth count. The plaintiff in error was tried on the indictment, at the General Sessions, in May last, and convicted. And the court below, thereupon, gave judgment that 'he be incapable of holding or being elected to any post of profit, trust, or emolument, civil or military, under the State of New York.'

"The plaintiff in error, in proper person, submitted the following questions:

"1. Whether the act under which he was convicted was not contrary and repugnant to the constitution of the State, then existing? (Secs. 1, 9, 13, 33.)

"2. Whether the act was not repugnant to the Constitution of the United States? (Art. 8 of the Amendments.)"

The only question that was raised under the Constitution of the United States against the validity of that judgment was that it was in violation of the eighth amendment, which prescribes that cruel and unusual punishments shall not be inflicted.

"3. Whether it be not repugnant to the new or amended constitution of the State; and, if so, abrogated after the last day of February last, because relating to the right of suffrage? (*Vide* Constitution, art. 1, sec. 3; art. 2, sec. 2; art. 5, sec. 2; art. 7, secs. 1, 13; art. 9, sec. 1.)

"4. Whether the power to disfranchise a citizen, and render him ineligible to any office, has ever been granted by the people, except in the case of impeachment?

"5. Whether the qualifications of an elector, and, consequently, of the person to be elected, can be changed or regulated by the Legislature, the same being fixed by the constitution?

"6. Whether the power to disqualify a citizen is not confined by the amended constitution to the case of a conviction for an infamous crime?

"7. That the judgment in this case is clearly repugnant to the sixth article of the amended constitution, which declares that 'no other oath, declaration, or test,' than the oath of office, 'shall be required as a qualification for any office or public trust.' The terms used are not synonymous. The word *test* has a most extensive meaning, and prohibits the establishing of any other *rule* by which the eligibility of an officer shall be determined than that defined by the constitution. Not only test oaths are prohibited, but all modes of ascertaining the qualifications of the person elected or appointed, which are not clearly provided by the constitution. The provisions of the amended constitution relate to the receiver, as well as the giver, of votes."

That is a summary of the facts of the case, and the points that were raised in it. The Senate will at once observe that the question came up totally different there from what it does here. To accept a challenge was made, by the law of New York, a penal offense, and one of the punishments resulting from it was a disqualification to hold any office or place of trust, profit, or emolument. Mr. Barker violated the law by sending a challenge; he was indicted for a breach of the law, and was convicted before the sessions court of the city of New York. The question was taken to a revisory court, and the revisory court there merely passed upon the question whether the punishment that had been adjudged against him, as a citizen, for having violated that law, was valid and constitutional or not. The revisory court decided that it was a valid, constitutional judgment; that the law was not unconstitutional. Spencer, chief justice, delivered the opinion, and, as it is not long, I will read it:

"The plaintiff in error contends that the judgment of the sessions is erroneous, and that the act on which it is founded, declaring that such disability shall ensue on a conviction for sending a challenge to fight a duel, is unconstitutional: first, as regards the original constitution of this State; second, as regards the Constitution of the United States; and third, as regards the amended constitution of this State. The first, ninth, thirteenth, and thirty-third articles of the original constitution of this State are said to bear upon this question, and the statute is supposed to be in repugnance to the provisions of those articles. The first article forbids the exercise of any authority over the people but such as shall be derived from or granted by them. The powers of the State Legislature are not conferred by an express grant, but result from the institution of a supreme Legislature; and it is an axiom that the Legislature possess all power not expressly forbidden by the constitution of the State or the United States, which relates to the prevention of crime or the well ordering of society."

There is one of the great principles upon which this decision was rendered, and it is a principle applicable to State governments but wholly inapplicable to the Constitution of the United States. It is there assumed as a principle correctly, that the State governments are plenary; that by the organization of a legislative power in the State governments they are possessed of all legislative power except that which is withheld from the legislative branch of the Government either by the Federal or by the State constitution.

A message of an executive character was received from the President of the United States, by Mr. NICOLAY, his Secretary.

Mr. HARRIS. Will the Senator from Kentucky give way for a motion to go into executive session. ["Oh, no!"] My own judgment is that this is a very unprofitable discussion.

Mr. TRUMBULL. I agree with the Senator; it is an improper discussion.

Mr. HARRIS. Not improper, but unprofitable, I said.

Mr. TRUMBULL. I think, however, it is necessary. If the Senate of the United States proposes to repeal a law of Congress, and set at defiance its own laws, I think we had better settle it at once.

Mr. HARRIS. We cannot settle it to-day.

Mr. TRUMBULL. I think we can.

Mr. HARRIS. I am sure we cannot.

Mr. SUMNER. I am sorry that the Senator from New York should propose here a nullification of a law of Congress.

Mr. HARRIS. I propose no such thing. I propose to occupy time more profitably.

Mr. DAVIS. I yield the floor for the motion to go into executive session.

Mr. HARRIS. I make that motion.

Mr. DAVIS. I do not yield the floor so as to forfeit my right to it.

Mr. GRIMES. We can go into executive session and have our nominations referred, and some of the committees can go on and transact their business while the Senator from Kentucky is

making his constitutional argument; and in that way we may save a day or two. We can come out of executive session as soon as these nominations are referred, and then we can listen with great pleasure to the argument of the Senator.

Mr. DAVIS. I have no objection to any course that may be agreeble to the Senate.

The PRESIDENT *pro tempore*. The question is on the motion of the Senator from New York.

Mr. SUMNER. I shall not interpose any objection to that; but I merely wish to make one remark. Here is a statute of Congress, and the question is whether the Senate is going to set an example of obedience to it or of disobedience; that is all. I took comparatively little interest in the passage of the law——

Mr. DAVIS. I do not suppose it is in order to debate this subject now.

Mr. SUMNER. I beg the Senator's pardon; it is in order to debate the question whether we shall go into executive session.

Mr. DAVIS. But you are not debating that question; you are debating the law.

The PRESIDENT *pro tempore*. Very limited debate is allowed on such a motion.

Mr. SUMNER. I shall not trench—the Senator, I think, will bear me witness that I do not trespass—upon the rules of the Senate.

Mr. DAVIS. I have no personal objection to your taking any latitude.

Mr. SUMNER. I do not mean to take any latitude. I merely intended to state that if the Senate choose now to go into executive session, they do choose to enter upon most important duties in disregard of an act of Congress which they have assisted in putting upon the statute-book.

Mr. GRIMES. I insist that there is no such issue before us. By going into executive session and transacting the business that will be presented to us, so far as referring nominations is concerned, we do not decide the question whether we are going to nullify a law of Congress or not. It is merely calculated to expedite our business and enable us to leave Washington for our respective homes a day or two sooner than would be otherwise the case. I shall vote to come out of executive session as soon as the nominations are referred, and some of us can be considering them; but if we go on with this discussion the whole day and have the nominations referred late in the evening we shall not be prepared to act on them for a day longer.

The motion of Mr. HARRIS was agreed to; and the Senate proceeded to the consideration of executive business, and after some time spent therein the doors were reopened.

COMMITTEE ON AGRICULTURE.

Mr. SHERMAN, in pursuance of notice, submitted the following resolution; which was considered, and agreed to:

Resolved, That the thirty-fourth rule of the Senate be amended, by adding thereto "A Committee on Agriculture, to consist of five members."

The PRESIDENT *pro tempore* appointed Mr. SHERMAN, Mr. HARLAN, Mr. MORRILL, Mr. LANE of Kansas, and Mr. POWELL.

JOHN ALEXANDER.

Mr. McDOUGALL. I desire to present a resolution which was before the Senate at the adjournment, and ask for its present consideration:

Resolved, That the Committee to Audit and Control the Contingent Expenses of the Senate be authorized to pay to John Alexander, the sum of $156 25 for decorating and furnishing material for decorating and placing the painting known as the "Storming of Chepultepec."

It passed the Committee on Contingent Expenses, and was reported favorably upon at the last session. It is a resolution about which there is no question, I suppose.

The resolution was considered by unanimous consent, and agreed to.

OATH OF OFFICE.

Mr. SUMNER. I think we had better now proceed with the business regularly in order.

The PRESIDENT *pro tempore*. The pending question is on the resolution moved by the Senator from Massachusetts, and the question is on postponing the further consideration of it until to-morrow, upon which the Senator from Kentucky was addressing the Chair at the time the Senate went into executive session, and is now entitled to the floor.

Mr. DAVIS. I was examining the decision in the case of Barker *vs.* The People, in New York, that was relied upon as authority to sustain the power of Congress to pass this bill at the time it was passed. I had got to that portion of the opinion which stated the general principle of plenary legislative powers that the State government necessarily established in the Legislature of the State of New York; and I was also stating that the power of Congress to act upon the subject was not at all analogous to the power of the State Legislature, because the power of Congress was limited and delegated, and that consequently Congress could not have power to pass the law imposing this oath unless there was a clause of the Constitution that in plain terms, or in terms importing the power, conferred it, or unless it was a necessary and proper auxiliary power to carry into execution some expressly delegated power. I do not think that that authority for the passage of the law can be found in the Constitution. I will proceed to read the residue of this opinion:

"The ninth article constitutes the Assembly judges of their own members. I presume it is intended by the plaintiff, by referring to that article, to infer that no other power, not even the legislative, can divest the Assembly of this right. If this be so, and it is not necessary to deny it, the only consequence would be, that should the Assembly consider the judgment as no disqualification, its operation would be so far defeated, but not necessarily any further. The thirteenth article forbids the disfranchisement of any member of this State unless by the law of the land, or the judgment of his peers. If the dueling act is not otherwise unconstitutional, then the injunctions of this article have been complied with; for the act is the law of the land, and the verdict is the judgment of the plaintiff's peers. The thirty-third article relates to judgments on impeachments, and restrains their operation to removal from office, and disqualification to hold any place of honor, trust, or profit, under this State. The application of this article to the question before us is not perceived. I am, therefore, of opinion that there is nothing in the original constitution which the act violates. When it was before the council of revision, the objections which some of the council, and I was one of them, had to the act, related to other parts of it, and not to the one now objected to. The supposed repugnancy of the act to the Constitution of the United States, as it is urged, is to the eighth amendment, which declares that cruel and unusual punishments shall not be inflicted. The disfranchisement of a citizen is not an unusual punishment; it was the consequence of treason, and of infamous crimes; and it was altogether discretionary in the Legislature to extend that punishment to other offenses.

"The judgment rendered in the court below is supposed to be erroneous, as repugnant to and contravening the third section of the first article, the second section of the second article, the second section of the fifth article, the first and thirteenth sections of the seventh article, and the first section of the ninth article of the amended constitution. The third section of the first article, giving to the Senate and Assembly the right to judge of the qualification of their members, has been commented on, as well as the second section of the fifth article, which relates to judgments on impeachments; and also the first section of the seventh article. The second section of the second article ordains that laws may be passed excluding from the right of suffrage persons who have been or may be convicted of infamous crimes. The thirteenth section of the seventh article, among other things, ordains that such acts of the Legislature as were then in force should be and continue the law of this State, subject to such alterations as the Legislature shall make concerning the same; but all such parts of the common law, and such of the said acts or parts thereof, as are repugnant to this constitution, are hereby abrogated. The first section of the ninth article ordains, among other things, that those parts of the amended constitution which relate to the right of suffrage, the number of members of Assembly thereby directed to be elected, the apportionment of members of Assembly, the elections thereby directed to commence on the first Monday of November, 1822, should be in force and take effect from the last day of February then next. The sixth article has also been relied on, which ordains that no other oath, declaration, or test shall be required, as a qualification for any office or public trust, than the one prescribed, which is to support the Constitutions of the United States and of this State, and faithfully to discharge the duties of the office, according to the best ability of the officer.

"It may admit of much doubt, whether the Legislature are not restrained from excluding from the right of suffrage any other persons than such as have been or may be convicted of infamous crimes. The enumeration of offenses, on the conviction for which power is given to the Legislature to exclude the persons convicted, by necessary implication denies the power in any other cases. The offense of which the plaintiff has been convicted is not an infamous one. The law has settled what crimes are infamous; they are treason, felony, and every species of the *crimen falsi*, such as perjury, conspiracy, and barratry. (Peake's Evid., 126, 127.) If this be so, then the inquiry is, whether the right of suffrage necessarily implies the right of being voted for. The amended constitution does not prescribe the qualifications of members of Assembly; and, with respect to senators, it requires only that they shall be freeholders. There are particular qualifications for a governor, but for all other offices the constitution is silent as to qualification. I cannot think that the right of voting and being voted for are convertible terms; indeed, we see they are not, for a great class of voters are not required to be freeholders, and yet it is necessary to the qualification of a senator or a governor, that he should be a freeholdera and, with respect to the Governor, he must be a native citizen of the United States, thirty years of age, and a resident within the State for five years. The right of suffrage is, therefore, distinct from the right of being eligible to an office.

"As to the oath of office prescribed by the sixth article, and the provision that no other oath, declaration, or test shall be required, it is contended that the word *test* has a most extensive meaning, and prohibits the establishing any other rule by which the capacity of a person to hold an office shall be determined than that defined, the oath of the person appointed or elected. I cannot accede to this. In my judgment, the exclusion of any oath, declaration, or test, as a qualification for an office or public trust, means only that no other oath of office shall be required. It was intended to abolish the oath of allegiance and abjuration, or any political or religious test, as a qualification."

Now, Mr. President, here are two principles decided in this case that bear very directly upon the present question, and both of them against the validity of the law. The first is a principle familiar to every lawyer, but which is asserted, also, in this opinion, "the enumeration of offenses on the conviction for which power is given to the Legislature to exclude the persons convicted, by necessary implication denies the power in any other cases." The principle is this, that when the law for any purpose enumerates matters of qualification or disqualification, or enumerates for any other purpose whatever, the enumeration necessarily, by a universal principle of legal construction, excludes all that are not enumerated. This opinion settles that principle, but it is not necessary that it should settle it, because it is a principle familiar to every lawyer. Whenever a constitution or a law enumerates for certain purposes—say the purposes of qualification or disqualification—several classes, it results as a principle of law that every class not enumerated is excluded. Here is the other principle that bears in this case, and it is a principle cognate to the one which I have just stated:

"As to the oath of office prescribed by the sixth article, and the provision that no other oath, declaration, or test shall be required, it is contented that the word *test* has a most extensive meaning, and prohibits the establishing any other rule by which the capacity of a person to hold an office shall be determined than that defined, the oath of the person appointed or elected. I cannot accede to this."

Here is the legal principle he states:

"In my judgment, the exclusion of any other oath, declaration, or test, as a qualification for an office or public trust, means only that no other oath of office shall be required. It was intended to abolish the oath of allegiance and abjuration, or any political or religious test, as a qualification."

I ask the attention of the Chair to this other feature in this opinion; it is this: the identical question that is now raised was not raised in the argument of the party himself interested in the case; it was not raised by the court; it was not decided by the court at all; and that question is simply this: whether, when a constitution enumerates certain qualifications of office, other qualifications can be added by the law:

"The amended constitution does not prescribe the qualifications of members of Assembly; and, with respect to senators, it requires only that they shall be freeholders. There are particular qualifications for a governor, but for all other offices the constitution is silent as to qualification. I cannot think that the right of voting and being voted for are convertible terms; indeed, we see they are not, for a great class of voters are not required to be freeholders, and yet it is necessary to the qualification of a senator or a governor that he should be a freeholder; and with respect to the Governor, he must be a native citizen of the United States, thirty years of age, and a resident within the State for five years."

This opinion does not at all recite, nor does it authorize, the inference that any of those qualifications of the Governor of New York could be added to by a law. On the contrary, the opinion having recited these constitutional qualifications of the office of governor, to my mind authorizes the inference that it was the opinion of the learned judge that these qualifications could not be added to. The main proposition that I take is this: that the qualifications of a Senator in Congress are established by the Constitution:

"No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen."

These are the three qualifications upon which it is competent for a State Legislature to choose a Senator to Congress, and upon which he is entitled to present himself and claim his seat, if he possesses them, and has been so decided. This proposition I lay down, that you cannot require from a Senator any other qualifications of office, either upon his election or upon his continuance in his seat after his election. Is it not a principle of our Constitution that it defines the qualifications of President and Vice President, and of a

Senator and Representative in Congress? If the Constitution defines those qualifications, is it competent for Congress, by a law, to interfere with them? Can it diminish them? Can it add to them? Can it make them more numerous or less numerous than the Constitution declares them? When a citizen of the United States has been nine years a citizen, is a resident of a State, and is thirty years of age, what inhibition is there upon any State Legislature from electing him as a Senator to Congress? I suppose the honorable Senator will concede that there is none. Then the position, if that be conceded, is undeniable, that whenever a citizen has these three qualifications he may be voted for or selected by a State Legislature to a seat in the Senate from that State. Well, sir, when he comes here and presents himself to take the oath prescribed by the Constitution of the United States and to be admitted to his seat, what power has Congress to meet him with other disqualifications or qualifications? because there is practically and in truth no distinction between disqualifications and qualifications. When there is a disqualification the Senator must necessarily have the opposite qualification, so that they are practically the same. But when I come to the Senate Chamber, present myself as a Senator from the State of Kentucky, and exhibit the testimonial of my election, and I am thirty years of age, and have been nine years a citizen of the United States, and am a citizen of the State of Kentucky, what objection can be made by any power to exclude me from my seat? All the gentlemen elected to the present Congress as Senators, with one exception, I believe, have been admitted to their seats.

Now, sir, after they have been admitted to their seats, what warrant or authority has the Senator from Massachusetts to require them to take an oath as the condition upon which they shall be permitted to remain in their seats, and to claim and exercise the privileges and the powers of Senators? Do not the same qualifications and election which authorize a Senator to take his seat, authorize him to continue in his seat, and to claim all of its privileges and rights until his term expires? Does the gentleman intend to attempt to take a distinction between admission to a seat in Congress and its continuance? He cannot I think logically or constitutionally assume any such distinction. If a man is qualified to take his seat when he presents himself, he needs no other or additional qualifications to continue in his seat, and he cannot be met with any other disqualifications that would remove him from his seat. Here is the honorable Senator from New Jersey, [Mr. WRIGHT.] He exhibited testimonials that were conceded to be sufficient by the Senate. The Senate was satisfied with his election and qualifications; they ordered the Presiding Officer to administer the oath which the Constitution requires, and the oath was administered to him; he took his seat, and he has been performing the functions of a Senator; and now, sir, the Senator from Massachusetts gets up and under this law proposes to establish a rule of the Senate that would require him to take the oath, which I read, in the law of the last session. Suppose he refuses to take it, what course will the Senate take? Will they proceed to expel him? I suppose not. For what would they expel him? He is guilty of no disorderly conduct, he is guilty of nothing that comes within the principle of cause which authorizes the Senate to expel a member; nothing of the kind; and he cannot be expelled except upon the adoption of an arbitrary and capricious and tyrannical principle and rule. It would be a two-edged instrument too, because the party and the man who establish this principle and this precedent may live to see the other edge of the sharp weapon turned upon themselves and their friends. Sir, it never was intended by the framers of the Constitution to allow the subject of disqualification or qualification of members of Congress to be interfered with by legislation. A more mischievous and unjust principle could not be established. The Constitution fixed that matter. It is immutable until the Constitution itself is changed in that particular. The change cannot be introduced by Congress either for the purpose of addition to or subtraction from the qualifications of a member of Congress.

Now, Mr. President, the gentleman from Illinois asked the question, will you permit a law of Congress to be executed? I suppose he and every other member of the Senate, be he a lawyer or not, knows that if the law is in conflict with the Constitution it is null and void. The Supreme Court have decided that principle again and again. But it was not necessary for any court to decide it that it might receive universal assent. We all know that that is the law. But in the case of Marbury *vs.* Madison, and other cases decided by the Supreme Court, that principle has been most explicitly recognized.

Now, sir, I maintain that the power to pass this test oath, if it existed in Congress, would necessarily carry the power to establish other test oaths. If Congress has the right to add to the qualifications or the disqualifications of a Senator or Representative in one respect, they have an indefinite right to do so. I admit that an oath to support a single law would not in all respects be an apposite case to the present, and the law requiring an oath to be taken to support the Administration would not be in all respects apposite to the present; but the power is the same, the principle of power is the same—Congress had the right to pass the law imposing the oath under consideration; they have the right to pass laws requiring other forms of oath indefinitely. Gentlemen may attempt to draw a distinction, but there is no distinction in the principle of power; none to my understanding. There would have been as much power when the fugitive slave law was passed to have required an oath to be taken by all the members of Congress to uphold and to aid in the execution of that law as there was in Congress to impose the oath under consideration.

There is no difference in principle or power. If some future Administration, when the public vigilance over the liberties of the citizen has abated, and when the strides of power have become greater, and when men are more unscrupulous and bold and have more subserviency to sustain their ambitious views, should take it into their heads to impose by law oaths to support the Administration then in being, I maintain that there would be just as much power, and constitutional power, to impose such an oath as that as the one that is under examination. I see no difference in the principle. The principle which prohibits it is this: that the qualifications of the members of the Senate are defined by the Constitution. Congress, as the legislative power, has no right to interfere with them. This oath purports to be as much a qualification as that a man shall be a resident of the State from whence he is elected or thirty years of age or nine years a citizen of the United States. I see no distinction in principle between these heads of qualification. The oath is as much a matter of qualification as the age, the residence, the time of citizenship. It is, therefore, an additional qualification sought to be added to the tenure of the senatorial office by the Legislature. They have no power to impose that or any other additional qualification. They have no right to interfere with the matter at all.

The reason why I have felt more confidence in this question I stated last summer. It is this: the question has often been raised upon the dueling laws in my own State. The qualification there of representatives and senators is in analogous language to the qualifications of Representatives and Senators in the Congress of the United States. At various times, I suppose, in the last fifty years, twenty times at least, probably more, men came there elected to the one house or to the other who had been engaged in a duel, having sent or accepted a challenge or acted as a friend of one of the parties, all of which were prohibited by the law of my State, and were declared to render those who had thus participated ineligible to a seat in the Legislature. From the time that the question was first made, when your Aliens and your Nicholasses and your Boyles and your Trimbles and your Talbots, and men of the first legal ability and learning in America were then residents of the State, and forming the judicial judgment of the people in relation to these questions, it was then and there decided that such laws were nothing more nor less than an attempt to add to the constitutional qualifications of members of the Legislature, and were therefore unconstitutional, void, and inoperative. And that first decision has been adhered to for forty or fifty years in the State of Kentucky without any departure from it whatever.

The question in that State, under our constitution, was precisely the same, except that it related to dueling, as that which arises under the present law. The ground that the matter of this law, which produces or is intended to produce the disqualification or the ejection from office, is of a different nature, does not change the power nor the principle. I regard the law, sir, as I did when it was passed, as in conflict with the Constitution, and, therefore, null and void, and that it has no validity and cannot be executed by the Senate. I believe, on the contrary, if one of these gentlemen refused to take the oath, and he was to be expelled by Congress, the Supreme Court would decide that he was entitled to his mileage and his per diem, and would issue their *mandamus* compelling it to be paid to him, and in that way determine the law to be void and inoperative.

Mr. SUMNER. Mr. President, the argument of the learned Senator from Kentucky attests the importance of the question, and I think is an answer to the suggestion a short time ago by a Senator over the way that this debate was unimportant. Sir, I regard it as of great importance. It is important always whether the laws of the land shall be obeyed; and how can you expect obedience to the laws of the land if here in the Senate you set an example of disobedience?

Mr. SAULSBURY. With the permission of the Senator from Massachusetts I wish to make a suggestion.

Mr. SUMNER. Certainly.

Mr. SAULSBURY. I should like to know how, consistently with his theory that the taking of this oath is a necessary preliminary to entering upon the duties of his office as a Senator, he can discuss the question now before the Senate. If it is necessary to take this oath before the Senator enters upon the discharge of his duties, as is contemplated by the resolution, I do not know how he can address the Senate upon the subject, not being a Senator according to his own doctrine.

Mr. SUMNER. The Senator has had the kindness to interrupt me at the very opening of my remarks. If he would also have the kindness to listen to me till the close I think he will find an answer. I said, sir, that this question involved the great question of obedience to the laws, and that we here in the Senate ought to set an example of obedience; for if we begin by setting this statute aside, will not the other House follow our example? And how can we expect other departments of Government to obey it, if Congress, that enacted it, disobey it?

The statute is very simple and very positive. It is as follows:

"That hereafter every person *elected* or appointed *to any office* of honor or profit under the Government of the United States, shall, before entering upon the duties of such office, and before being entitled to any of the salary or other emoluments thereof, take and subscribe the following oath or affirmation."

Then follows the oath at length.

"Which said oath, so taken and signed, shall be preserved among the files of the court, *House of Congress*, or department to which *the said office* may appertain."

Listening to the Senator from Kentucky, we have heard what can be said against the taking this oath by Senators, and I believe I shall not do injustice to his argument if I say it resolves itself into two special objections. First, that we seek to impose a new test oath, which, from the nature of the case, is unconstitutional. To this I reply that we do not seek to impose any new test oath, all of which I will show before I sit down. And his second objection is, that we seek to impose an additional qualification. To this, also, I reply that we do not seek to impose any additional qualification; all of which I will show, also, before I sit down, and I do not mean to be long. The case is very plain. Of course the sum and substance of the whole argument is, that the required oath is unconstitutional, or at least that it is inconsistent with the text of the Constitution. Let me follow the Senator in his appeal to the text of the Constitution. The Constitution says in the third clause of article six:

"*The Senators* and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, *shall be bound by oath or affirmation to support this Constitution.*"

"Shall be bound by oath or affirmation to support this Constitution." That is all that we find in the text of the Constitution with regard to the re-

quired oath. But this text has a commentary. The first act of Congress after it came together under the Constitution, the very first act in our statute-book, standing foremost in our legislation, was to carry into execution this text. It was the statute of June 1, 1789, entitled "An act to *regulate the time and manner* of administering certain oaths." The very title is instructive. Here is regulation of time and manner. Then comes the statute itself. The first part of the first section is as follows:

"That the oath or affirmation required by the sixth article of the Constitution of the United States shall be administered"—

How?

"*in the form following, to wit:* I, A B, do solemnly swear or affirm that I will support the Constitution of the United States."

It is not in the text of the Constitution that you find the oath which is administered to us at your desk, but it is in the supplementary statute. Nor is this all; this statute has a commentary. I read now from the debate on that statute when it was under consideration in the House of Representatives, May 6, 1789, as it is preserved in the fourth volume of Elliot's Debates. It seems that there were objectors at that time to the proposed oath, as there are objectors now. But those objectors were replied to:

"Mr. BLAND had no doubt respecting the powers of Congress on this subject. The evident meaning of the words of the Constitution implied that Congress should have the power to pass a law directing the time and manner of taking the oath prescribed for supporting the Constitution."

Then follows Mr. Lawrence, who is more explicit and more instructive. He says:

"The Constitution declares that the members of the State Legislatures, and all officers, executive and judicial, shall take an oath to support the Constitution. *This declaration is general, and it lies with the supreme Legislature to detail and regulate it.*"

Permit me to say that in this cotemporary exposition you find a complete answer to the whole argument of the Senator. "The declaration is general, and it lies with the supreme Legislature to detail and regulate it." Mark the words—"to detail and regulate it." The text of the Constitution requires an oath to support the Constitution; but the Legislature may step in, according to the cotemporary commentary, *to detail and regulate it.* But what is the proposed oath to which the Senator objects but an oath to support the Constitution of the United States—an oath, if you please, with details, but in its sum and substance, in its beginning and in its end, in its object, in its character, in its spirit, as also in its letter, an oath to support the Constitution of the United States, and nothing else? When the Senator from Kentucky argues that this oath is a test oath, I reply to him at once, then is the oath to support the Constitution of the United States a test oath; and when the Senator argues that the oath that we require is an additional qualification, then do I reply that the oath to support the Constitution of the United States is also an additional qualification. The argument of the Senator is illusory. It is not applicable to the case. If the proposed oath was a test oath, then he would be right, and I should be with him. If the proposed oath imposed an additional qualification, then he would be right, and I should be with him. But as it is not a test oath, and as it does not propose any additional qualification, but is simply an oath to support the Constitution of the United States, then the Senator will allow me to say that he is clearly wrong. The oath, I admit, is less simple than the early oath; but it is the same in substance, and has its origin in the same requirement of the Constitution. Though cumulative in its words and expressions, it is essentially an oath to support the Constitution.

But I am not ready to say, even if the proposed oath went further, especially if its operation was to guard the loyalty of this body, that it would not be strictly constitutional; nor can I doubt that it is within our powers to establish an *oath of office* in addition to an oath of loyalty, as is done in other cases under the Government. Such an oath would not be obnoxious to the objections of the Senator. It would be neither a test oath nor an additional qualification.

Now, sir, I am ready to reply to the inquiry of the Senator from Delaware, directed to me at the opening of my remarks. He wishes to know how, with the views which seem to me so just, I can participate in this debate. My answer is easy. I am no better than others on this floor. I follow the example of my associates who have entered upon their duties; especially do I follow the lead of our honorable President, who did not see fit to take the proposed oath himself, nor did he administer it to others. But I take advantage of the position that has been conceded to me, of what lawyers call the *persona standi in judicio*, to make this earliest effort to induce the Senate, with which I am associated, to do its part in obedience to the laws of the land. If there be irregularity in the proceeding, its vindication will be found in the peculiarity of the circumstances. I need not remind the Senator that for certain purposes a legislative body may be addressed by those who are not in all respects qualified as members. He knows that applicants for seats, certainly in the other House, are heard in their own case. I refer to these instances only in illustration, and content myself with remarking that thus far during the few hours of this session there has been no vote of the Senate.

And now, sir, as I conclude, let me say that I desire to take and subscribe the new oath in open Senate, that I may in all respects qualify myself for the discharge of my duties as a Senator. Others will do as they please, or as the Senate shall require. But I hope that I may appeal to the Chair to administer that oath to myself, or to direct that it shall be administered. With the expression of this desire I take my seat.

The PRESIDENT *pro tempore*. The subject is under debate.

Mr. DAVIS. A single word in reply to the Senator from Massachusetts. The Senator from Massachusetts says that the oath which this law prescribes is only an oath to support the Constitution in detail, if I understand his position.

Mr. SUMNER. So I understand it.

Mr. DAVIS. Well, every Senator has taken an oath to support the Constitution of the United States, in the terms prescribed by the First Congress, after the adoption of the Constitution, so that the oath which the Senator says is to be taken in detail has already been taken in general terms. Now, sir, if this oath prescribed in the law means nothing more than an oath to support the Constitution of the United States, and that oath has already been taken in general terms, the matter is *functus officio*, the oath is taken. Having taken the oath once in the general form, which the gentleman states to be in substance the particular oath, has Congress the power to impose the oath a second time upon the members of the Senate—an oath which in substance and in legal and constitutional effect would be precisely the same? I say not, sir.

The oath prescribed by the First Congress under the Constitution is in substance and in meaning almost literally, too, the oath prescribed by the Constitution itself. The Constitution having prescribed one oath, that necessarily excludes all other oaths to be taken by members of the Senate and the other officers of the Government who, by the Constitution, are required to take that oath. That is upon the familiar principle which every lawyer well understands; it is the A, B, C of law that where there is a requisition by the Constitution or law in express language, it necessarily excludes everything that is not comprehended by that language. Here is an oath required by the Constitution in express language, which, according to the concession of the Senator, has been already taken by every member of the Senate. If the oath which he insists shall be taken is the same in detail, but not different in substance, meaning, or effect, from the general oath, the oath which even he requires has already been taken; and the gentleman has no right to insist upon its repetition once, twice, or any number of times by the same Senators. If it is a different oath than that prescribed by the Constitution in any of its features or branches, it is not competent for Congress to impose it, because the Constitution, in enumerating one oath which Senators are to take, necessarily excludes from being imposed upon them every other oath. The last branch of this oath is:

"And I do further swear (or affirm) that to the best of my knowledge and ability I will support and defend the Constitution of the United States against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely without any mental reservation or purpose of evasion."

Now, sir, when the Constitution requires that members of the Senate and other officers shall take an oath to support the Constitution, where does the gentleman derive his power to impose an additional oath upon a member of Congress, that he takes the oath freely and without mental reservation? It is an additional oath, and, being an additional oath, is necessarily excluded by the prescription in the Constitution of the oath and the form if not the substance of the oath which that instrument requires officers to take.

Now, sir, I do not understand the debate that took place in the First Congress under the Constitution exactly as the gentleman does; and that I may do him no injustice, as it is only a page and a half, I will read what was said by all the members on that point:

"Mr. GERRY said he did not discover what part of the Constitution gave to Congress the power of making this provision, (for regulating the time and manner of administering certain oaths,) except so much of it as respects the form of the oath; it is not expressly given by any clause of the Constitution, and, if it does not exist, must arise from the sweeping clause, as it is frequently termed, in the eighth section of the first article of the Constitution, which authorizes Congress 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers, vested by this Constitution in the Government of the United States, or in any department or officer thereof.' To this clause there seems to be no limitation, so far as it applies to the extension of the powers vested by the Constitution; but even this clause gives no legislative authority to Congress to carry into effect any power not expressly vested by the Constitution. In the Constitution, which is the supreme law of the land, provision is made that the members of the Legislatures of the several States, and all executive and judicial officers thereof, shall be bound by oath to support the Constitution. But there is no provision for empowering the Government of the United States, or any officer or department thereof, to pass a law obligatory on the members of the Legislatures of the several States, and other officers thereof, to take this oath. This is made their duty already by the Constitution, and no such law of Congress can add force to the obligation; but, on the other hand, if it is admitted that such a law is necessary, it tends to weaken the Constitution, which requires such aid; neither is any law, other than to prescribe the form of the oath, necessary or proper to carry this part of the Constitution into effect; for the oath required by the Constitution, being a necessary qualification for the State officers mentioned, cannot be dispensed with by any authority whatever other than the people and the judicial power of the United States extending to all cases arising in law or equity under this Constitution. The judges of the United States, who are bound to support the Constitution, may, in all cases within their jurisdiction, annul the official acts of State officers, and even the acts of the members of the State Legislatures, if such members and officers were disqualified to do or pass such acts by neglecting or refusing to take this oath."

Mr. Gerry stated the true constitutional principle when he said that everything that is necessary is to throw the oath into form, the substance of which is required by the Constitution.

Mr. SUMNER. May I interrupt the Senator right there. The Senator says the true principle is to throw the oath into form. Has not Congress undertaken to do it?

Mr. DAVIS. Not to throw it into such form as this law does.

Mr. SUMNER. The Senator objects to the form, but Congress has undertaken to exercise a constitutional power in throwing the oath into form. It undertook that on the 1st of June, 1789, and it undertook it a second time during the second session of the last Congress.

Mr. DAVIS. Yes, and it undertook a good deal more. It undertook to throw other matter into the oath that is not required by the Constitution at all.

Mr. TRUMBULL. That is your opinion.

Mr. DAVIS. It would be yours if your mind was not beclouded by the grossest prejudice and darkness. [Laughter.] That I willingly take the oath is an addition to it; that I take it without mental reservation is an addition to the oath. Will the Senator say it is not an addition?

Mr. SUMNER. It seems to me it is not. I should think, loyal as we all know the Senator is—no person can have served on this floor with the Senator, as we all have, without knowing his perfect loyalty—he would rejoice to take such an oath, and rejoice to have everybody else take it.

Mr. DAVIS. I am very sorry, sir, not to be able to return the compliment. I wish I could. I have no doubt I am a much more loyal man than the Senator from Massachusetts.

Mr. HOWARD. I do not think either of you will ever be hanged for loyalty. [Laughter.]

Mr. DAVIS. I hope not. But I was reading the debate in Congress in 1789:

"Mr. BLAND had no doubt respecting the powers of Congress on this subject. The evident meaning of the words of the Constitution implied that Congress should have the power to pass a law directing the time and manner of taking the oath prescribed for supporting the Constitution.

There can be no hesitation respecting the power to direct their own officers and the constituent parts of Congress. Besides, if the State Legislatures were to be left to direct and arrange this business, they would pass different laws, and the officers might be bound in different degrees to support the Constitution. He not only thought Congress had the power to do what was proposed by the Senate, but he judged it expedient also.

"Mr. JACKSON. The States had better be left to regulate this matter among themselves; for an oath that is not voluntary is seldom held sacred. Compelling people to swear to support the Constitution will be like the attempts of Britain, during the late Revolution, to secure the fidelity of those who fell within the influence of her arms; and, like those attempts, they will be frustrated. The moment the party could get from under her wings the oath of allegiance was disregarded. If the State officers will not willingly pay this testimony of their attachment to the Constitution, what is extorted from them against their inclination is not much to be relied on.

"Mr. LAWRENCE. Only a few words will be necessary to convince us that Congress have this power. It is declared by the Constitution that its ordinances shall be the supreme law of the land. If the Constitution is the supreme law of the land, every part of it must partake of this supremacy; consequently, every general declaration it contains is the supreme law. But then these general declarations cannot be carried into effect without particular regulations adapted to the circumstances: these particular regulations are to be made by Congress, who, by the Constitution, have power to make all laws necessary or proper to carry the declarations of the Constitution into effect. The Constitution likewise declares that the members of the State Legislatures, and all officers, executive and judicial, shall take an oath to support the Constitution. This declaration is general, and it lies with the supreme Legislature to detail and regulate it.

"Mr. SHERMAN. It appears necessary to point out the oath itself, as well as the time and manner of taking it. No other Legislature is competent to all these purposes; but if they were, there is a propriety in the supreme Legislature's doing it. At the same time, if the State Legislatures take it up, it cannot operate disagreeably upon them to find all their neighboring States obliged to join them in supporting a measure they approve. What a State Legislature may do will be good as far as it goes. On the same principle the Constitution will apply to each individual of the State officers; they may go without the direction of the State Legislature to a justice and take the oath voluntarily.

"This, I suppose, would be binding upon them; but this is not satisfactory; the Government ought to know that the oath has been properly taken; and this can only be done by a general regulation. If it is in the discretion of the State Legislatures to make laws to carry the declaration of the Constitution into execution, they have the power of refusing, and may avoid the positive injunctions of the Constitution. As the power of Congress in this particular extends over the whole Union, it is most proper for us to take the subject up and make the proper provision for carrying it into execution to the intention of the Constitution."

The first Congress under the Constitution prescribed the form of the oath. That oath, as prescribed by the direction of the Constitution by the First Congress, has been administered to every Senator present. Each of them has taken precisely the oath which the gentleman says in substance he proposes to administer to them. The oath he requires them to take, he says, is not different in its meaning, in its effect, in its substance; it only goes into the particulars; but the whole of those particulars, he says, are identical with the oath that he admits they have already taken; that is, the oath the form of which was prescribed by the First Congress; and they having taken that oath, I deny that he or the Senate has a right to impose upon these gentlemen to take the oath the second time. I deny it for the other reason which I stated: the oath is different in some of its branches; and to the extent that it is different, it is adding to the qualifications of members of the Senate.

Mr. TRUMBULL. I think this is one of the most profitless and out of the way discussions that I have ever listened to in the Senate of the United States. We had the argument of the Senator from Kentucky, when this law was under consideration, against its passage. The Congress of the United States, consisting of two branches, thought fit to enact the law; and now the Senator makes a speech against the enforcement of the law. The Senate of the United States is not the tribunal to which you are to appeal to test the constitutionality of a law, and it seems to me that we have nothing to do here but to comply with the laws of the land. I am astonished that such an argument should be brought in.

Mr. DAVIS. Will the honorable Senator permit me to say a word?

Mr. TRUMBULL. If it is to ask a question or to say a word, I have no objection, but not to make a speech. I do not want to give up the floor for an argument.

Mr. DAVIS. Just to make a statement. When the Senate is asked to interpose to execute a law, that the Senate cannot judge whether that law is valid or not, as being constitutional or unconstitutional, is the most extraordinary position I ever knew any man to take who had any claims to being a lawyer.

Mr. TRUMBULL. Well, I am astonished at my friend from Kentucky. He talks of a person being beclouded. If it is not a law, does not the Senator know that the proper way is to repeal it? You talk about the Senate of the United States setting at defiance the laws they pass!

Mr. DAVIS. It is no law.

Mr. TRUMBULL. Are you going to pass upon that, after the Senate has said it is a law? We might adopt a rule here to-day that the Senator should not speak more than four fifths of the time of the Senate, and he might say "it is no rule at all; I will not abide by it;" but if we adopted it, he would have to abide by it if he was a member of the Senate.

Now, sir, I am not going to make an argument, but to state a fact; and I should like to have the Senator's attention, and the attention of the members of the Senate, to the fact I state. The position of the Senator from Kentucky would overturn the practice of this Government from the day it was organized. What does the Constitution say?

"The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution."

The same oath is to be administered to Senators and Representatives here, to Senators and Representatives in the State Legislatures, and to judges in the United States courts and judges in the courts of the States; precisely the same oath is to be administered to all. Now, the Senator gets up here and tells you you can only administer the oath to support the Constitution of the United States. What did the fathers believe? They, in the very first Congress that met, in 1789, provided for the appointment of judges. What sort of an oath did they require those judges, judicial officers here, to take? Precisely the same oath as Senators, according to the Senator's argument, and that can only be an oath to support the Constitution. Now, let me read from the act of 1789 organizing the judicial system of the United States, what the first Congress that ever met, composed largely of men who framed the Constitution, believed in regard to the oath. The eighth section of the judiciary act declares:

"That the justices of the Supreme Court and the district judges, before they proceed to execute the duties of their respective offices, shall take the following oath or affirmation, to wit: 'I, A B, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ——, according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. So help me God.'"

Chief Justices Marshall and Taney and all the judges took that oath. Do you not think it was abominable that they should be required to take an oath that they would do equal justice to the rich and the poor? How could they take such an oath? Did the Senator ever serve in the Legislature of Kentucky? I would venture anything that if he ever served in the Legislature of Kentucky, when he took his oath in that Legislature he swore not only to support the Constitution of the United States but the constitution of Kentucky. How did he do it? How could you do that?

Mr. DAVIS. Because the constitution of Kentucky required it.

Mr. TRUMBULL. And the constitution of Kentucky overrode the Constitution of the United States, did it? The Constitution of the United States said you should take a particular oath, according to your argument, and that was that you should support the Constitution of the United States; and there you went into the Kentucky Legislature and took that further oath that you would support the constitution of Kentucky. Now is there an officer in any of the States that does not take, in addition to the oath to support the Constitution of the United States, an oath to support the constitution of his State and to discharge the duties of his office? That is all there is to this. The statutes are full of it from the beginning of the Government to this day. Something more is required of every judge of the Supreme Court. We have had three judges recently appointed; and if you will go and examine the files you will find the oath filed away that I have just read to you; and yet now, forsooth, the only thing we can swear them to in so many words is, "I will support the Constitution of the United States."

Now, sir, I want to get rid of this question. I think it needs no order; we want no rule of the Senate, and I appeal to my friend from Massachusetts now to lay his rule aside. We have got a law of Congress which requires a certain oath, and it is the duty of the Presiding Officer to administer it to anybody who thinks proper to take it; and if there is anybody that refuses to take it, it will be time enough to decide on the consequences as to him hereafter. I suggest to my friend from Massachusetts to let his resolution lie on the table, (I understand that the Secretary has written out the form of the oath,) and that the Presiding Officer call upon Senators who have been elected since the enactment of this law on the 2d of July last, such Senators as think proper, to come forward and subscribe the oath, and let it be filed in accordance with the law in the office of the Secretary of the Senate; and if any one refuses to take it, it will be time enough hereafter to determine the effect of that refusal. I hope my friend will consent to this suggestion, and let us end this profitless discussion about a law that we cannot repeal. I move with that view that the resolution be laid on the table, and I ask that the Presiding Officer administer the oath to such persons as think proper to take it in accordance with the law. If any one refuses, it will be time enough to determine what shall be done as to him hereafter.

Mr. SUMNER. I hope the Senator will yield one moment, as his motion is not debatable.

Mr. TRUMBULL. I withdraw it if there is anything like a desire to continue this debate.

Mr. SUMNER. I wish before the subject is laid on the table to say one word in reply to what seemed to be the prevailing idea of the last remarks of the Senator from Kentucky. He said, as I understand him, that Senators had already taken one oath to support the Constitution of the United States, and that it was not in our power now to add another oath. Why, sir, I would ask that Senator whether it is not in our power to require Senators to take the oath to support the Constitution daily. Is there anything in the Constitution against it? The text is as follows:

"The Senators and Representatives before mentioned" * * * * "shall be bound by oath or affirmation to support this Constitution."

That is all. It leaves the whole question open when they shall take that oath, in what form they shall take it, and how the oath shall be recorded. I think, therefore, all of the last remarks of the Senator fall entirely to the ground. Because we have already taken one oath to support the Constitution of the United States, it does not follow that we should not take also another oath.

And now as to the suggestion of my friend from Illinois. He knows perfectly well that I brought forward this proposition simply by way of directing attention to what seemed to me to be an important question, and because I thought there had been an omission at the beginning of this session, and I saw no other way of correcting it but in the manner I proposed. I have already, as the Chair will remember, asked permission to take and subscribe that oath in open Senate, and I hope that the Chair will consent to administer the oath to me.

Mr. McDOUGALL. I wish to make one observation. That oath I am prepared to take at any time; but I wish to remark here that in doing so it will not be because I think Congress has the power to enforce such an oath on Senators. I think the Constitution governs us; but at the same time, under present circumstances, I think there is nothing in the oath that a good citizen and a Senator should not be willing to take; and I have no objection to taking it at any time. Still, I do not believe it to be in the power of Congress to require it.

The PRESIDENT *pro tempore*. The Chair proposes now to take and subscribe this oath, in pursuance of the law of the 2d of July last; and that being done, the Chair will administer the oath to such members as will voluntarily take it. A copy of it has been made ready for the signatures of such members who have been elected since the passage of the law, or re-elected, as will voluntarily subscribe it, and the Chair will request the Senator from Connecticut [Mr. FOSTER] to administer the oath to the Chair, as Senator from the State of Vermont.

Mr. TRUMBULL. I ask that the resolution of the Senator from Massachusetts be laid upon the table.

The PRESIDENT *pro tempore*. It will be laid on the table by common consent.

Mr. FOSTER administered to Mr. FOOT the following oath:

"I, SOLOMON FOOT, do solemnly swear that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted nor attempted to exercise the functions of any office whatever under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution, within the United States, hostile or inimical thereto. And I do further swear that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

Mr. FOOT then subscribed the engrossed copy of the oath which had been prepared by the Secretary.

The PRESIDENT *pro tempore*. The Chair will now direct the Clerk to call in alphabetical order the names of all Senators who have been elected or reëlected since the 2d of July, 1862, that being the day of the approval of the act; and such Senators present whose names shall be called, as choose to do so, will come forward to the Secretary's desk and receive the oath of office administered by the Chair, after which they will have an opportunity to subscribe the oath.

The Secretary called the names of Messrs. BAYARD, BOWDEN, BUCKALEW, CHANDLER, DIXON, DOOLITTLE, HARDING, HENDRICKS, HICKS, JOHNSON, MORGAN, MORRILL, RICHARDSON, SPRAGUE, SUMNER, WADE, and WRIGHT.

Messrs. BAYARD, DOOLITTLE, and RICHARDSON were not present.

Messrs. BUCKALEW, HENDRICKS, JOHNSON, and WRIGHT remained in their seats.

Messrs. BOWDEN, CHANDLER, DIXON, HARDING, HICKS, MORGAN, MORRILL, SPRAGUE, SUMNER, and WADE, as their names were called, came forward, and, when the call was concluded, the President *pro tempore* administered to them, collectively, the oath prescribed by the act of July 2, 1862, each Senator audibly repeating the words of the oath as they were read.

Mr. JOHNSON. I rise merely for the purpose of stating, Mr. President, that I have not the slightest objection to taking the oath prescribed by the act of 1862, as far as I am individually concerned. There is nothing prohibited by that oath that I am sure will be charged to have been committed by me. Nor do I very seriously question the right of Congress to impose some other oath than that which the Constitution prescribes. The sixth article of the Constitution, as the Senate have of course seen by the frequent reading of it during this morning, merely prescribes that an oath to support the Constitution of the United States shall be taken by all officers. There are two difficulties, perhaps, and only two, in my judgment, in relation to the propriety of the particular oath, and the propriety of exacting any other oath than that which is included in the oath to support the Constitution.

The first is, that recently after Congress was organized under the Constitution of the United States, it was decided that a member of the Senate or of the House of Representatives, was not an officer of the United States in the meaning of that term as found in the Constitution; that a member of the Senate could not be impeached, on the ground that he was not a civil officer of the United States. The act of July 2, 1862, provides that all civil officers shall take the oath prescribed. It is possible that the authors of the oath, by the language which they use in the concluding portion of the act, intended to apply it to members of the House of Representatives and members of the Senate; but it is not so certain that they intended to apply it in point of fact. The words to which I refer are those which provide that the oath shall be kept in the Houses of Congress, among other places. That provision might have been made in order to cover the cases of officers of the several Houses other than the members of either House.

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The other objection that I have to the particular oath is not one, I repeat, affecting me, nor have I any reason to believe, and I certainly do not believe, that it would affect any member now upon the floor of the Senate. It is that it is retrospective in its operation. The authority to impose another oath than the Constitution prescribes is denied by my friend from Kentucky and my friend from Delaware. They take the ground that the particular oath mentioned in the sixth article of the Constitution not only is the only one which the Constitution authorizes, but is the only one which can by Congress be imposed. I do not agree in that opinion. The concluding portion of the sixth article, which prescribes that the oath shall be taken, provides also that no religious test shall be prescribed; and it is evident from the insertion of that provision in the clause that in the judgment of the Convention, but for the provision in the Constitution Congress might have required other than the oath to support the Constitution, some test, some religious test; and in order to prohibit the exaction of any religious test an inhibition in express terms upon the authority of Congress, the only authority to which the inhibition could refer, was inserted in the clause. But according to my reading of the clause, a reading not now for the first time given, aided by judicial decisions and legislative interpretations, although Congress may prescribe some other oath than a mere oath to support the Constitution, yet it by no means follows that they can prescribe an oath which is inconsistent with the oath which the Constitution requires to be administered to each member of the Senate to support the Constitution.

This particular oath, as I am sure the Senators have seen, is retrospective in its operations. Now, to assume, merely for the sake of the argument, that I have rendered aid to the enemies of the United States, at any time, the national enemies of the United States in any international contest, or the enemies of the United States to be now found in rebellion, it by no means follows that because I have violated the Constitution in that respect, or in any other respect, I am not eligible to a seat as a Senator of the United States, or as a member of the House of Representatives, provided I am now faithful to my duty as a citizen and am willing to support the Constitution. The only oath prescribed by the Constitution is an oath to support the Constitution, and the oath required by this act is an oath that you never have in the past violated it; so that it concedes that in point of fact, a particular member may be just as loyal now as any other member of the body, although disloyal in the past. I doubt very much the authority of Congress to impose a restriction of that description, which, according to my reading of the article, is inconsistent with the mere oath which the Constitution prescribes, that is to say, an oath to support the Constitution.

With these remarks, sir, I am willing to take the oath required.

Mr. HENDRICKS. I desire to adopt the explanation of the Senator from Maryland, and with that explanation I will take the oath, sir.

The PRESIDENT *pro tempore*. The Senators will step forward and take the oath.

Mr. JOHNSON, Mr. HENDRICKS, Mr. BUCKALEW, and Mr. WRIGHT, thereupon stepped forward, and the oath, prescribed by the act of July 2, 1862, was administered to them; and they respectively subscribed the engrossed copy of it prepared by the Secretary.

Mr. SUMNER. Mr. President, I should like to have the indulgence of the Senate, as I had the honor of offering the resolution that has been under discussion to-day, to make one word of reply to the remarks of the Senator from Maryland.

The PRESIDENT *pro tempore*. If there be no objection, the Senator will proceed; but there is no question before the Senate.

Mr. SUMNER. If anybody objects, we can take it up again. But I presume there will be no objection. The Senator from Maryland, as I understand, made two objections to the oath; the first was that, according to his interpretation of the Constitution, a Senator was not a civil officer, and therefore did not fall within the requirements of the statute. His second objection was that the oath was retrospective in its character. Let me say a word on each of these points.

It is obvious that a Senator is a civil officer, in contradistinction to a military or naval officer. Indeed, it is only by a severe technicality that it can be said that he is not, in all respects, a civil officer. Blackstone, in his Commentaries, speaks of the laity of England as divided into three distinct states, the *civil*, the military, and the maritime; and, in the same sense, the expenses of the civil list officers are spoken of in contradistinction to those of the Army and Navy.

It is probable that the Senator from Maryland would not have made the suggestion that a Senator was not a *civil officer*, if the question had not been presented at an early stage of our history when an effort was made to impeach a Senator. Now, it will be remembered that under the Constitution, "the President, Vice-President, and all *civil officers* of the United States" are liable to impeachment. On these words we have the commentary of Mr. Justice Story, which I now hold in my hands, as follows:

"*All officers of the United States*, who hold their appointments under the national Government, whether their duties are executive or judicial, in the highest or lowest departments of the Government, with the exception of officers in the Army and Navy *are properly civil officers*, within the meaning of the Constitution, and liable to impeachment. The reason for excepting military and naval officers is, that they are subject to trial and punishment according to a peculiar military code, the laws, rules, and usages of war." —*Commentaries on Constitution of the United States*, section 792.

According to this broad language a Senator is clearly a *civil officer*. But it has been decided by the Senate that a Senator was not a *civil officer* for purposes of impeachment. The reasons of this decision are not known, for it was made in secret session. Nor has the decision great weight from the unanimity with which it was adopted. The Senate Journal shows that it was made only by a vote of fourteen against eleven; being a small majority in a small Senate. Mr. Justice Story tells us in his Commentaries, that

"This decision, upon which the Senate itself was greatly divided, seems not to have been quite satisfactory, as may be gathered, to the minds of some learned commentators."—*Ibid.*, sec. 793.

And he refers in his notes to Tucker and Rawle, both of whom were cotemporaries of the decision.

It is obvious, however, that the question whether a Senator is a *civil officer* liable to impeachment, is very different from the question whether he is a *civil officer* in a general sense. He may be a *civil officer* in the latter sense and not in the former. Not to dwell on this point, it is evident that the special jurisdiction which the Senate has over its own members, with the power of punishment even to expulsion, may be interpreted as ousting all proceedings by impeachment, and that on this account the Senate in the case of Mr. Blunt, to which reference has been made, may have refused to entertain the impeachment. But whatever may be the value of this much-questioned precedent, it is only applicable in a case of impeachment.

The statute prescribing the oath is not in any way affected by this case; nor is it affected by the language of the Constitution with regard to impeachments. Here is no question of impeachment, but a simple question of the meaning of language in a statute. An oath is to be administered "to every person *elected or* appointed to any office of honor or profit under the Government of the United States, either in *the civil*, military, or naval departments of the public service, except the President of the United States;" "which said oath so taken and signed shall be preserved among the files of the court, *House of Congress*, or departments to which the said office may appertain." Now, sir, I have already shown in this debate that this oath is constitutional. I believe that no question is seriously raised any longer on that point. But it is argued that Senators are not included in the term "civil department" as used by the statute. This is simply a question of intention with regard to which there can be little doubt. If Senators do not belong to the "civil department," pray, sir, to what department do they belong? They are not military or naval. But I will not follow this question further. I feel confident that it would not have been raised, but for the hasty application of that early precedent about impeachments which is entirely inapplicable to the present case.

The other objection of the Senator from Maryland was, so far as I understood, that the oath was

retroactive, inasmuch as it requires a Senator to swear as follows:

"I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted, nor attempted to exercise the functions of any office whatever under any authority, or pretended authority, in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution, within the United States, hostile or inimical thereto."

These words are stringent, and I presume were intended to be so. To a certain extent they may be retroactive; but not beyond the exigency of the times, under the peculiar circumstances by which we are surrounded. It is our duty to guard the loyalty of this Chamber. In requiring that a person shall purge himself with regard to the past, we simply take a new assurance of his fidelity for the present. Others may think that Jefferson Davis, Robert Toombs, or Judah Benjamin may resume their seats in this body on taking a simple oath to support the Constitution. I do not think so; and I gladly seize the earliest opportunity since the commentary of the Senator from Maryland, to declare my conviction that no person whose loyalty is not manifest to the Senate can be allowed to approach your desk and to take his oath as a Senator of the United States. The Senate may shut the door upon him. This is not the first time that I have made this declaration in the Senate; nor have I contented myself with making the declaration. I have argued it. Nothing is clearer than this: a traitor cannot be a member of the Senate. But a person who cannot take this oath, retroactive though it be, must have been a traitor. Once a traitor, always a traitor; unless where changed by pardon or amnesty.

I know not what changes may be required by changing events. For myself, I shall always welcome every act of just clemency or condonation. But for the present the statute is wise and conservative. It only remains that we should stand by it.

Mr. JOHNSON. The Senator misunderstood me in relation to the first subject of his remarks. I did not say that in my opinion it was very clear that a Senator of the United States was not liable to process of impeachment. All that I said was that in 1799 it was so decided by a majority of the Senate; and as far as I am advised that decision never has been reversed by the Senate, nor has the propriety of that decision ever been called in question anywhere judicially, as perhaps it could not have been. The doubt suggested by Mr. Justice Story is of course entitled to all the respect which the eminent ability of that distinguished man gives to it; but it is not authority, nor does he profess to speak decidedly against the correctness of that doctrine.

Upon the other point I should agree with the Senator from Massachusetts, that no man who is a traitor ought to be a Senator of the United States; but the question is, who is a traitor? Is he who was a traitor last year, necessarily a traitor now? Is there no *locus pœnitentiæ*? This is a civil war; and above all others is it important that we should recall into our midst, if we can recall them, men who have got themselves entirely clear of the taint of treason, and who are willing to join us now as brothers. But, if it were otherwise, it by no means follows that the Senate would be without the means of protecting itself against association with a man of that description. If he comes in and is qualified, turn him out.

But that oath, as the Senator will see, if he comes to look at it particularly, goes infinitely beyond this rebellion. It goes to the entire past, to any struggle, in which the nation has been engaged at any time; and any person elected would not be eligible unless he took an oath of that description, which he could not take and observe good faith if he had done anything to aid the enemies of the United States heretofore. Now, I submit to the Senator and to the Senate, that of all the punishments to which men can be subjected, perhaps the most odious and that which affects a man most in his feelings, is the punishment of exclusion from office. If, therefore, the oath shall exclude from office because of an antecedent offense, which was not punishable under the existing laws by any exclusion from office, him who has committed such antecedent offense, it is not, upon other grounds, within the power of Congress; it falls in the particular instance under the prohibition on the part of Congress passing *ex post facto* laws.

The Senator from Massachusetts, perhaps—I think I speak knowingly—has upon one or two occasions, and perhaps from the time the original law passed and up to the present moment, believed, and honestly believed, in the unconstitutionality of what is called the fugitive slave law. I think I have heard him say upon the floor of the Senate that he would not execute it, as far as he was individually concerned.

Mr. SUMNER. I have.

Mr. JOHNSON. Over and over again.

Mr. SUMNER. Yes.

Mr. JOHNSON. That in one sense is warring against the authority of Congress, assuming Congress to have authority to pass that act. The Senator from Massachusetts of course denied the authority, or, at least, I suppose he did deny the authority; because, assuming that Congress had authority to pass the fugitive slave act, then an attempt on the part of any citizen of the United States to resist that law either by force or otherwise, when called upon to execute the law, would be an offense against the United States; and the Senator from Massachusetts would fall in the category of such an oath as Congress, if his doctrine is right, would have a right to prescribe, if Congress should require that no Senator should be eligible to a seat in this body unless he would take an oath that he never has violated or intended to violate any law of the United States.

Mr. SUMNER. That is a different question entirely.

Mr. JOHNSON. I know it; that is one law, and this is another; but the principle is the same. I did not rise for the purpose of discussing it; I am, perhaps, just as free as the Senator from Massachusetts in the opinions which I entertain upon the nature of this rebellion. There is no member of this body, I am sure, who would willingly associate here with any one who takes part or lot in the rebellion, or who renders aid or comfort in any way, directly or indirectly, purposely, to the success of the rebellion. That is one question. It is a different question, however, whether you have the right to pass this particular law, or whether it is necessary even if you had the right.

Mr. SUMNER. I have no desire to protract this discussion. My purpose was simply, if I may call it so, to enter a protest against two positions taken by the Senator; and, of course, I could have no purpose of making any reflection upon his own position. And now, Mr. President, with the permission of the Senate, I will withdraw the resolution.

The PRESIDENT *pro tempore*. The resolution is withdrawn.

CLERKS OF COMMITTEES.

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

Resolved, That the clerks of committees appointed for the former session be continued during the special session.

F. P. STANTON.

Mr. WADE submitted the following resolution; which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate;

Resolved, That the Secretary be instructed to pay, out of the contingent fund of the Senate, the usual mileage of a Senator to Frederic P. Stanton, as contestant for a seat in the Senate from Kansas at the second session of the last Congress.

Mr. POWELL. I move that the Senate do now adjourn.

The motion was agreed to; and the Senate adjourned.

IN SENATE,

SATURDAY, *March* 7, 1863.

Prayer by the Chaplain, Rev. Dr. SUNDERLAND.

The Journal of yesterday was read and approved.

Hon. JAMES R. DOOLITTLE advanced to the desk and took the oath prescribed by the act of July 2, 1862, and subscribed his name to the engrossed copy thereof.

Mr. HALE appeared in his seat.

PATENT OFFICE REPORT.

Mr. ANTHONY. I am instructed by the Committee on Printing, to whom was referred a resolution for printing ten thousand copies of the mechanical report of the Patent Office for 1861–62, to report it back without amendment, and recommend its passage. I ask for its present consideration.

There being no objection, the Senate proceeded to consider the resolution. It is as follows:

Resolved, That ten thousand copies of the mechanical report of the Patent Office for 1861–62 be printed for the use of the Senate.

The resolution was adopted.

PRINTING OF LAWS.

Mr. ANTHONY. I am instructed by the same committee, to whom was referred a resolution for printing four thousand copies of the acts and resolutions of the third session of the Thirty-Seventh Congress, to report it back with an amendment; the amendment being to add the words "with a suitable index." I ask for its present consideration.

There being no objection, the Senate proceeded to consider the resolution.

The amendment of the committee was agreed to; and the resolution, as amended, was adopted, as follows:

Resolved, That four thousand copies of the acts and resolutions of the third session of the Thirty-Seventh Congress be printed for the use of the Senate, with a suitable index.

EXECUTIVE SESSION.

Mr. WILSON, of Massachusetts. I move that the Senate now proceed to the consideration of executive business.

The motion was agreed to; and after some time spent in the consideration of executive business, the doors were reopened, and

The Senate adjourned.

IN SENATE.

MONDAY, *March* 9, 1863.

Prayer by the Chaplain, Rev. Dr. SUNDERLAND.

The Journal of Saturday was read and approved.

COMMITTEE ON MANUFACTURES.

Mr. ANTHONY. I offer the following resolution:

Resolved, That the 34th rule of the Senate be amended by adding thereto the following: "a Committee on Manufactures, to consist of five members."

The PRESIDENT *pro tempore*. The resolution lies over one day, under the rule.

Mr. ANTHONY. I should like to remark upon that resolution—I do not desire to call it up to-day—that up to 1825 there was a Committee on Commerce and Manufactures. In 1825, on motion of Senator Dickerson, of New Jersey, the committee was divided; and there was one committee appointed on commerce and one upon manufactures. At the same session, on the motion of Senator Findlay, of Pennsylvania, a Committee on Agriculture was added to the standing committees of the Senate. These three committees continued until 1857, when the Senate was under the control of the men who are now engaged in rebellion against the Government, and who concluded that agriculture and manufactures were not interests of sufficient consequence to be represented by a committee; and then, on motion of Mr. Benjamin, of Louisiana, the committees were reorganized, and the Committee on Manufactures and the Committee on Agriculture were both dropped. A Committee on Agriculture has just been appointed by the Senate very wisely, on the motion of the Senator from Ohio. I propose to restore the Committee on Manufactures; but as, at the present session, which is devoted exclusively to executive purposes, it is hardly possible any business can be referred to a Committee on Manufactures, and as there seems to be a general understanding that at the next session there will necessarily be an entire reorganization of the committees, I shall not, if this resolution should be adopted, move to proceed to the election of such a committee at this session, or to authorize the President *pro tempore* to appoint it, but allow the committee to stand vacant until the next session. I shall call the resolution up to-morrow.

EXECUTIVE SESSION.

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

The motion was agreed to; and after some time spent in the consideration of executive business the doors were reopened, and

The Senate adjourned.