Also, the petition of Zenas Bradley, of similar import, to the same committee.

Also, the petition of citizens of the twenty-ninth district of New York, for the transfer of land adjoining the Brooklyn navy-yard to that city, for a public market, to the Committee on Naval Affairs.

By Mr. WALSH: The petition of William Walter, for compensation for property taken by United States troops, to the Committee on War Claims.

By Mr. WIKE: The petition of Barney and Hugh McKenna, that steps be taken to secure the release of Edward O'M. Condon, confined in a British prison as a political prisoner, to the Committee on Foreign Affairs.

Also, the petition of E. O. Cochran and others, relative to the rights of settlers on the Des Moines River lands, Iowa, to the Committee on Public Lands.

By Mr. WILLIAMS, of Indiana: The petition of 115 citizens of Dubois County, for a post-route from Huntingburgh, via Brentsville and Saint Anthony, to Schnellville, Dubois County, Indiana, to the Committee on the Post-Office and Post-Rroads.

Also, joint resolutions of the General Assembly of Indiana, favoring the passage of a law granting, without favor or discrimination, to those who served in the Mexican war for a period of sixty days or more, and were honorably discharged, the sum of $8 per month during their natural lives, to the Committee on Invalid Pensions.

By Mr. WOODWORTH: The petition of Henry S. King and 78 other citizens of Columbiana County, Ohio, that existing tariff laws be not disturbed, to the Committee of Ways and Means.

The following petitions and papers have been presented at the Clerk's desk, under the rule, without having indorsed thereon the name of any member of the House, and referred as stated:

The petition of William Wheeler Hubbell, for the establishment of a commercial money currency equal to gold and silver coin, to the Committee on Banking and Currency.

The petition of citizens of Iowa, for a post-route from Prairie View to Westerville, Iowa, to the Committee on the Post-Office and Post-Roads.

The petition of Thomas K. Davis, for a rehearing of his claim rejected by the southern claims commission, to the Committee on War Claims.

The petition of the clergy of South Washington for the removal of the Baltimore and Potomac and the Orange, Alexandria and Manassas Railways from Maryland and Virginia avenues and Sixth street southwest, to the Committee for the District of Columbia.

Three petitions of vessel-owners and others, protesting against the passage of House bill No. 523, to the Committee on Commerce.

The petition of William Zantzinger, secretary of the rear-admiral commanding United States naval forces Asiatic station, for relief, to the Committee on Naval Affairs.

The petition of soldiers of the late war, for the equalization of bounties, to the Committee on Military Affairs.

The petition of Amasa T. C. Dodge, for compensation for damages to his property by the District of Columbia board of public works, to the Committee for the District of Columbia.

Memorial of John J. Johnson and 106 other members of the bar of Washington, District of Columbia, relative to the license tax on members of the legal profession, to the same committee.

HOUSE OF REPRESENTATIVES.

SATURDAY, *April* 22, 1876.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. I. L. TOWNSEND.

The Journal of yesterday was read and approved.

MERCHANT SEAMEN.

Mr. WARD. I desire to enter a motion to reconsider the vote by which the bill (H. R. No. 3187) to amend title 53 of the Revised Statutes relating to merchant seamen was yesterday recommitted to the Committee on Commerce.

CERTIFICATES OF DISTRICT BOARD OF AUDIT.

The SPEAKER, by unanimous consent, laid before the House a letter from the Second Comptroller of the Treasury, transmitting, in conformity with the joint resolution of March 14, 1876, the register of certificates issued by the board of audit of the District of Columbia; which, with the accompanying documents, was referred to the Committee for the District of Columbia.

ELECTION CONTEST—LEE VS. RAINEY.

The SPEAKER also laid before the House testimony in behalf of the sitting member in the contested-election case of Lee *vs.* Rainey, from the first congressional district of South Carolina; which was referred to the Committee of Elections.

RIGHTS OF CITIZENS ABROAD.

Mr. FAULKNER. I ask unanimous consent that the bill which was made a special order for to-day after the morning hour may be now taken up for consideration. In this request I have the concurrence of gentlemen interested in the business of the morning hour. If the bill be taken up, I wish to offer some amendments from the Committee on Foreign Affairs and then to explain the provisions of the bill, after which I shall be content that the bill lie over for further consideration.

The SPEAKER. By order of the House the bill (H. R. No. 2245) to carry into execution the provisions of the fourteenth amendment to the Constitution concerning citizenship and to define certain rights of citizens of the United States in foreign countries and certain duties of diplomatic and consular officers, and for other purposes, was made a special order for to-day after the morning hour and from day to day until disposed of. The gentleman from West Virginia [Mr. FAULKNER] now asks unanimous consent that, dispensing with the morning hour, the House proceed at once to the consideration of the special order.

The motion was agreed to.

The bill was read, as follows:

Be it enacted, &c., That for the purposes of this act, the words "domicile" and "reside" are to be construed as implying a fixed residence at a particular place, with direct or presumptive proof of an intent to remain indefinitely.

SEC. 2. That in order to assure to all persons born or naturalized in the United States, and subject to the jurisdiction thereof, the full enjoyment of the right to be citizens of the United States and of the State wherein they reside, it is hereby declared:

First. That all persons shall be regarded as entitled to the privileges and immunities of citizens of the United States and as subject to the duties imposed upon such citizens who may have been born and are residing within the United States and subject to the jurisdiction thereof; and also all married women whose husbands may be such citizens as against all powers except the power within whose jurisdiction an alien woman married to a citizen of the United States may have been born and shall continue to reside. But a child born within the United States of parents who are not citizens and who do not reside within the United States, and who are not subject to the jurisdiction of the United States, shall not be regarded as a citizen thereof, unless such child shall reside in the United States, or unless his or her father, or, in case of the death of the father, his or her mother, shall be naturalized during the minority of such child, or such child shall, within six months after becoming of age, file in the Department of State, in such form and with such proof as shall be prescribed by the Secretary of State, a written declaration of election to become such citizen, or shall become naturalized under general laws.

Secondly. A child born abroad, whose father may be a citizen of the United States and subject to the jurisdiction of the United States, shall be regarded as a citizen of the United States at the time of birth, and shall follow and have the domicile and citizenship of the father during minority.

Third. The following persons shall be regarded as not subject to the jurisdiction of the United States within the intent of the said fourteenth amendment, or as not residing within the United States, within such intent, namely: First, citizens of the United States who become naturalized as citizens or subjects of another state, or who, in any foreign country, enter into the civil, naval, or military service of any foreign prince or state, or of any colony, district, or people foreign to the United States, while such service continues; secondly, citizens of the United States who may be domiciled abroad, unless registered as hereinafter provided; commercial establishments shall not be regarded as creating a domicile unless made with an intent not to return; citizens of the United States engaged in them may, by registering themselves as hereinafter provided, preserve presumptive proof of intent to return; thirdly, naturalized citizens of the United States who may, by the terms of any treaty, be regarded as having resumed their original nationality; fourthly, a citizen of the United States becoming the wife of an alien who shall not reside within the United States; but such citizen may, on the death of her husband, become again a citizen of the United States by residing within one of the States or Territories, and becoming subject to the jurisdiction of the United States, and filing in the Department of State, in such form as may be prescribed by the Secretary of State, a written declaration of her election to become such citizen.

SEC. 3. That citizens of the United States who are, or may hereafter be, domiciled in a foreign country may, if adults, within six months of the time of first acquiring such domicile, and if minors, within six months after becoming of age, register themselves as such citizens at the legation of the United States in the country in which they may be domiciled, or if there be no such legation, then at a consulate to be designated by the Secretary of State. The registry shall be made by a written declaration signed by the person making it, stating in full his name, and the place and date of his birth; if naturalized, the time and place of his naturalization; his place of previous domicile in the United States; how long since he actually resided in the United States; whether he intends to return; if married, the name and nationality of his wife and the names and ages of his minor children, if any, and the dates and places of their birth. The diplomatic or consular representatives of the United States, as the case may be, shall, at the close of each calendar year, make return to the Department of State of such registries in such form as the Secretary of State may direct, and the Secretary of State shall annually transmit copies of such returns to Congress; and citizens of the United States of adult age, who shall remain out of the jurisdiction of the United States, and within the jurisdiction of some other power, continuously for two years, shall be held as domiciled in a foreign country, except as herein before provided.

SEC. 4. That the foregoing provisions of this act shall not be construed as affecting the right of inheritance or succession to real or personal property in any State. Within the Territories and within the domain subject to the exclusive jurisdiction of the United States real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a citizen of the United States; and a title to real and personal property of every description may be derived through, from, or in succession to an alien in the same manner in all respects as through, from, or in succession to a citizen of the United States.

SEC. 5. That a marriage in a foreign country between citizens of the United States, or between a citizen of the United States and an alien, unless forbidden by the law of the country in which it takes place, may be contracted and solemnized in such manner and form as may be prescribed by the Secretary of State, in the presence of the principal diplomatic agent of the United States in such country, or of a consul-general or consul for the district in which it takes place, and shall in such case have full force and effect, and shall be valid to all intents and purposes throughout the United States. It is made the duty of such diplomatic agent or consul-general or consul, on being satisfied of the identity of the parties, and that at least one of them is a citizen of the United States, and that the marriage is not prohibited by the laws of the country, and on being requested to be present at any such marriage, to indicate a time and place when and where it may be solemnized in his presence, and to be present at such time and place, and when the marriage shall have been solemnized, to give to each party a certificate thereof, in such form as may be prescribed by the Secretary of State. At the close of each calendar year, he shall make a return to the Secretary of State of all marriages so contracted or solemnized in his presence within the year, showing, with respect to each party, the name, the age, the place and date of nativity, the place of residence, and such other

facts as he may think necessary. Section 31 of the act of June 22, 1860, entitled "An act to carry into effect provisions of the treaties between the United States, China, Japan, Siam, Persia, and other countries, giving certain judicial power to ministers and consuls or other functionaries of the United States in those countries, and for other purposes," is hereby repealed.

Mr. FAULKNER. I now submit, in accordance with the recommendation of the Committee on Foreign Affairs, the amendments which I send to the Clerk.

The Clerk read as follows:

First, amend second section, ninth line, by inserting after the word "born" the words "or naturalized."

Second, strike from the second section thereof, commencing with the words "and also all," in the tenth line, page 2, all down to and including the word "reside," in the fourteenth line thereof.

Third, strike from the same section, commencing with the word "fourthly," in the fiftieth line, page 3, all down to the end of the section.

Fourth. Insert in the same section, after the thirty-second line, page 3, the following new subdivision:

"Thirdly. A married woman shall be deemed to be a citizen or subject of the State of which her husband is for the time being a citizen or subject; but an alien woman, married to a citizen of the United States, shall not, while within the jurisdiction of the country of her nativity, be entitled to claim the protection of the United States as against the country of her nativity, unless by the laws of such country her marriage to an alien divests her of her natural allegiance. A citizen of the United States who has become the wife of an alien may, on the death of her husband, become again a citizen of the United States, by residing within the United States and becoming subject to the jurisdiction thereof, and by filing in the Deparment of State, in such form as may be prescribed by the Secretary of State, a declaration of her election to become such citizen."

Fifth. Strike from the fifth section, commencing with the twenty-seventh line all down to and including the thirty-second line, and insert "4082 of the Revised Statutes is."

Sixth. Strike out from the ninth line of section 5 the word "full" and insert the words "the same;" in line 10, after the word "be," insert the word "as;" from the same line strike out the word "throughout" and insert the words "as if solemnized within."

Mr. COX. Will the gentleman from West Virginia allow me to offer a substitute for this bill or to give notice of it?

Mr. FAULKNER. Certainly.

Mr. COX. The bill, I understand, is not to be voted on to-day; and as it will go over, I would like to have my substitute printed.

The SPEAKER. If the substitute is to be offered, it had better be submitted now.

The substitute was read, as follows:

Strike out all after the enacting clause of the bill and insert the following:

That any citizen of the United States who has at any time before, or may at any time after, the passing of this act voluntarily become naturalized as a citizen or subject of a foreign state, or who in any foreign country shall enter into the civil, naval, or military service of any foreign prince or state, shall cease to be a citizen of the United States, and be regarded as an alien. Such person may be re-admitted to citizenship in the manner prescribed by law for the naturalization of aliens: *Provided*, That a citizen of the United States, having become the wife of an alien, may on the death of her husband become again a citizen of the United States, by appearing in person before any court of record of any State or Territory having common-law jurisdiction, and a seal and clerk or prothonotary, or before any circuit or district court of the United States, and producing satisfactory proof of her citizenship before marriage and of the death of her alien husband, and filing a written declaration under oath of her intention to again become a citizen of the United States, which proceedings, together with the order of the court thereon, shall be recorded by the clerk of the court.

SEC. 2. That nothing contained in the preceding section shall be construed as affecting the right of inheritance or succession to real or personal property in any State or Territory in the United States.

The SPEAKER *pro tempore*, (Mr. SPRINGER in the chair.) The question first recurs on the amendments to the bill submitted by the Committee on Foreign Affairs; and if there be no objection the question will be taken upon them in gross.

There was no objection, and the amendments were agreed to.

The SPEAKER *pro tempore*. The question now recurs on the substitute submitted by the gentleman from New York, [Mr. COX.]

Mr. COX. Mr. Speaker, I did not know it was intended by the gentleman from West Virginia, who has charge of this bill, to ask for a vote upon the amendments or for any action at this time.

The SPEAKER *pro tempore*. The amendments reported from the committee have been agreed to.

Mr. O'BRIEN. The amendments were not read from the Clerk's desk.

The SPEAKER *pro tempore*. They were stated by the gentleman from West Virginia.

Mr. O'BRIEN. I did not understand the amendments reported from the committee were to be voted on before they were printed. I hope the gentleman will not take advantage of what has taken place as it were without objection, but, on the contrary, that he will allow the question to be reconsidered.

Mr. FAULKNER. What question?

Mr. O'BRIEN. Why, the question on the amendments.

Mr. FAULKNER. They are amendments which the Committee on Foreign Affairs have asked to be put to their own bill, and surely no gentleman will object to the committee amending their own bill.

Mr. O'BRIEN. That will depend very much on what the amendments are.

The SPEAKER *pro tempore*. The amendments have been agreed to, and the gentleman from West Virginia is entitled to the floor.

Mr. FAULKNER. Mr. Speaker, the questions presented by this bill do not possess that domestic interest which usually attaches to the legislation of this House, and they are especially devoid of those sectional and political fascinations which seem to exercise so powerful a sway over the attention of this body. They are nevertheless worthy of its careful consideration.

The President of the United States, in his two annual messages to the last Congress, and again in his annual message to the present Congress, has invited our attention to the necessity of some appropriate legislation upon the subjects embraced in this bill. So in like manner the attention of the Committee on Foreign Affairs has, during the present session, been directed by the Department of State to the propriety of legislation on this subject. The extensive correspondence which the Secretary of State necessarily has with our ministers and consuls abroad has made him familiar with the embarrassments and perplexities which have resulted from the want of some precise and well-defined rules regulating many constantly-recurring questions of nationality; and an effort has been made in this bill so to define and prescribe these rules as to produce more uniformity of doctrine between ourselves and those nations with whom we have intercourse, and to relieve this subject from some of the difficulties which now surround it.

I desire here *in limine* to remark that this bill in no respect conflicts with the right of expatriation. That we recognize as a fundamental doctrine of our free Government. We claim, indeed, to have been the first nation—certainly in modern times—to have recognized this principle in practice; and while many of our most eminent and distinguished jurists, trammeled by the feudal principles derived from the common law of England, have maintained the doctrine of perpetual allegiance, yet from the earliest history of this Government the executive department in its intercourse with foreign nations has maintained the doctrine of expatriation, and the question is now forever set at rest by an act of Congress passed in July, 1868, declaring it a fundamental doctrine of this Government. It will therefore be found that this bill, so far from conflicting with that recognized doctrine, if liable to any objection on that score at all, is subject to the charge of too great facility in enabling American citizens to throw off their national character.

Again, sir, this bill makes no distinction of any kind between native-born and naturalized citizens. It places them all upon the same footing of perfect equality which the Constitution, laws, and policy of this country designed that they should occupy; and we adopt in its fullest extent the principle embraced in the act of July 27, 1868, that all naturalized citizens of the United States, while in foreign states, shall be entitled to and shall receive from this Government the same protection of persons and property that is accorded to native-born citizens in like situations and circumstances.

Again, sir, this bill in defining citizenship does not propose to affect in any manner the rights of inheritance or succession to real or personal property in any State, but leaves those questions to be determined by the law regulating such subjects in the several States. The main and leading purpose of this bill is to prescribe the law by which the personal rights of American citizens may be ascertained and determined in foreign countries, and to furnish our ministers and consuls abroad the rules by which they shall be governed in determining the status and personal rights of those citizens when called upon in the discharge of the delicate duty which so often devolves upon them of vindicating and protecting those rights by the power of this Government.

I now propose to present some general remarks explanatory of the objects and provisions of this bill. I will then have it read by sections, when it will be open to amendment and for such detailed explanation of its provisions as may be required by any member of this House.

It must strike every gentleman who has given the least attention to this subject that nothing can more contribute to the peace of nations and to the comfort of the people than uniformity of doctrine and decision among the Christian and civilized nations of the world upon all questions of private international law touching personal rights and, I might add, property. But this bill relates alone to personal rights. Unfortunately, in this connection, England and the United States have drawn their systems of jurisprudence from sources differing from those of the continental nations of Europe. While the latter have largely based their jurisprudence within the last half century upon the broad and comprehensive principles of the Roman civil law, and the Code Napoléon, which is itself largely based upon the Pandects of Justinian, England has been governed by the narrow, technical, and feudal principles of the common law, all of which we have inherited rather than adopted from the mother-country. Perpetual allegiance, nationality by locality of birth, the exclusion of the wife from the nationality of the husband, are all doctrines of feudal origin which England has abandoned only within the last few years and upon which we have but partially legislated within a recent period. The tendency of modern progress is to attain to something like uniformity upon all these doctrines, and throwing aside all effete, obsolete, and merely prescriptive views of these questions, to base our doctrines upon the broad and comprehensive principles of right, justice, and common sense. Hereditary error, though founded in the sanction of centuries, is rapidly disappearing before the lights which knowledge and international intercourse are casting over the practical affairs of life. At no former period of the world has this social and commercial intercourse between nations been so intimate and extensive. Commerce has become universal; the means of travel have become so extended, cheapened, and facilitated; the tide of immigration is so largely mingling the elements of different nationalities; Europe and America have become, by means of steam, so much like one vast family, that all must see not merely the theoretical but the prac-

tical value of uniformity and harmony upon these heretofore controverted questions of nationality among the civilized nations of the earth.

It is gratifying to observe the rapid diffusion of liberal ideas among the nations of Europe within the last half century. There is scarcely now one nation on that continent that does not open its arms to receive foreigners into the bosom of its society, with privileges almost equal to native-born citizens. There is not one, England included, that does not permit aliens to hold real and personal estate and transmit it by inheritance or devise. There is not one that does not recognize, to some extent, the rights of expatriation and emigration, where half a century ago these doctrines were received with distaste and abhorrence. Such, then, is the progress of modern civilization upon these points; and we may well anticipate that, by means of treaties, legislation, and the efforts of those learned international societies which are specially directing their attention to this subject, we shall in a few years see a perfect uniformity of doctrine upon all essential points of nationality, and thus one of the most ordinary causes of international discord will be forever removed.

The first section of this bill defines the sense in which the words "domicile" and "reside" are to be received throughout all its provisions. It is important to bear this definition in mind, otherwise the true intent and character of the bill will be misconceived. Many definitions of domicile may be found in the writings of our public jurists, but that has been selected which has the merit of being called the "American definition," and which is preferred even by Sir Robert Phillimore and other distinguished European writers. It is "a residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time." In this bill the essential part of that definition is the purpose not to return and intention to remain for an unlimited or indefinite period of time.

The second section, after prescribing who shall be regarded as entitled to the privileges and immunities of citizens of the United States as prescribed by the fourteenth amendment to the Constitution, then proceeds to touch upon some of those points of private international law which at one time were the subjects of great diversity in the doctrine and practice of nations.

First, then, in regard to married women: In every country *except* where the common law of England prevails, the nationality of a woman on marriage merges in that of the husband; she loses her own nationality and acquires his; whereas, by the common law, an English woman, marrying an alien, still remains a British subject. The law in this country was the same; an American woman, married to a foreigner, retained her American nationality. This common-law doctrine was changed in England by an act of Parliament passed in 1870, as it has been to a certain extent modified in the United States by the act of Congress of 1855. With the passage of the present bill, the doctrine may be considered as settled and alike accepted and adopted by all Christian and civilized nations, that the nationality of a married woman is merged in that of her husband. I know of no exception to this doctrine in any nation of Europe.

The same section touches upon the controverted question of *nationality by birth.*

Nationality by birth is in some countries determined by the mere *locality* where the child happens to be born; in others it is determined by *descent*, or by the national character of the parents without regard to the place of birth. By the common law of England nationality by birth is determined by the locality in which the child is born; so that every person born within the dominions of the Crown, no matter whether of English or foreign parents, and no matter whether the parents were only temporarily sojourning or visiting in the country, and no matter whether the father had ever set his foot upon English soil, was an English subject. No effect whatever was given to *descent* as a source of nationality. Such, also, has been the fixed American doctrine, derived from the common law of England, except so far as it has been partially modified by the act of Congress of 1855.

This rule of determining nationality by locality of birth was of purely feudal origin. It belonged to the *adscripti glebæ*, and was originally established in England as suitable to the isolated position of that island and to the absence of intercourse of foreign nations in Norman times. This was also the prevailing doctrine of Europe until the French revolution, when, under the influence of the Code Napoléon, it was discarded as a sound principle by the continental nations. A vigorous effort was made in 1868 by the minority of the learned commission appointed by the Queen of Great Britain to inquire into the law of naturalization and allegiance to abrogate the English principle altogether and to conform English legislation to the doctrines on the continent. That minority only succeeded partially in ingrafting their views upon the legislation of Great Britain. We have to some extent conformed to continental theory and practice in our act of 1855. The provisions of the present bill upon that subject are based upon the principles recognized by our statute of 1855, and now, as I before remarked, universally adopted upon the continent of Europe. This bill provides that a child born within the United States of parents who are not citizens and who do not reside within one of the States or Territories, and who are not subject to the jurisdiction of the United States, shall not be regarded as a citizen thereof, unless such child shall reside in the United States and unless his or her father shall be naturalized during the minority of such child, or unless such child shall, within six months after becoming of age, file in the Department of State, in such form and with such proofs as shall be prescribed by the Secretary of State, a written declaration of election to become such citizen or shall become naturalized under general laws.

It further provides that a child born abroad, whose father may be a citizen of the United States residing in one of the States or Territories, shall be regarded as a citizen of the United States; thus discarding in the two cases referred to the doctrine of nationality by locality of birth, and adopting that of nationality by descent.

The same section proceeds to declare who shall not be regarded as citizens of the United States. They are—

First. Such as have become naturalized as citizens or subjects of another state. This proposition is too plain to require any explanation.

Secondly. Such as while in a *foreign country* shall enter into the civil, naval, or military service of any foreign prince or state. This does not affect that class of men who, living in this country, accept consulates or other similar appointments from foreign governments. It applies only to those who leave the country, and while abroad enter into such foreign service. But so soon as they retire from such foreign service, and return to this country, they are remitted to their rights of American citizenship.

Thirdly. Such as may be domiciled abroad without intent to return to the United States, unless they shall repel the presumption arising from this foreign domicile by registering themselves as American citizens in the mode prescribed by this bill.

Fourthly. Naturalized citizens of the United States who may, by the terms of any treaty, be regarded as having resumed their original nationality.

Now I approach that provision of this bill which will incur most opposition, at least I so infer from the remarks of the gentleman from New York, [Mr. COX,] who, when I reported this bill from the Committee on Foreign Affairs, took occasion to express himself in strong reprobation of that feature of it.

This section—the third—provides that born or naturalized citizens of the United States who are or may be *domiciled* in a foreign country may register themselves as such citizens at the legation of the United States in the country in which they may be domiciled, or if there be no such legation, then at a consulate to be designated by the Secretary of State.

The bill further provides the mode and details of such registry, and requires the diplomatic or consular representative of the United States, as the case may be, at the close of each calendar year to make return to the Department of State of such registries, and directs the Secretary of State annually to transmit copies of such returns to Congress.

Now, sir, we have been told by the gentleman from New York, [Mr. COX,] and probably shall be told so again, that there is something degrading in requiring an American citizen to register himself at a legation or consulate. Degrading! How can such an act be degrading? Besides, sir, to what class of American citizens does this requisition apply? Is it required of the thousands who every year crowd our steamships and visit Europe, Asia, and the isles of the sea for the purposes of health, pleasure, education, or business? Certainly not, sir; and while the vast majority of these persons would do better to spend their superfluous cash in visiting the unequaled scenery and attractions of our own country, they are the masters of their own money, they may waste it where they please, and we take no control over their movements nor impose any obligations of registry upon them. To whom, then, does this law apply? To those who have *domiciled* themselves in foreign countries; who have left the United States with no intent to return, but with a fixed purpose to make their home in a foreign land, leaving all care of their country behind them. It applies to those who have substantially abandoned their country, have taken their wealth or their talents into foreign countries, there to stimulate the industries and add to the strength of alien governments; to those who contribute nothing in the form of taxes to the support of our Government, and who, in their fondness and admiration for foreign manners and society, have estranged themselves in interest, feeling, occupation, and pursuit from their own country. Now, is it this class of American citizens who have so earnestly excited the sympathies of the gentleman from New York? These persons who have thus practically abandoned their country are yet prompt, when they get into any difficulty, to appeal to this Government for protection, and would ask that we should even embroil ourselves in a war to vindicate their rights as American citizens. Now, as we know that by the principles of international law a national character may be acquired by domicile, and, as we know by our numerous naturalization treaties, expatriation may be presumed by a prescribed residence abroad, is it asking too much of this class of American citizens that they shall, for their own sakes and for our peace, preserve at the legation or consulate the evidence of their claim to American nationality? In my opinion, sir, this bill shows a most extraordinary tenderness for the rights of American citizenship when it permits this class of persons, who have really but little claim upon our protection, by this simple registration of their names to invoke all the physical powers of this Government to vindicate their rights if they should be assailed. Sir, I am unable to comprehend how any American citizen can feel himself degraded by recording the proud title of his citizenship in the face of a foreign population. If there be any man who feels himself humiliated

it must be one who is ashamed of his birthright, and who has exchanged the pride of an American citizen for the flunkeyism of European subserviency.

There are reasons which render this registry proper as an act of justice to this Government. It is our duty to extend the arm of protection to every American citizen, wherever he may be found upon this habitable globe. Now give us the means, in at least certain ordinarily occurring cases, to know who are and who are not entitled to demand our protection. It is not every person who claims to be an American citizen, in this day, that is entitled to that character. The manufacture and sale of naturalization papers have become a regular business. The traffic has been on so large a scale as to attract the notice both of the courts and of the Executive. Cases are frequently brought to the attention of our ministers of persons in possession of naturalization papers, regularly authenticated, who have never been within the limits of the United States, and whose claims to American citizenship, by virtue of such fraudulent papers, would never have been disclosed but for some difficulty in which they had become involved, and from which they sought to extricate themselves by an appeal to the protecting power of this Government.

These frauds upon the right of naturalization, when the cases occur within our own jurisdiction, are probably beyond remedy. Their certificates are judicial acts. As judgments of a court of competent jurisdiction they are held conclusive, and no mode has been yet provided by law by which they can be canceled and set aside even for fraud. Where, however, they are brought to the notice of our diplomatic agents in foreign countries, a larger and more liberal discretion is allowed in dealing with them.

But it is not so much for this class of persons that a registry is needed. Such certificates would rarely be brought to the legation for the purpose of registration. There is another class to which I will now refer. It is a well-known fact that there are hundreds of persons who emigrate to this country with no *bona fide* purpose or intent to become permanently a part of our population, and especially young men prior to the period when military service has been exacted of them. They reside here the time prescribed by law, and having thus acquired American citizenship, they return to their native countries there to remain the residue of their lives, using American citizenship for the sole and selfish purpose of escaping those burdens and obligations which fall in common upon all the inhabitants of that country. Of the existence and numbers of this class, our diplomatic correspondence furnishes the most abundant proof. It is they whose equivocal relations to the country consume three-fourths of the time of our ministers, and fill the pages of our diplomatic correspondence. No honest American citizen abroad should for one moment desire that his nationality should be ambiguous and involved in doubt. Here is a simple and inexpensive formula that enables him at once to remove all doubt as to his national character, and serve as a safe guide to our ministers and consuls.

This registration will operate in the general not only as a safeguard to the citizen himself and a guide to our diplomatic agents, but it has become a necessity under the numerous naturalization treaties which have been ratified between this and other governments. It is useless here to discuss whether all the provisions of those treaties have been made in sound policy. I know that objections have been made to some of them. I have upon a former occasion discussed one of those treaties, and have expressed my opinion that it was a brilliant diplomatic triumph upon the part of this country; but it is idle to discuss that question here. Those treaties are contracts with sovereign states, and are of the supreme law of the land. We are bound by their terms until they shall upon due notice be abrogated. By those treaties we have agreed that citizens of the United States may cease to be such, and may at their pleasure become citizens or subjects of other powers. We have agreed that residence abroad without intent to return shall of itself work expatriation. We have further agreed that a continuous residence of two years in the country of his origin shall afford presumptive evidence of such expatriation, to be repelled, however, by proper evidence that he still retains his American nationality. Now, sir, what simpler, what less expensive, what more convenient and satisfactory mode for the authentication of his intention could be devised than the registry of his name as such in the archives of our legation.

The practical value of some such means of preserving American citizenship abroad by those who come under the operation of our treaties, or under the law of domicile, was well illustrated in a case in diplomatic history which occurred nearly thirty years ago. Austria had a law that all foreigners who resided ten continuous years in the empire without adopting some means of freeing themselves from the Austrian citizenship acquired by such residence, by giving notice that they had no intention by such residence of becoming Austrian subjects, should be held to be subjects, and as such liable to all the burdens of that condition. During the Venetian insurrection in 1848, and while Venice was a part of the Austrian Empire, some British subjects who had resided ten years in that city became under that law Venetian citizens, as they had adopted no means to repel the presumption arising from residence. Forced loans were demanded of them, and they appealed for relief to the British government. But Lord Palmerston, who was then secretary of foreign affairs, refused to interpose on their behalf, upon the express ground that, having resided there ten years without adopting any steps to preserve their British character, they were liable in common with all other Austrian subjects to the forced loans demanded of them. Now, sir, if a registry so plain and simple as that provided for by this bill had existed there at that time and they had availed themselves of its terms of protection, they would have escaped the oppressive exactions to which they were compelled to submit.

I now approach the subject of marriage in foreign countries between citizens of the United States and between a citizen of the United States and an alien. This bill provides that, unless forbidden by the laws of the country in which they take place, such marriages may be contracted and solemnized, in such manner and form as may be prescribed by the Secretary of State in the presence of the principal diplomatic agent of the United States in such country, or of a consul-general or consul for the district in which they take place, and shall in such case have the same force and effect and shall be as valid to all intents and purposes as if solemnized within the United States. I omit here the further details of the bill upon this point.

It will be here observed that this section gives no authority to the minister or consul to solemnize marriages by pronouncing a form of espousal, but only to give them a valid sanction by their official presence.

The first question that naturally presents itself in this connection is, what necessity is there for any legislation upon this subject by Congress? It is the received doctrine throughout the civilized world that between persons *sui juris* marriage is to be decided by the law of the place where it is celebrated. If valid there, it is valid everywhere. In the language of Judge Story, "It has a legal ubiquity of obligation." If invalid there it is invalid everywhere. Now it may be said, if such be the universal law of the Christian world, why not leave our citizens who may be in foreign countries to conform to the law of such countries? Why should Congress concern itself about their marriages at all? This would, indeed, be a cold and selfish policy and not in accordance with the practice of other enlightened governments. Citizens abroad and citizens at home are alike entitled to the paternal consideration of their governments. Laws are enacted not simply to punish crime, but to promote the convenience and relieve the doubts and perplexities of the people. The difficulties which an American citizen most usually encounters in having marriage solemnized according to the law of foreign countries result from their municipal regulations prescribing a fixed period for the matrimonial domicile. In some countries, like France, it requires a residence of six months, in others, I believe, a year, and perhaps longer. There are many other requirements, such as the formal evidences of birth, &c., which it is difficult and sometimes altogether impracticable to comply with when absent from their country. Again, a marriage solemnized in many of the Catholic countries of Europe, if performed in accordance with their local law, would be deemed incapable of dissolution; and, while in England and the United States the law of the domicile would be held to prevail over the law of the place of the contract, there are other countries in which it would not be so held; and, no matter what the future conduct of the parties might be, there could be no divorce *a vinculo matrimonii*. In many of the Oriental and unchristian nations of Europe and Asia, conformity to their local laws would be out of the question. It may not here also be a matter unworthy of consideration that all patriotic American citizens in a foreign land have a very natural wish to have a contract of so much interest to them solemnized under the flag of their own country and upon that spot where, according to the courtesy and principles of international law, the power of this nation has a residence in the person and habitation of its minister.

It is because of considerations of this kind that all the enlightened nations of Europe have made provision for the celebration of these marriages at their legations and in the presence of their diplomatic and consular agents. The practice has prevailed for many years at the several legations of the United States, although no positive statute like the present was ever passed by Congress. The validity of those marriages has rested upon the principle of extraterritoriality accorded to the residence and office of the minister. When I was minister at Paris I was repeatedly called upon to have marriages celebrated at the legation. I then gave to the subject a careful consideration and reached the conclusion that such marriages were valid. I never assumed, as I understand some ministers have done, to perform the marriage ceremony myself, but it was done at my legation by some clergyman or rabbi in accordance with the religious forms, Jewish or Christian, that the parties interested selected. Mr. Hoffman, in a letter to the Secretary of State, of August, 1874, states that during the seven years that he was secretary of legation at Paris one hundred and fifty marriages were celebrated at the legation in that city.

I am well aware that some of our public jurists, William Beach Lawrence among the number, deny this principle of extraterritoriality as embracing the validity of marriages celebrated at the legations. He informs us that General Cass, when minister at Paris, had so much doubt of the doctrine that he would not permit his daughter to be married to his own secretary at the legation, but required the marriage to be celebrated at the *mairie* according to the strictest formalities of the French local law. This may have been a very prudent and discreet exercise of parental solicitude upon the part of General Cass, and while there may be some ground for diversity of opinion I am well satisfied that the weight of legal authority supports the

validity of those marriages. But in a case of this kind there should be no ground for doubt, if it is in the power of legislation to remove that doubt. Marriage is too sacred an institution, its consequences to the parties, to their offspring, to the questions of inheritance and succession, to the peace and interests of society, are too important to permit a shade of doubt to rest for a moment on its validity. We should either absolutely forbid all marriages at the legation or remove all doubt as to their validity by the passage of such a bill as that which is now before us.

The question then is, will this law remove all doubt upon that subject? In other words, has Congress the power to give validity to a contract of marriage made in a foreign country when solemnized there between its own citizens in the presence of one of its own officers, and in conformity to its requirements? When I speak of validity I of course mean validity within the United States, not beyond its territorial limits. It is said that marriage is one of those domestic institutions which is under the exclusive control of the States. This is undoubtedly true in regard to all marriages within the limits of the Union; they can derive their validity alone from the laws of the States where solemnized. But while the States have properly reserved this right to be exclusively exercised by them within their own limits, they assert no right to exercise it in foreign countries. There cannot, therefore, be any conflict in such a case between the State and Federal authority. The States are unknown in our intercourse with foreign nations. They have no political existence, so far as foreign powers are concerned. An American in Paris is not a citizen of Pennsylvania or a citizen of West Virginia, but a citizen of the United States. The Constitution has created this a nation, and has endowed it with all the attributes and powers that belong to any other nation in its relations to the world at large. However limited or restricted may be its powers when acting in co-operation with the States in the joint administration of the varied internal concerns of this Republic, there is no such partnership of power when this Government acts in its relation with the other nations of the world. Then its powers are supreme and exclusive. It is clothed with every attribute of national sovereignty which public law accords to any nation. Perfect equality of right and privilege among nations is a fundamental doctrine of modern international jurisprudence.

The practice of one nation by its legislation and within its own limits to give validity to acts done within a foreign country is of constant occurrence and has been universally recognized. Great Britain, Germany, France, Italy, and other powers have freely exercised the authority of giving validity to contracts of marriage solemnized according to their own laws at their legations in foreign countries. Can a power thus exercised by all other nations be justly denied to the United States? It is no answer to this to say that ours is a government of limited and defined powers, while those in Europe just referred to are without any such limitations. Ours is indeed a government of restricted authority so far as its relations to the States and the people are concerned. But as the representative of our sovereignty in its intercourse with foreign governments it has no limitation upon its sovereignty beyond that which international law imposes alike upon Great Britain, Germany, and France. It would indeed be a curious anomaly in the system of nations if the United States did not possess the power of giving validity to the acts of its own citizens done in foreign countries in pursuance of its own laws, when that right is conceded to all other nations, and when if it does not exist in Congress it cannot exist anywhere. It is difficult to see what right of any State is infringed by recognizing a contract of marriage made in France. If the marriage was performed at the *mairie*, according to French law, that contract, thus deriving validity from the local law of France, would be accepted as conclusive by every State court in the Union. Would they be less disposed to accept as conclusive a contract made by American citizens in France under an American law passed for the special benefit of our own people, and which can work prejudice to no one?

I have remarked that an American citizen in Paris is not a citizen of Pennsylvania or West Virginia, but a citizen of the United States. If involved in any difficulty with a foreign government, he can look for no relief from the interposition of his State. His appeal for protection can alone be to the United States. The duty of protection upon the part of the Government involves the reciprocal duty of allegiance on the part of the citizen. As the States have divested themselves of all power to protect their own citizens in foreign countries, and have devolved that duty exclusively upon the National Government, it must follow by necessary implication that this Government possesses all the powers necessary to that protection. This leaves its discretion unrestricted as to the mode and manner in which this protection shall be given; and if this Government believes, as do those of Great Britian, Germany, France, and others, that a proper and necessary part of that protection is to provide for and legalize marriages contracted by its citizens abroad, it falls fully within the scope of the powers conferred upon it.

This is not the first time in the history of this Government that Congress has exercised by legislation that power which the Constitution and nature of our Government devolves upon it, of protecting the rights of our citizens in foreign countries in cases of this kind; but I believe it is the first time that this power has been seriously questioned. Some years ago it was quite usual for our consuls to perform the marriage ceremony between citizens of the United States and citizens and aliens without observance of the laws of the particular country in which the ceremony was performed. The opinion of Attorney-General Cushing was asked by Mr. Marcy, when Secretary of State, as to the validity of such marriages. His opinion, marked by his usual ability and profusion of learning, was clear and decided that a consul possessed no such authority, and consequently that the marriages were invalid. He drew a distinction between ministers and consuls, and showed very conclusively that while the doctrine of extraterritoriality applied to the one, it did not to the other. Congress acted upon this opinion of the Attorney-General, and passed the law of the 22d of June, 1860; and while it omitted by statute to confer any authority upon our diplomatic agents, regarding them under that opinion as already possessed of it, it provided that marriages in presence of any consular officer of the United States in a foreign country, between persons who would be authorized to marry if residing in the District of Columbia, shall be valid to all intents and purposes, and shall have the same effect as if solemnized in the United States. This law has now been in operation for sixteen years. Many marriages have been solemnized under it, and I have never yet heard that the validity of these marriages, or the power of Congress to pass such a law, has been questioned.

Laws have existed upon our statute-book for many years authorizing the secretaries of legation and all consular officers to administer oaths, to take depositions, and to perform notarial acts in foreign countries, and provisions are contained in the same laws for punishing in any district court of the United States the crimes of perjury and forgery, when committed in foreign countries in violation of those acts. These last provisions for punishing extraterritorial crimes will no doubt strike the technical common-law jurist as a departure from all sound principle; but it is only one of the indications of the revolution now in progress in the doctrines of private international law, and results from a growing conviction on the part of England and the United States of the duty of punishing offenses committed against their own laws beyond the limits of their territory and to concur with the balance of the Christian world that the country of arrest should in some cases have jurisdiction as well as the country of the commission of the crime.

I have now concluded all that I propose to say in general explanation of the character and provisions of this bill, and unless some gentleman desires to reply to the views which I have presented I will, at the request of several gentlemen around me, move to postpone its further consideration until some day next week, when a full opportunity will be afforded for such amendments as may be offered to the bill.

Mr. Speaker, I have now said all I desire to say on the subject. I do not desire to press the consideration of the question further at this time but will yield the floor to any other gentleman who desires to address the House.

Mr. COX. I have proposed a substitute for this bill. I have endeavored to extract what virtue there was in the bill and place it in my substitute.

The SPEAKER *pro tempore*. The question first recurs on the gentleman's substitute.

Mr. COX. Mr. Speaker, at the beginning of this session I offered a resolution for the rescinding of the German treaty. The committee have reported against it. They give good reasons for their opinion. I agree to their report, because I desire no hasty action upon a treaty which is so soon to expire. What I desire is that the recommendations of the committee and the best wisdom of our diplomacy shall be exerted in improving our relations with Germany.

No one can overstate the importance of a good understanding with Germany. Her people are the salt of the earth. They go and come and bring and make thrift. In despite of their domestic police and other regulations against emigration, they are going to every part of the world. They carry the virtues and economies, the energy and the glory, that belong to the great race which held Rome at bay in her proudest days and which to-day dictates policy to Europe.

My reason, sir, for not urging the rescission of the treaty with Germany is well stated by the honorable gentleman from West Virginia [Mr. FAULKNER] in the report of the Foreign Affairs Committee (No. 96) which was laid upon our table on the 10th of February:

> But if the object of this proposed notice is simply to stimulate our Government to ask a revision of that treaty; to have it extended to the entire German Empire, including Alsace and Lorraine; to define with more precision some of the points of controversy growing out of subjects of expatriation, naturalization, and nationality; to incorporate into it some provisions that subsequent experience has introduced into our later treaties on that subject, the resolution of inquiry addressed to us is unobjectionable and indeed worthy of commendation.
>
> If our opinion of the future action of the German government is too favorable there will yet be ample time to apply the appropriate corrective. By the fifth article of that treaty it went into effect immediately on the exchange of ratifications, to continue in force for ten years from that day. Ratifications were exchanged on the 9th of May, 1868. A previous notice of six months is required to be given if we desire to terminate it at the end of ten years. A notice, therefore, given by the 19th of November, 1877, will terminate the treaty. We can therefore well leave twelve months more for diplomatic negotiation, and if by that time any evils resulting from alleged ambiguities and omissions in that treaty are not remedied, it will be in the power of Congress at its next session to direct a notice to terminate it, if in its judgment it would be wise and expedient to do so.

During the next twelvemonth the diplomacy of our country may well be employed in perfecting our relations with Germany.

The Germans have a proverb that a sparrow in the hand is better than a pigeon on the roof of the house. Let us therefore keep the

treaty until we get something better. While we would do everything to stop the abuse of American citizenship by German-Americans abroad, it should always be with the reservation that they are treated on the same footing with native citizens, and that no abnormal views like the present proposed measure shall enter into legislation as to citizenship.

I think that I express the German-American sentiment and the American sentiment when I say that the main defect of the German treaty is that we are left entirely to the good-will of the German governments. In a revision of the treaty, or rather in concluding a treaty comprising all the states of Germany, the Department of State should exact from the German government provisions tending to place upon a perfectly equal footing naturalized American citizens and their children, so far as their sojourn in Germany is concerned. If, under the existing treaties, a naturalized German returns to Germany and resides there for two years, the German government is not bound to recognize his own or his children's citizenship, while a native American may reside, with his children, in Germany as long as he pleases without justifying the German government in the assumption that he has no intention of returning to the United States, and that he has renounced his American citizenship. It is this unequal treatment against which the opposition of the German-Americans is chiefly directed. I admit that the assumption of an intended abuse of the American citizenship for the purpose of residing, with children, in Germany without being compelled to perform the duties of subjects, is more applicable to naturalized than to native citizens, and we cannot, therefore, censure the German government for being somewhat rigid in demanding proofs that such American citizens sojourn in Germany for transient purposes only. But a revised treaty should, on the other hand, afford naturalized citizens and their children better protection against annoyances by the German governments than they enjoy under the existing treaties.

My friend from West Virginia [Mr. FAULKNER] exaggerates somewhat in asserting that in ratifying the Bancroft treaties the German governments have unreservedly admitted the right of expatriation. If such were the case, our naturalized citizens would not have been placed on an exceptional footing by these treaties. In the case of Steinkauler, the German government has claimed as a German subject a native-born American, on the ground that his father, by his return to Germany, has renounced his expatriation, and the American Government has refused to grant the young man the protection due to an American citizen. There is evidently ample room for further concessions on the part of the German government, and the Secretary of State would render the German-Americans an important service if he could secure such concessions.

Admitting, Mr. Speaker, all the abuses which belong to our German-American people resident abroad, the question I propose to discuss is of larger moment. I discuss it in no "Federal" light. I have no prejudices, no democratic traditions to gratify at the expense of justice to our foreign relations.

Allow me then, while keeping my mind on the treaty with Germany, which was so incautiously made and which deserves so much amendment, to discuss in detail the bill presented by the gentleman from West Virginia. Then I may be permitted to add some general observations on the treaty and our right by treaty stipulation to limit or destroy citizenship.

First, as to the present bill:

The honorable gentleman from West Virginia, [Mr. FAULKNER,] on reporting the bill from the committee to the House, March 30, (Congressional Record, March 31, page 5,) was not explicit or exact in replying to my question that the bill is not the same which was in the House two years ago. It is true that it is not wholly the same bill of two years ago, which was forced back into committee; but it returned to the House last year, January 7, 1875, as a report of Judge E. R. Hoar from the same committee, was recommitted, and that was the last ever heard of it again outside of the committee-room, until the gentleman from West Virginia took it up, and his bill, unless greatly changed by the amendments just offered, is word for word, *punctuatim et literatim*, the identical bill which last year perished in the hands of Judge Hoar, and which was substantially—all but two clauses omitted and some changes of phraseology—the same bill killed in the House the year before. (Congressional Record, April 24, 1874.)

1. The bill starts out—as did the bill in 1874 and again in 1875—with declaring its purpose to be "to carry into execution the provisions of the fourteenth amendment to the Constitution, concerning citizenship." In this it can only refer to the first clause of the first section of that amendment, which reads:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

It is only the first section of the bill (and possibly the second clause of the second section, of which hereafter) that has any remote relevancy to this subject of the amendment, in that it seeks to provide that the words "reside" and "domicile" "are to be construed as implying a fixed residence at a particular place, with direct or presumptive proof of an intent to remain indefinitely."

Let us see. The Constitution declares that citizens of the United States are "citizens of the State wherein they reside," and this bill declares virtually that they shall be citizens of the State in which they may be, "with direct or presumptive proof" to remain indefinitely. In all our statutory jurisprudence, State as well as Federal, the words "reside" and "residence" have acquired a technically well-defined significance. In the State of New York a period of one year constitutes the "residence" required for the acquisition of citizenship of the State, which includes the right to vote. It is so, probably, in every other State in the Union; and nowhere a mere "tramp," as it were, who comes into the State at hap-hazard, presumably intending to remain indefinitely, can acquire the legal "residence" entitling him to the privileges of citizenship of the State until he "resides" within such State one full year. The fourteenth amendment, in adopting the term "reside," has necessarily adopted it with its settled construction, as meaning a residence legally acquired according to the laws of the place of such residence. This first section of the bill goes apparently further. It would eventually override all the constitutional and statutory provisions in the various States concerning the acquisition of the privileges of local citizenship by residence alone. The words in this section requiring "a fixed residence at a particular place" do not avail against this objection, since, by making the mere presumption of an intent to remain sufficient, the "fixed residence," like a "fixed idea" in metaphysics, becomes an unrealizable fancy; and again, because, if the acquisition of a really permanent habitation in a State can make a man a citizen of the State, it does so from the very moment he acquires such habitation, regardless of all the contrary provisions contained in the State constitutions. No such violence to the rights of States was intended by the fourteenth amendment, and therefore this section, being liable to this objection, ought to be stricken out.

2. The second section has three distinct clauses or subdivisions, two of which are again subdivided into clauses or paragraphs. Every one of these more or less independent provisions should be considered separately.

After the first five lines of introduction, which are really but a pleonasm and should be expunged for that reason alone, this section proceeds in line 6:

> First, that all persons shall be regarded as entitled to the privileges and immunities of citizens of the United States and as subject to the duties imposed upon such citizens who may have been born and are residing within the United States and subject to the jurisdiction thereof.

Were Congress to declare by a solemn enactment that the sun shall shine by day and that by night there shall be darkness subject to occasional incursions of the moon, it would be just as sensible a proceeding as to pass this declaration in the bill. As in the matter of the sun and of the changes of the day and night, so in this respect has there a higher power intervened. The Constitution, to whose jurisdiction even Congress is subject, has declared that "all persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States;" and there is as little need for Congress to enact the Constitution into a law as there is for an attempt to paint snow white. That citizens of the United States are entitled to the privileges and immunities of such citizenship and subject to all the duties imposed upon such citizens follows so logically as a matter of course as effect follows cause. This is not legislation; it is a stump speech. In one sense, however, it may prove mischievous and give rise to endless difficulties. "Persons" includes the male and the female gender. Without arguing whether this paragraph, by recognizing "all persons" born and residing within the United States as endowed with the "privileges" of citizens, might or might not be claimed to confer upon women the privilege of voting or of practicing as attorneys "in the State where they reside," it is proper to refer to the sentence which declares that they are also to be "subject to the duties imposed upon such citizens." One of these duties is to serve the country in war, carry the musket to the front and defend her against all enemies. Can "all persons," without discrimination of age or sex, be made subject to that duty? Of course not; and, if not, then this lofty style of legislation explodes itself.

But this paragraph does even violence to the fourteenth amendment. Does it leave out all reference to persons "naturalized in the United States" and add an additional qualification of citizenship, not known to the Constitution, by confining its operation to persons who "are residing within the United States?" The amendment makes "all persons born or naturalized in the United States" citizens of the United States, no matter where they may be residing at any given time, and confers upon them citizenship of the State only "wherein they reside;" that is, where they have acquired a legal residence according to the laws thereof. The latter is local citizenship, the former national, and this, by force of the Constitution, depends solely upon birth or naturalization and not upon residence at any particular place, as does the citizenship of a State. This paragraph, therefore, is useless, improper, mischievous, and contrary to the fourteenth amendment at the same time; and for these reasons it ought to be dropped.

3. The next paragraph of this first subdivision of section 2, beginning with line 10, refers to alien women who become the wives of citizens of the United States.

I can say nothing better on this part than what has been said in my previous remarks in 1875 concerning this same identical provision of Judge Hoar's second bill, except I may add that the question is already covered by the second section of the act of February 10, 1855, section 1994 Revised Statutes United States, and by the principles of law governing matrimonial relations, now universally recognized.

4. The next subject, beginning at the end of line 14 and ending

with line 26, is indeed rare phraseological architecture, of the composite order. To one not accustomed to the anomalies of law terms and their meaning, it must appear as a paradox to read of "a child born within the United States of parents who" "do not reside within the United States," since to the common understanding this would indicate a physical impossibility. The lawyer knows that by the word "reside" in this section is only meant that undefinable "fixed residence in a particular place with direct or presumptive proof of an intent to remain indefinitely," which is mentioned in the first section, and meaning simply the place of "residence." It does not necessarily imply the bodily presence of the parents at their "residence." Why not say so, then, and make the language intelligible to all? Such child born within the United States of parents who do not reside in the United States "shall not be regarded as a citizen thereof, unless such child shall reside in the United States." Should this paragraph be adopted in its present form, there is no end to the puzzles to which it may give rise. The law presumes the "residence" of an infant—and all minor children are considered in law as infants—to follow the "residence" of his parents; if the parents have no "residence" in the United States, how can their child have a "residence" here? Moreover, minors are not free agents, but remain under the control of their parents, without whose consent they acquire no domiciliary rights. How, then, can an infant secure for himself even the legal fiction of a "domicile" or "residence" in this country away from the "domicile" or "residence" of its parents elsewhere? Should the parents, after the child is born here, leave it either to the care of friends or strangers, and the child grows up in the United States to man's estate, then the fourteenth amendment steps in, and by that constitutional provision he is a citizen as a "person born in the United States." It needs no act of Congress to make him such, nor could an act of Congress deprive him of that constitutional right. That portion of this conglomerate paragraph which provides that "a child born within the United States of parents" "who are not subject to the jurisdiction of the United States shall not be regarded as a citizen" is completely superfluous, inasmuch as all persons born under such circumstances are specially excepted from the operation of the fourteenth amendment, and no additional negative is required from Congress to make the exception any more valid. How an infant born under circumstances not entitling him to citizenship by right of birth may acquire it through the naturalization of his parents during his minority is already amply provided for by long existing laws, and all such new requirements as the filing of a declaration with the State Department, which this paragraph seeks to establish, are obnoxious innovations. They break into the accepted principle that naturalization is a judicial proceeding terminating with a solemn adjudgment of a court of competent jurisdiction, and not dependent on the favor or discretion of an executive officer of a department. The attempt to introduce the system here is a weak copy of the English practice, where naturalization is a favor granted or withheld by the Crown as it chooses. Even the British naturalization act of 1870, in its seventh section, fully recognizes this royal prerogative. In this Republic naturalization has ever been a right founded in law to be adjudged by a court, and the executive branch of the Government should have neither control over nor part in it.

5. The second subdivision of this section, from line 27 to 32, is thoroughly objectionable. In the first place it is useless, since the status of children born of American citizens in foreign countries is clearly defined by the first section of the act of February 10, 1855. That act declares these children to be citizens of the United States during their natural lives, but such citizenship does not descend to children whose parents have never resided in the United States.

The present bill would limit the duration of citizenship only during the minority of such children of American citizens, and in that it is utterly wrong. A person is either a citizen or he is not. In the latter case we have nothing to do with him. But if he is a citizen, that quality clings to him through life, or until he shall have voluntarily changed his nationality by assuming another. To declare a person to be a citizen for a term of years only, as a land-owner parcels out an estate among tenants, is an absurdity. Again, this clause declares that a child born abroad, whose father may be a citizen of the United States, shall follow the domicile of his father. It is this provision that has some connection with the purposes of the bill as announced in the first half of its title. The "domicile" mentioned can only be the domicile of the father somewhere in the United States, and not any transitory domicile the father may have acquired abroad, because in regard to that Congress has no jurisdiction to legislate at all. But a citizen of the United States and of the State of Massachusetts, resident and domiciled in Boston, goes to Europe and remains there ten or twenty years with his family. Children are born to him while abroad. Under the act of 1855 they are citizens of the United States, and they are also citizens of Massachusetts, because by a universally accepted rule the child follows the domicile of the father, and the father's domicile in the supposed case is in the city of Boston until the father shall have gained a domicile elsewhere in the United States. This rule is the common law not of this country and of England alone, but of the whole civilized world, and what is already so universally recognized needs no statutory affirmation.

But there is in this second subdivision a little phrase of only nine words which has a very suspicious bearing. The clause reads: "A child born abroad, whose father may be a citizen of the United States and subject to the jurisdiction of the United States, shall be regarded as a citizen of the United States," &c. What is the meaning of this requirement that the father must be "subject to the jurisdiction of the United States?" We can quickly arrive at it by the logical process of putting the sentence in its converse form, thus: "A child born abroad, whose father may be a citizen of the United States but not subject to the jurisdiction of the United States, shall not be regarded as a citizen of the United States." Consequently this provision contains a novel limitation upon the descent of citizenship from father to son, in that citizenship descends to a child born abroad from the father only in case the father remains subject to the jurisdiction of the United States. How? Nobody will pretend that the United States can exercise any direct or corporeal jurisdiction over an American citizen residing in London or Paris or Dresden or anywhere else outside of the limits and local jurisdiction of the United States, except in countries where by treaty stipulations the United States, like other Christian countries, exercise consular jurisdiction over resident citizens. But these exceptions do not come in question here. How, then, can any American citizen traveling or sojourning in Europe remain personally "subject to the jurisdiction of the United States?" Was George Peabody, for over thirty years a resident of London, while there ever personally subject to the jurisdiction of the United States? Not at all. And the same applies to every American in Europe, whether he remain away a month, a year, or fifty years. Is the citizenship of these fathers not to descend to their children born abroad because they are not subject to the jurisdiction of the United States? The act of 1855 says yes; this bill would imply no. Why change the rule as it has now existed for twenty-one years, since there is no necessity for a change? But the third clause of this second section, together with the third section of this bill, explain why this objectionable phrase has been interpolated here. Yet inasmuch as the act of February 10, 1855, being now section 1993 of the Revised Statutes of the United States, has for so many years been found sufficient and giving no cause for just complaint, it seems best to let well enough alone.

6. In the opening clause of the third subdivision of this section there is the first glimpse of desirable legislation of a nature that has been wanting and should be supplied; but it is so crude and incorrect in terms that it should be amended. It reads:

> Thirdly. The following persons shall be regarded as not subject to the jurisdiction of the United States within the intent of the said fourteenth amendment, or as not residing within the United States, within such intent, namely: First, citizens of the United States who become naturalized as citizens or subjects of another state, or who in any foreign country enter into the civil, naval, or military service of any foreign prince or state, or of any colony, district, or people foreign to the United States, while such service continues.

There is a fundamental error and misdirection of meaning in the use of the words "subject to the jurisdiction of the United States," as here quoted in the bill from the fourteenth amendment. In the Slaughter-house cases the Supreme Court say:

> The phrase was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign states born within the United States.

From this authoritative interpretation it follows that the words in the fourteenth amendment, "subject to the jurisdiction of the United States," have no reference whatever to those persons who by birth or naturalization are constitutionally and legally citizens of the United States. The reference to this proviso has logically no place in this bill, which deals with the rights of citizens only, and not with the rights of those who are specially excepted by this proviso from becoming such citizens.

That persons on becoming naturalized elsewhere or entering the public service of any foreign power should cease to be citizens of the United States is perfectly right and proper, and a declaratory act to that effect should have been passed long ago. But this clause of the pending bill does not say so, and in that it falls short of being satisfactory. It only declares them "not subject to the jurisdiction of the United States," which of course would deprive them of all right to protection while they are abroad, but leaves their citizenship in abeyance, and to revive in case of their return to the United States. And here is the wrong in the bill. A citizen of the United States becoming naturalized in another country has left us; he has abjured his allegiance to the Republic, and has assumed the relation of a citizen or subject to another power. He thereby has become an alien to the United States, the same as if he had been an alien throughout life. We have no claims upon him, and he has none upon us. Should he return to this country, desirous to resume his lost citizenship, the way stands open to him, as to every other alien, in the process prescribed by our naturalization laws. Those who take public office in foreign states place themselves in the same category. They must necessarily take an oath of allegiance to the sovereign or state that employs them, and as no man can be assumed to owe allegiance to two nationalities at the same time, they deprive themselves by their own act of their American citizenship, thus accepting voluntarily the status of aliens to the United States. They also may again be naturalized here, by going through the same proceedings in court as other aliens.

This is the American doctrine of the effect of naturalization. The rule so lucidly laid down by General Cass, that a native of Germany, naturalized in the United States, when returning to the country of his birth, returns there as an American citizen and in no other capacity, is the only true guide in this question, and should be applied to

our own people also. When a native of the United States is naturalized in France, when returning to the country of his birth, he returns here as a French citizen and in no other capacity. Let us exact observance of this rule on both sides and we shall be right and will need no such questionable legislation as is proposed in this bill.

7. The "thirdly" of this third subdivision of section 2 brings up the deeper and wider question, whether the "naturalization treaties," especially those with the German states, are to be sustained as wise and politic. This clause deprives of the protection of the United States "naturalized citizens of the United States who may by the terms of any treaty be regarded as having resumed their original nationality." The adoption of this clause would be tantamount to a legislative approval of the treaties themselves by the House. Of that hereafter in full. It would also tend to establish it as a principle that a naturalized citizen is such only in a qualified sense; a principle opposed not only to the plain terms of the fourteenth amendment to the Constitution, but also to all previous legislation, notably that of 1868, found in the Revised Statutes as sections 2000 and 2001.

On this subject I have heretofore spoken so much on Judge Hoar's bill that nothing new is to be added.

8. To the fourth clause of this subdivision, beginning in line 50, the only objection is that it again introduces the "Department of State." The declaration mentioned should be required to be made before either one of the courts named in the first subdivision of section 2165 of the Revised Statutes, which is the act of April 14, 1802. The Secretary of State should have no power whatever over any step in naturalization, for the reason that it offends the republican principle. Admission of aliens to allegiance in European countries is, as a rule, a prerogative of the crown, because the obligation of allegiance runs to the sovereign, and the secretary or minister acts for his master, the sovereign. Here allegiance runs to the country, the people, the Constitution, and the laws; admission to allegiance is regulated by law, and every application for admission or re-admission is a matter for judicial determination, or at least judicial supervision.

9. The third section seeks to establish a most objectionable system of registration for American citizens journeying abroad. The details of the registry comprise the inauguration of a system of espionage over the private affairs of citizens against which every manly spirit must revolt. The whole scheme is largely borrowed from monarchical Europe, not of the present day, but of earlier times, when every traveler was compelled to have a passport about him, duly countersigned by the consular agent of the sovereign of his native country in the place he last visited. With these consular agents the traveler had to register all the particulars of himself and family if traveling with him. If this bill had added to the other requirements a demand that the citizen journeying abroad should also exhibit proof to the consul that he had enough ready money to pay the expenses of his journey and that he should be sent back to the United States if he had not, the draughtsman of the bill would only have imitated the ancient European system of consular surveillance still more clearly. Such legislation implies going back more than a hundred years, to the days when the relation of the subject to the state was yet that of a slave to his master. The passport was the collar of servitude placed upon the individual on his venturing beyond the domain of his sovereign, and it was his duty to have that passport registered and countersigned in every place where there was an official representative of his king. Only with that mark upon him was he permitted to go abroad. He was to be branded as the Texas stock-breeder brands his cattle before letting them roam over the prairie. Shall we return to that feudal system, subject our own citizens traveling abroad to a kind of surveillance which every monarchy in Europe, except, perhaps, Russia, has wholly abandoned? Shall we declare by law that, unless our citizens submit to it freely, they shall forfeit their right to be protected by the United States if they remain away continuously for two years? Is not this virtually a forfeiture of their citizenship while they remain abroad? Is Republican America, the champion of the freedom of the individual, to become the laughing-stock of the civilized world? Is she now, in this centennial year, to attempt putting her own citizens, while tarrying in foreign lands, in the chains of bureaucracy, and make her consuls and other officials their overseers or head-keepers? Are American citizens, like babes, to be held in leading-strings for fear that they might peradventure go astray?

But why should we adopt this innovation and introduce a system hitherto unknown to our laws? It is accepted as a rule that a law is enacted either to cure some evil or to advance some good, and if made for neither of these purposes such law is itself an unmixed evil. What, then, are the evils to be remedied? What good is to be achieved? Is it so great an evil that many thousands of our countrymen travel in all parts of the globe without sending a record home through the consuls to the State Department, showing where they have been, where they did go, whether they are single or married, and with how many children they are blest, and what is the name of their dear spouses and little ones? There is no evil in existence which this information would remedy, nor is there any useful purpose it could subserve.

The number of American travelers, taken altogether, is not large enough to affect the census returns as to population, nor is it pretended that this proposed registration of Americans abroad is to aid any census at home. But the effect of such a law, whatever its purpose or object, will undoubtedly be to restrict, as never before, the freedom of movement of citizens of the United States in foreign countries. It imposes as a penalty the forfeiture of their citizenship and of all rights under it, for the time, unless they submit to these restrictions. Such an effect of legislation is a wrong in itself of which Congress should never be guilty. Looked at from a strictly logical stand-point, it is a penalty imposed on going beyond the limits of the United States, as it would permit traveling and sojourning abroad with full rights of citizenship only on the conditions prescribed in this section.

If Congress can prescribe one string of conditions, it may prescribe others more or less severe. It may direct that a citizen, on being registered at a legation or consulate, shall pay a fee of a hundred or two hundred or any number of hundreds of dollars. It may even demand that any citizen on leaving the United States for a journey to foreign lands shall deposit with the Secretary of State a stipulated sum as security that he will return within a stated time; that he will not get into trouble while abroad; and that while gone he will pay all taxes at home that may be imposed during his absence. All this would be deemed absurd; yet it is the same in principle as the registration proposed in this section. *Obsta principiis* is a good rule, and should be followed in this instance.

10. The fourth section, except the first three lines, has nothing whatever to do with the general scope of this bill; and, though its object is good and salutary, it should be incorporated in some other act, or in the substitute which I offer to this bill.

11. The fifth and last section seems to have been specially framed for the purpose of reducing emigration to the United States. Its repealing clause is aimed at section 31 of the act of June 22, 1860, found at section 4082 of the Revised Statutes, page 792, in the following words:

> Marriages in presence of any consular officer of the United States in a foreign country, between persons who would be authorized to marry if residing in the District of Columbia, shall be valid to all intents and purposes, and shall have the same effect as if solemnized within the United States. And such consular officers shall in all cases give to the parties married before them a certificate of such marriage, and shall send another certificate thereof to the Department of State, there to be kept; such certificate shall specify the names of the parties, their ages, places of birth, and residence.

Now, mark how the pending section would change this. It would require that at least one of the parties so married be a citizen of the United States. The act now in force makes no such limitation, and it is well that it does not. Let me explain. Dating back to very ancient times, there are still in existence in Germany many obstacles to marriage, particularly among the working classes. Some of them may have been removed, others liberalized of late, but quite a number are still in force, and prevent thousands from marrying when and whom they like. This country has received a very large accession to its German population from this very cause. Thousands of young people have looked longingly across the ocean as the land where no arbitrary distinction would prevent their union, and they saved their scant earnings for years to enable them to pay their passage. These people on reaching the seaboard at Bremen, or Hamburg, or Havre, and preparing to go aboard the ship that was to carry them to their new home, generally applied to the American consul at these ports to be married by him and thus start upon their ocean journey as legally man and wife. Among these emigrants as I have heard, are many older people, men and women, who but for the laws of their own country would have been married years before, but they waited to accumulate the money for their emigration, and in the mean time children were the result of their intercourse. These also legitimatized their offspring by their marriage in presence of the consul before leaving for America. Such had grown to be the practice for many years prior to the passage of the act of 1860, and even without that act courts have held such marriages valid, except as a foundation for prosecution for bigamy as being a binding civil contract evidenced by the consular certificate. The opportunity of getting married by the consul before going on shipboard induced many thousands of women to consent to emigration, and without the women the men would not have come. In this way the practice of consular marriages greatly increased emigration and benefited this country.

Under the pending section, consuls would be prohibited from solemnizing any such marriages, as they would be authorized to act only in cases where both parties are already citizens, or at least one of them is. Moreover, nearly all such marriages are directly forbidden in Germany for one reason or another, reasons which do not operate as obstacles to marriage in this country; yet being forbidden, our consuls in that country would have no power under this section to solemnize such marriages between persons on their journey of emigration to America neither of whom is yet a citizen. The passage of the pending provision would consequently cut off one of the many influential inducements of emigration to the United States, and that at a time when we should stimulate every means in our power to increase it if possible. Why is this liberal act of 1860 to be repealed? Why is this section of the pending bill, with its prohibitory and restrictive clauses, to be substituted for it? Who asks for the change? Surely no one who knows anything of the beneficial effect which the law as it stands and the practice prevailing before its passage in 1860 have had upon immigration. But as we alone should suffer by complying with this request and by aiding in keeping emigrants away from the United States, it would be unwise to make the change involved in the passage of this bill.

On the 22d of April, 1874, arguing against a bill similar to this, re-

ported to the House by Judge Hoar, from the Committee on Foreign Affairs, and which sought to recognize in congressional legislation the leading principles of the naturalization treaty between this country and the North German Confederation, I had the honor to remark:

A variety of thoughts strike me here. * * * Among others, whether Congress has the constitutional power to pass any such act as this. Would it not be to some extent in the nature of a bill of attainder to legislate a citizen out of his rights? If Congress has the power to denationalize a citizen for being away from the country two years, could it not impose the same penalty for going abroad for any time, or at all?

That obnoxious bill fell with the adjournment of the last Congress, but the principles on which it rested face us to-day in the treaties concluded in 1868 by Mr. Bancroft with the North German Confederation and with several minor German states, all now parts of the German Empire, as well as in the bill before us.

Two years ago I hinted at the possible unconstitutionality of the proposed legislation. If the power be wanting in Congress to pass any such act, as some firmly believe, the inquiry naturally presents itself, Can two-thirds of the law-making power—the President and the Senate—do what all three parts—the President, Senate, and the House—conjointly cannot do? This is not expressing a flippant doubt, but stating a very serious question that goes to the root of the entire subject, as a brief argument will make clear.

GERMAN TREATY.

I make no apology for the general discussion of the relations of citizenship abroad under all our treaties, and especially the treaty with Germany. I had no opportunity for that discussion when my resolution was reported back adversely, as "it was laid on the table." But for future guidance this treaty should be analyzed in order to be ameliorated.

The treaty under consideration is generally known as the naturalization treaty of May 27, 1868, between North Germany and the United States. Its whole object is to regulate the relations of naturalized citizens between the two countries, and it culminates in the fourth article, which is its most objectionable part:

If a German, naturalized in America, renews his residence in North Germany without the intent to return to America he *shall* be held to have renounced his naturalization in the United States. Reciprocally, if an American, naturalized in North Germany, renews his residence in the United States without the intent to return to North Germany, he *shall* be held to have renounced his naturalization in North Germany. The intent not to return may be held to exist when the person naturalized in the one country resides more than two years in the other country.

As this provision is reciprocal, an American who has been naturalized in Germany is an alien here to all intents and purposes and as fully as if he had lived in Germany from his birth. But returning to this country as such alien and residing here more than two years he may claim and exercise, under this treaty, all the rights of American citizenship without being naturalized in the manner provided, which the Constitution and the law require of other aliens.

This treaty therefore establishes primarily two things: first, it is a rule of naturalization; and, secondly, it makes a different rule in our intercourse with the people of Germany than prevails in our intercourse with people of other countries.

It is a well-settled rule of constitutional and statutory construction—and it were wasting time to quote from elementary text-books in its support—that where a power is granted and the person or body to exercise that power is designated in the grant, such power is vested in the authority thus designated, and nowhere else. That power may remain in abeyance by neglect or refusal to use it, yet no other authority can intervene. If that be so—and I believe none will deny it—then it seems clear, as a principle of American constitutional law, that naturalization cannot be regulated by treaty. The eighth section of article 1 of the Constitution of the United States says:

The Congress shall have power: * * *
4. To establish a uniform rule of naturalization.

The first section of the same article declares that—

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

And the second and third subdivisions of section 7 of this article make the President a part of the law-making power, by conferring upon him the right to approve or veto any bill or concurrent resolution or order before either becomes a law.

It would be supererogation to attempt arguing any further that to establish a rule of naturalization is by these provisions of the Constitution declared to be one of the legislative powers granted to the Congress composed of both the Senate and the House, and subject to the President's approval or veto; and it seems not to be within the jurisdiction of the President and Senate alone under the treaty power vested in them by the second subdivision of section 2 of article 2. Hence any regulation concerning naturalization must proceed from the concurrent action of both Houses, with the approval of the President; and since this treaty does establish a rule concerning naturalization, yet as the treaty does not proceed from the concurrent action of both Houses with the approval of the President, but only from the President with the advice and consent of the Senate, there is no constitutional authority to sustain its validity.

It may be said that this treaty concerns itself principally with the relations of American citizens abroad, and its conclusion was therefore a proper exercise of that power which the law of nations attaches to every sovereignty in its intercourse with other sovereignties, and which is preserved in the Constitution by clothing the President, with the advice and consent of the Senate, with the power "to make treaties;" this grant being general and unlimited, excepting nothing from its operation. Tested by the most ancient rules of logic—and modern philosophers have not improved upon those left to the world by Aristotle—this claim of almost omnipotence for the treaty power cannot be sustained. If the legislative power of Congress can be invaded by the making of a treaty in one case, it can be invaded in all. "To borrow money on the credit of the United States" is given to Congress in the same section which confers upon it the power to establish a uniform rule of naturalization. If the latter can be constitutionally done by treaty, why could not the President alone, the Senate advising and consenting to it, "borrow money on the credit of the United States" from the government of England, for example, by simply entering into a treaty with that government? "To declare war" is another power of Congress. If the extent of the treaty power be as is claimed, then the President might to-day, with the Senate consenting, enter into a treaty obligation with England, France, Germany, or with other powers, to send the American Army and Navy to Cuba, ostensibly for the pacification of the island, and thus virtually declare war against Spain. As the President under the treaty power can do neither of these things, which all will admit, so also can he not interfere with the jurisdiction of Congress over the question of naturalization.

The ninth section of the second article enumerates various restrictions upon the legislative powers of Congress. Can the President and Senate override any of these by making a treaty with some foreign country? No. The fifth clause of the section provides that "no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another." The man who should pretend that the President and Senate could nevertheless make a valid treaty, say with Great Britain, that all ships carrying cotton from the port of Mobile, and only those, should be exempt from paying tonnage dues and wharfage at Liverpool, would be laughed at as an idiot. Yet the claim put forward in favor of the validity of this naturalization treaty, on the ground of the treaty power, runs on all fours with that absurd pretense.

The Government of the United States is a limited sovereignty, limited not only by the restrictive clauses but also by the grants of power in the Constitution. Each department must move within the bounds fixed for it by the fundamental law and cannot exceed them. Not only can that not be done which is prohibited, but the powers granted must be exercised by that authority or department only to which they are intrusted, and by no other. Hence, as the establishing of a rule of naturalization is among the express powers of Congress, no other department of Government has any power over the subject.

Perhaps some will contend that this treaty, in its main provisions, does not refer to naturalization at all, but only to the rights or rather limitation of rights of the citizen after he has become naturalized. Such a narrow construction can be founded neither in logic nor in law; in both the major always includes the minor, and the use of a generic term covers all co-related branches implied in it.

In that view naturalization means not only the act of being naturalized and all the precursory steps to that end, by which an alien is invested with the attributes of a citizen and taken into the full fellowship of the nation, but used in the Constitution in its generic signification the term also includes the subsequent relation which the new citizen and the government of his choice shall bear to each other. It follows from this, *ex necessitate rei*, that all rules of naturalization must, either expressly or impliedly, cover not only the method in which an alien may assume citizenship, but also all the rights, privileges, and immunities which that citizenship confers. This the Congress of the United States has done by the passage of the act of July 27, 1868, precisely two months after the proclamation of this treaty with the North German Union; and the second section of that act says:

All naturalized citizens of the United States, while in foreign countries, are entitled to and shall receive from this Government the same protection of persons and property which is accorded to native-born citizens.

This provision is again found in section 2000 of the Revised Statutes of the United States, adopted by Congress on June 22, 1874, six years and one month after this treaty went into effect. But the two are antagonistic. The treaty does not give the same protection to all naturalized citizens, but makes a distinction as to the country of their nativity, inasmuch as a naturalized American of English birth receives more protection in England than a naturalized American of German birth in Germany, nor does the treaty give to all naturalized citizens the same protection accorded to native-born citizens, since it makes a marked distinction between the two classes. The law of Congress, passed subsequently to the treaty, being diametrically opposed to the treaty, that one only of the two which has a constitutional warrant for its existence can stand, and the other must give way.

One reason why this treaty finds no support in the Constitution has already been given—that making rules concerning naturalization is not within the province of the President and the Senate, constituting the treaty power. It must be said further that this treaty, like those with other nations, is in its very nature a compact of reciprocity and seeks to secure to the citizens or subjects of the other contracting power the same rights here which American citizens are to

enjoy there. Heretofore all such treaties were confined to their legitimate limits. In our first treaty with France in 1778 reciprocal civic rights in regard to entering into business, to acquiring property, to removing from place to place, and the like, were guaranteed to Americans and Frenchmen in the two countries, but the question of citizenship, of assuming or renouncing allegiance, was not touched.

Again, in a similar treaty concluded with Switzerland in 1850, reciprocity of rights was conceded by each country, but the theory of presumptive naturalization, as it may be called, found no place in that document. During that interval of seventy-two years many other treaties of more or less like character were entered into, but never until 1868 has this theory been broached, and no statesman of the country had advanced the doctrine that the rules of naturalization and the rights of naturalized citizens, as established by Congress, could be regulated, changed, or abrogated by treaty.

The act of Congress of 1868 is not only in full harmony with the original Constitution but also with the fourteenth amendment, which was adopted July 28, 1868, two months after proclamation was made of the treaty, and says:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.

There is no distinction in this provision between persons born and those naturalized. As to their subsequent rights, they are both citizens of equal degree, entitled to the same fundamental rights, privileges, and immunities. The words "and subject to the jurisdiction" of the United States do not affect this argument at all and do not exclude from citizenship and its privileges those citizens who sojourn in other countries and are in body for a longer or shorter period beyond the immediate "jurisdiction" of the United States. The meaning of this phrase in the amendment has, however, already received an authoritative interpretation by the Supreme Court of the United States in the well-known "Slaughter-house cases," where the court in their majority opinion say through Mr. Justice Miller:

The phrase "subject to its jurisdiction" was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign states born in this country.

The native and naturalized citizens being thus placed upon complete equality as to their rights, we turn again to the same majority opinion of the Supreme Court, where Mr. Justice Miller says:

"Another privilege of a citizen of the United States is to demand the care and protection of the Federal Government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government. Of this there can be no doubt, nor that the right depends upon his character as a citizen of the United States.

Mr. Justice Field, in a dissenting opinion, quotes approvingly from Mr. Justice Washington in Corfield *vs.* Coryell, 4 Washington, C. C., page 380, that the fundamental privileges of a citizen of the United States might well be "all comprehended under the following general heads: Protection by the Government; the enjoyment of life and liberty," &c. It is therefore clear that the act of Congress of 1868 and 1874, declaring that all naturalized citizens shall receive the same protection abroad as native-born citizens, is in full harmony with this amendment to the Constitution as interpreted by our highest tribunal, and that the treaty is not.

The Constitution requires the rule of naturalization, which Congress was given the sole power to establish, to be uniform, and all the acts passed on the subject from 1791 to 1874—excepting some of the provisions of the "alien and sedition acts" of 1796—complied with this constitutional demand for uniformity. But how is it with these naturalization treaties? Secretary Fish himself complains of their utter want of uniformity. In a dispatch to Mr. Bancroft, dated April 14, 1873, he writes:

It is much to be desired that there should be a revision of the treaties respecting the status of naturalized Germans (other than Austrians) in the United States. They were all negotiated by you and you are doubtless familiar with their practical defects.

And as one vital defect in these treaties, Mr. Fish refers to the fact that "they make different and, in some respects, conflicting provisions respecting the naturalized citizens." It is evident, on the authority of Secretary Fish himself, that "different" and "conflicting" provisions respecting naturalized citizens do not constitute "a uniform rule of naturalization," as imperatively required by the Constitution. A very serious distinction is made in these treaties between naturalized citizens, natives of different countries. An Austrian, naturalized in the United States, may, under the treaty with that country, return to the land of his birth and remain there to the end of his days, yet he will be considered an American citizen and an alien to his native land, unless he voluntarily resume his former allegiance and renounce his American citizenship. But if a native of either Bavaria, Denmark, Hesse, Mexico, North Germany, Sweden, Norway, or Würtemberg, who has become naturalized in the United States, return to the country of his nativity and reside there for more than two years, he is held by virtue of the treaty to have forfeited his citizenship and his right to American protection. An American by birth may roam the world over, or settle permanently in any country, for business or pleasure, and he remains an American still, unless he has of his own free will renounced his citizenship, became a naturalized subject of the foreign state, and an alien to his native country. There is certainly no "uniform rule" in this as regards naturalization and the rights of citizens. But here is an extract from the analytical index to the "Treaties and Conventions of the United States with other Powers," which gives a still better view of the confusion which these treaties have caused:

NATURALIZATION.—Citizens of one nationality are to be deemed and taken to have become citizens of the other, who during a continuous residence of five years in the territories of the other have become naturalized—Austria, Sweden, Norway; who have resided uninterruptedly there five years, and before, during, or after that time have become or shall become naturalized—Baden; who have become or shall become naturalized, and shall have resided there uninterruptedly five years—Bavaria, Hesse, Mexico, North Germany; as explained in the protocol—Würtemberg; who may or shall have been naturalized there—Belgium, Denmark; who have become or shall become naturalized—Great Britain. The declaration of intention to become a citizen has not the effect of citizenship—Austria, Baden, Bavaria, Hesse, Mexico, North Germany, Sweden, Norway, Würtemberg. A naturalized citizen may renounce his acquired citizenship—Austria, Baden, Bavaria, Hesse, Mexico, North Germany, Sweden, Norway, Würtemberg; but this renunciation does not entitle him to recover his former citizenship—Bavaria. A return of the naturalized citizen to his original country is not of itself a renunciation of his acquired citizenship, and no fixed period of residence in his original country works of itself a renunciation—Austria, Baden. A residence in the old country without the intent to return works a renunciation, and the intent not to return may be held to exist when the residence is for more than two years—Bavaria, Denmark, Hesse, Mexico, North Germany, Sweden, Norway, Würtemberg; but in Mexico that presumption may be rebutted by proof.

From this enumeration is seen the diversity and conflicting character of these treaties. Against some of them, like those with Austria and Great Britain, nothing can be said, as they are simply a recognition by international agreement of the municipal laws of this country on the subject—the only basis on which naturalization treaties should be concluded. But the treaty with the North German Union, now embracing the whole German Empire, upsets our municipal laws in this respect, since it deals with our naturalized citizens as citizens only in a qualified sense, (an expression invented by Judge Hoar when Attorney-General,) who retain their original nationality in a dormant state, to revive, even against their will, by the mere residence in their native country for more than two years. This arrangement is contrary to the Constitution of the United States, contrary to the interpretation put upon the fourteenth amendment by the Supreme Court, and contrary to the act of Congress of 1868, re-enacted in 1874.

If this treaty be a law at all, it is as much a law concerning Americans naturalized in Germany and returning here as it is concerning naturalized citizens of German birth returning to their first country. In that respect it conflicts with all the acts of Congress passed on the subject, and never yet has that body seen fit to change its laws in order to conform them to this peculiar treaty. Nor could it do so. For then the rule of naturalization would not be uniform, and any such act would be held unconstitutional.

There are repeated decisions of the Supreme Court that "under the general law of nations a treaty does not operate of itself to effect the purposes of its provisions, but requires, as respects infraterritorial operation, to be carried into effect by the sovereign power," which for this purpose rests in Congress. (Foster *vs.* Neilson, 2 Peters, page 253; United States *vs.* Arredondo, *ibid.*, page 692; United States *vs.* Perchemann, 7 Peters, page 51.) And "a treaty which requires the action of Congress to give it effect is not the supreme law of the land until such action is taken." (Turner *vs.* American Baptist Missionary Union, 5 McLean, page 344.) And still more explicit is the decision that "though a treaty is a law of the land under the Constitution, Congress may repeal it so far as it is a municipal law, provided its subject-matter is within the legislative powers of Congress." (Taylor *vs.* Morton, 2 Curtis, C. C., page 454.) The act of 1868, re-enacted as section 2000 of the Revised Statutes of 1874, being supplemental to the general naturalization act of 1802 and its various amendments, and as all must necessarily be construed together, being *in pari materia*, is therefore now the law of the land, and should control the executive branch of the Government in its dealings with citizens of the United States, whether native or naturalized, and not this treaty, the provisions of which have never been given effect to in this country by appropriate legislation proceeding from the only body that has constitutional power over the subject, and that is—Congress.

But suppose I were mistaken in this argument, there is another very grave objection to the validity of this treaty. It proposes to take from a naturalized German, and against his will and even protest, his rights of an American citizen upon a mere residence for two years or more in his native country. "Naturalization," as was said by the Supreme Court at a very early day, "is a judgment of a court of competent jurisdiction," (Stark *vs.* Chesapeake Insurance Company, 7 Cranch, page 420,) and "the decree of the court is conclusive evidence of the legal naturalization of the party." (Spratt *vs.* Spratt, 4 Peters, page 393.) This doctrine has been steadily adhered to, and it was afterward held that "an order naturalizing an alien is conclusive, if by a court of competent jurisdiction, upon the question of citizenship, it cannot be impeached collaterally." (The Acorn, 2 Abbott's C. and D. C. Reports, page 434.) Here, then, we have an alien clothed with full citizenship by a solemn decree or judgment of a court of competent jurisdiction; by that decree he has acquired, as it were, a sacred right of property in such citizenship, just as he would have in lands, houses, or ships, had the decree been concerning them. Can it be assumed that without any voluntary act on the part of that citizen himself, without his consent, and even against his protest, the Federal Government may step in and of its own mere motion and pleasure, either through the treaty power or by an act of Congress, could strip him of his rights of citizenship, and thus practically reverse and annul the judgment of a court? It cannot be done. "Congress has no judicial

power, and therefore cannot award a new trial or reverse a judgment." (Nock *vs.* The United States, 2 Nott & Huntington.) It is true that the citizen may expatriate himself, assume a new allegiance, or resume his old one; but that is a voluntary act, and cannot be made compulsory, as it would amount to a deprivation by treaty or act of Congress of those rights which a court of competent jurisdiction adjudged him to possess and enjoy. "Expatriation is a fundamental right," (Stoughton *vs.* Tailor, 2 Paine, page 652,) and whatever some of our courts may have decided in this respect, that fundamental right was fully and fitly recognized by Congress in the act of 1868, (15 Statutes at Large, page 223, and section 1999 Revised Statutes of the United States.) The only thing that may be said in favor of these treaties is that they recognize this fundamental right of expatriation; but even in this tardy acceptance of the American doctrine the treaty with the North German Union is defective, as it concedes only a qualified recognition of the principle, and still maintains the original allegiance to resume its sway and its hold upon the man, whether he will or no.

But "expatriation means not only emigration *to* a foreign country, but also naturalization *in* that country," said Judge Black as Attorney-General of the United States, and he was within the law as expounded by the Supreme Court. In the case of Murray *vs.* The Charming Betsy, 2 Cranch, 64—by the way, not a breach of promise suit, as might be presumed from the names of the parties, but an admiralty case—that court held that "an American citizen, domiciled in a foreign country, who has taken an oath of allegiance to the foreign sovereign is not under the protection of the United States." According to this rule the converse is also true, that the gaining of a domicile abroad, without the voluntary assumption of allegiance to the foreign state, does not deprive the American citizen of his right to the protection of his Government; but being such citizen, either by birth or by virtue of a judicial decree of naturalization, he is entitled to demand it as a matter of right.

Having shown that this treaty in its very inception had no warrant in the Constitution, that its provisions are opposed to the will of Congress expressed as late as 1874, and that its fundamental idea has been ruled against by our courts, it is now proper to inquire whether it could be defended on any grounds of necessity, policy, or expediency.

There was really no necessity for it. The chief and only trouble arose from the steel-clad militaryism of Prussia, which compels every able-bodied male subject of the age of twenty to serve for three years in the army. From this liability to military duty sprang the demand of the Prussian government, that an American citizen of Prussian birth, even in case he had been brought to this country by his parents in tender childhood, but who in after life, and at mature age, revisited the home of his youth, was liable to punishment as a "deserter from the army" in which he never served. There have been numerous instances of this kind, and they gave occasion for a protracted correspondence between the American minister at Berlin and the Prussian authorities, and the latter, with pardonable unctuousness, pointed to a *dictum* of Henry Wheaton, the American writer on international law, to the effect that whenever a Prussian naturalized in the United States returns to his original country, his "native domicile and natural character revert." Even such an eminent jurist and statesman seems to have overlooked for the moment that on the 1st of May, 1828, a treaty was concluded between the King of Prussia and the American Republic, which in article 1 declares that "American citizens" are at liberty to sojourn and reside in all parts whatsoever of Prussia, and shall enjoy security and protection." Mr. Bancroft, however, was not unaware of the existence of this treaty, for he himself, in an official note of October 1, 1873, to Mr. von Balan, the German under-secretary of state, calls the latter's attention to it. The terms of that treaty are broad enough to insure the safety of every American citizen, whether native or naturalized, while residing within the dominions of Prussia. Since 1828 that kingdom has become greatly enlarged, having, by the force of events in 1866, absorbed a number of minor states. By this enlargement the kingdom of Prussia, at the time Mr. Bancroft made the treaty of 1868, contained within its limits all those parts of Germany whence perhaps two-thirds of our German emigration had come, and by the rules of international law the treaty of 1828 with the Prussia of that year applied in 1866, and since, to all the other provinces that had been incorporated with the kingdom. And with the other states now in the German Empire we have long had similar treaties like that with Prussia of 1828.

It was undoubtedly upon this treaty that General Cass predicated his memorable declaration contained in the dispatch he sent as Secretary of State to Mr. Joseph Wright, American minister at Berlin, on July 8, 1859, and also in his letter to Mr. A. V. Hope, of June 14, 1859, that "a naturalized citizen, should he return to his native country, he returns as an American citizen, and in no other character," and, as such "American citizen," was entitled to the protection of the treaty of 1828. Hence, so far as the kingdom of Prussia and, in fact, all the other German states with whom we had similar treaties were concerned, there seems to have been no necessity for any such new arrangement if, as should have been done, the position taken by General Cass, and known and spoken of all over Europe as the American doctrine, had been strongly maintained. On September 28, 1858, Mr. Wright wrote home to the State Department that "if a decided and firm stand be taken by our Government it will lead to good results." That "decided and firm stand" was taken by General Cass, who informed the Prussian foreign minister, Baron Mannteuffel, that "the demands of the government of Prussia were inconsistent with the rights of United States citizens under the treaty," meaning the treaty of 1828. This "decided and firm stand" did "lead to good results," as no further conscription of American naturalized citizens of Prussian birth into the military service of that kingdom is mentioned in the records until some time between 1862 and 1864, when we ourselves had recourse to conscription, and the military ardor then prevailing in our Government and among the people led many to look with scorn upon those who evaded military service. Secretary Seward was probably guided by the same sentiments when, in September, 1863, he wrote to Minister Judd, at Berlin, that as some Europeans, naturalized in America, return to their native country to avoid military service here and impertinently invoke the protection of the United States to avoid military service there also, Mr. Judd should make no further applications in these military cases without specific instructions. But when our war had closed the correspondence was resumed, and culminated finally in the treaty of 1868 upon the suggestion of Chancellor Bismarck himself.

A more resolute maintenance of the rights of American citizens secured by the treaty of 1828 would have been the proper course to adopt, and then there could have arisen no cause for the making of a new treaty. It was therefore unnecessary and, as an abandonment of the true American doctrine proclaimed by General Cass and recognized as such in Europe—an abandonment, too, made at the solicitation of the German chancellor—the proceeding was undignified.

But it was also impolitic. It created a distinction between the rights of American citizens not known to the Constitution and the laws, nor ever before raised in any previous treaty. If permitted to stand it will only cumulate the difficulties it was avowedly framed to blot out. To what extent the confusion wrought by this treaty has already grown is evident from the fact that even so able and clear-headed a lawyer as Attorney-General Pierrepont could, by interpreting this treaty, in his opinion of June 26, 1875, in the Steinkauler case, come to the remarkable and rather startling conclusion that a man may have two nationalities, one natural and the other acquired. Had he said unnatural in juxtaposition to natural, Judge Pierrepont would have been nearer right—at one and the same time—which is about as true as saying that a horse of one color is also a horse of another color.

> Young Steinkauler (says the Attorney-General) is a native-born American citizen; there is no law of the United States under which his father or any other person can deprive him of his birthright; he can return to America * * * and become President of the United States.

Yet this native-born American citizen, with a prospective claim to the Presidency of the Republic, is held to be also a subject of the German Empire by virtue of this treaty, and bound as such to serve three years in the German army, five or seven years after that in the reserve, and for any number of years, and until the white locks of age cover his temples, in the *Landwehr* and *Landsturm*. Should Judge Pierrepont's prophecy turn true and young Steinkauler be one day chosen President of the United States, it could happen under this peculiar interpretation of this treaty that upon the outbreak of war in Europe we might see a German officer walk coolly into the White House and serve an order upon the President to report immediately for active duty at the military barracks of Berlin or some other garrison of the empire. Of course, this is the *reductio ad absurdum*, but a most apt process of reasoning to expose the complications resulting from the treaty, and which are so great that even the clear and logical mind of the Attorney-General has been befogged.

It is this very case of Steinkauler that brings into prominence all the incongruities and inconsistencies of this treaty perhaps more glaringly than any other of which the public have yet heard. His father was, as the Attorney-General says, a Prussian by birth, who emigrated to this country in 1848, was naturalized in 1854, and his son was born in Saint Louis in 1855; hence they were both at the time citizens of the United States. In 1859 the father went to Europe with his family, as he had a perfect right to do, and took up his residence at the celebrated and fashionable summer resort and watering-place, Wiesbaden, in the Duchy of Nassau, visited annually by many American tourists. There he has remained ever since. Now, the Duchy of Nassau was, until 1866, an independent and sovereign principality, in its government as foreign to Prussia as any other country. Hence Steinkauler, being a Prussian by birth, did not return to his native country, and to him not even the antiquated *dictum* of Wheaton applied, that "his native domicile and natural character had reverted." He lived there unmolested as an American citizen, and had as little obligation to the King of Prussia as to the Emperor of China. But in 1866 war came and the Duke of Nassau sided with the Bundestag at Frankfort and with Austria against Prussia. The result was that Nassau, along with Hanover and Hesse-Cassel, was conquered and merged as a province in the Prussian kingdom. These events had really nothing whatever to do with the nationality of Steinkauler and of his family, who, as American citizens, were foreigners in Nassau. The conquest of the territory and its native inhabitants did not, as it could not, transfer the allegiance of resident foreigners, and if Steinkauler, the father, had himself been an American citizen by birth, such would doubtless have been the ruling of the Attorney-General. But here comes in the impolitic and mischievous distinction made by this treaty. Steinkauler, the elder, was only a naturalized citizen, and therefore the conquest of Nassau by the Prus-

sians in 1866, when he was legally a foreigner, changed him and all his family into Prussian subjects, though his son is admitted to be an American citizen by birth, and but for this treaty both father and son would have been protected by the treaty of 1828. This is precisely a case foreshadowed in my speech in this House two years ago in these words:

A native of any part of that country, (the German Empire,) naturalized here, is by the terms of that treaty re-incorporated among the subjects of the emperor after a residence anywhere in Germany, though hundreds of miles away from the place of his birth, for even a day over two years.

What was then supposed as merely a remote possibility has now actually happened in the case of Steinkauler, *père et fils*, and has been ruled by the Attorney-General to be according to the treaty of 1868, though it would seem that an inspection of the treaty of 1828, securing to American citizens the unmolested enjoyment of residence anywhere in the Prussian dominions—and Nassau has been a Prussian province since 1866—might have brought the State Department as well as the Department of Justice to a different conclusion.

A treaty that is so unnecessary and impolitic, like the "naturalization treaty" of 1868, and involves also an undignified submission to a foreign demand, cannot be expedient. Aside from the want of constitutional authority to make it and which destroyed its validity *ab initio*, it proved itself in its results the reverse from beneficial. In a letter from Berlin to the State Department, written June 30, 1874, Mr. Bancroft congratulates himself "upon the degree of comfort secured to our German fellow-citizens by the peaceful security which they obtain for their visits in Germany by the treaty of naturalization." But this "peaceful security" was solemnly pledged to them, in common with all other American citizens, in the treaty of 1828, and a firm resolution by the Government of this Republic to exact faithful and rigid compliance with the stipulations of that treaty would be far better and more in accordance with the true American spirit than is done by the provisions of the treaty of 1868.

Whatever may be done with the German treaty, our duty is plain. Let us unfurl the proud flag of the Republic, with the declaration inscribed on its folds that an American citizen, no matter where born, remains such wherever he may be, and his country will defend and protect him in his rights until he himself renounces his allegiance by voluntarily assuming another. Let us proclaim to the world that all may come and find a home under the banner of our Union; and, once assimilated with ourselves as citizens of the United States, no power on earth except their free volition shall despoil them of the high privileges inherent in American citizenship, nor interfere with their right to life, liberty, and the pursuit of happiness.

When next year this treaty shall expire and our diplomatic agents shall consider what may take its place, let us not have the humiliation of the old treaty; and, above all, let us avoid the incorporation of the un-American doctrines of this bill in the sacred relations with the great German power.

Mr. REAGAN. Mr. Speaker, I desire now, as I may not have an opportunity again, to move two amendments to the bill to be considered as pending.

The SPEAKER *pro tempore*. The Chair hears no objection.

Mr. REAGAN. I move to amend section 4 of the bill by striking out all of the section after the word "State" in line 3, and also to amend by striking out section 5 of the bill.

I have only read the bill since the gentleman from West Virginia has been discussing it, and am not therefore prepared to discuss the questions raised by these amendments in any satisfactory manner. I propose to limit what I have to say to stating what occurs to my mind as the exceptionable features of the two portions of the bill I propose to strike out.

The part of the section I propose to strike out has for its object to confer upon the alien the same rights citizens have of inheriting ownership of real estate anywhere within the jurisdiction of the United States—I mean where the jurisdiction of the United States extends within the United States. I only have this to say, and I say it now more for the purpose of calling the attention of the gentleman from West Virginia and those who take an interest in the bill than for the purpose of discussing it. It makes an innovation upon the laws of our own country. It goes further than the laws of any civilized country under the sun within my knowledge. The policy of all governments, so far as I am advised, and I have somewhat carefully looked into this subject in connection with other questions in a judicial point of view within the last year or so—the policy of all countries is to exclude foreigners from ownership of the soil within their several limits. This proposes that all aliens or foreigners may inherit and hold realty in this country the same as natives or naturalized citizens. Foreigners cannot inherit or hold land in Great Britain. They cannot inherit or hold land in France. They cannot inherit or hold land in Spain They cannot inherit or hold land in Prussia or in Austria. They cannot inherit or hold land in Mexico or in any of the Central or South American governments I know of. That rule which is of so universal application, that rule which has been maintained traditionally by all nations, must rest on a great political philosophy which no nation should attempt to overthrow without the strongest inducements and upon the clearest reasons.

I will not attempt now to go into the discussion generally of the reasons which prevent governments from alowing aliens to hold lands within their limits. There are in history some striking instances of the effect of allowing aliens to hold land. It is known that under the reign of Catharine she induced her emissaries to go into Poland and acquire territory there, in order to give her power within that territory to help her in her scheme to destroy that country and turn it to her own use. The general theory is that the land should belong to the citizen. The common law is that there is no inheritable blood in the alien. I believe in this the civil law agrees with it. But whether it does precisely in this or not, it is true that the principle that aliens cannot inherit and hold land is recognized by all countries.

I know that in a treaty entered into some time ago with Prussia we have a stipulation that citizens of Prussia shall have the rights in our country which American citizens are given by the government of Prussia in that country. But this, if I remember correctly, relates to personalty and not to realty. And there is no treaty or law which goes to the extent, in regulating the property rights of aliens, of recognizing their right to inherit and hold lands in this country. There are good reasons why the law should not be changed. I do not enter into the discussion of them now, but merely call attention to them to induce examination and discussion of the subject by others who have the bill in charge and feel an interest in it.

The other amendment I propose is to strike out section 5 of the bill. Without having given the subject full consideration, it is not to be expected that I can enter into an argument at this time very satisfactory to myself or convincing to others. But I simply desire to state a few reasons why it seems to me this section should not be allowed to stand in the bill.

In the first place it undertakes to determine who is married, and to some extent to regulate marital rights. My understanding is that there is no power in this Government to regulate the subjects of marriage and divorce, the settlement of successions, or the determination of the line of descent, unless it may be so far as relates to the legislation of the Federal Government for the District of Columbia and for the Territories. But this goes beyond that. In lines 10 and 11, it provides that the marriages spoken of in this section 5—

Shall be valid to all intents and purposes throughout the United States.

This, then, undertakes to determine what shall be a lawful marriage in the State of Virginia or in the State of Maryland, or in any other State in this Union. I do not apprehend that the State courts administering the State laws would be likely to respect this as a law which the Constitution and their duty would require them to enforce to that extent.

But there are other objections to this section it seems to me, to which I desire to call attention. The section provides:

That a marriage in a foreign country between citizens of the United States, or between a citizen of the United States and an alien, unless forbidden by the law of the country in which it takes place, may be contracted and solemnized in such manner and form as may be prescribed by the Secretary of State, &c.

Now rights as a general rule in this country are made to depend not only upon the power possessed by the authority legislating but upon legislative authority. This seems to me to this extent to make the Secretary of State a legislator to prescribe the rules under which marriages may be solemnized. If that be so, it seems to me to be an innovation upon our ideas of separating the different departments of the Government one from the other and limiting each to the discharge of its own constitutional duty. It seems to me it should be the law-making power of the Government that prescribes how marriages shall be celebrated, and that it is not competent for this Congress, if it has jurisdiction of the subject, to delegate to an executive or any other officer or person the authority to make laws. The power of legislation cannot be delegated by Congress. Legislation must be performed by Congress where it has jurisdiction to enact laws. But this authorizes the marriages to be solemnized in such manner and form as may be prescribed by the Secretary of State.

As I have said, the several States prescribe the mode of solemnizing marriage, and the effect of it, and who shall do it. Their laws are only to a limited extent of extraterritorial authority. The rights acquired and possessed by the marriage relation depend upon the law of the forum in which the parties appear and where they live, with a few limitations; but that is the rule. This undertakes, it seems to me, to do what this House ought not to attempt to do. It undertakes to regulate a domestic relation which belongs, it seems to me, to the legislatures of the different States. This section attempts to extend the authority of Congress in this matter not only to the District of Columbia and to the Territories, but to extend its authority in the regulation of domestic relations, the manner of marriage, and the effect of marriage into the several States. I cannot think that such a law can be constitutional.

But in addition to the objection that in the first place this seems intended to confer legislative authority upon the Secretary of State, and to give an effect to marriages under this law which, it seems to me, can hardly be sustained under the Constitution, it goes further and clothes the diplomatic agents, consuls-general, and consuls with certain judicial functions, if I understand the meaning of the bill. And if I am correct in assuming that from line 11 down on page 6 it does attempt to invest these consular officers and diplomatic agents with judicial functions, it seems to me that it is in that respect unconstitutional, and that we ought not to attempt to do such a thing. The section says:

It is made the duty of such diplomatic agent or consul-general or consul, on being satisfied of the identity of the parties—

He has to pass judgment upon this matter, and judicially determine as to the status of these persons and their relations to the Government by determining the identity of the parties—

and that at least one of them is a citizen of the United States, and that the marriage is not prohibited by the laws of the country, and on being requested to be present at any such marriage, to indicate, &c.

These constitute briefly some of the objections which have occurred to me to section 4, which I have proposed to amend, and to section 5, which I propose to strike out. I do not ask for a vote on the amendments now. My object was to bring them before the House and to the attention of those in charge of this bill, in whose ability to grapple with these questions I have great confidence—more indeed than I would have had in my own if I had been charged with the investigation of the subject. I place these amendments before the House with these crude suggestions merely for the purpose of directing attention to these provisions of the bill, which seem to me to introduce new features, dangerous features, unconstitutional features in some respects, and features that cannot fail to give trouble to the judicial tribunals and involve difficulty in their consideration and future determination.

Mr. COX. Before the gentleman takes his seat, I would like to inquire if he has considered the proposition whether there is any authority in the treaty-making power to regulate naturalization or citizenship. Is not that matter to be determined judicially?

Mr. REAGAN. It is to be fixed by the legislative authority, and its interpretation is to be made by the judiciary.

Mr. COX. That is the principal question which I desire to have considered.

Mr. FAULKNER. The Committee on Foreign Affairs are very much pleased to hear any objections that can be made to this bill, and also to receive and consider at as early a day as possible any amendments to the bill which may be proposed by gentlemen. I do not design to ask for a vote upon this bill to-day; I have made arrangements to occupy only time enough now to explain the character of the bill and to move such amendments as have been directed by the Committee on Foreign Affairs. I now propose that the further consideration of the bill be postponed until Thursday next, at one o'clock, and that the bill, with the amendments reported from the Committee on Foreign Affairs, the amendments moved by the gentleman from Texas, [Mr. REAGAN,] and the substitute proposed by the gentleman from New York, [Mr. COX,] be printed for the use of the House.

Mr. KELLEY. I would suggest to the gentleman that the tariff bill comes up on next Wednesday as a special order for that day and from day to day until disposed of. That, I think, was the order made upon motion of the chairman of the Committee of Ways and Means, [Mr. MORRISON.]

Mr. FAULKNER. I then would have only to yield my position, if that is the case.

Mr. KELLEY. I thought it proper to make the suggestion to the gentleman.

The SPEAKER *pro tempore*. Does the gentleman from West Virginia [Mr. FAULKNER] modify his motion?

Mr. FAULKNER. There is no need to modify it. This bill will take its place, to be superseded by any prior order that may have been made.

The motion of Mr. FAULKNER was then agreed to.

REDEMPTION OF LANDS SOLD FOR DIRECT TAXES.

Mr. YOUNG. On Tuesday last I introduced a bill (H. R. No. 3144) to provide for and regulate the manner of redeeming lands sold for direct taxes. It was by mistake referred to the Committee on Public Lands. I ask that the Committee on Public Lands be discharged from its further consideration, and that it be referred to the Committee on Private Land Claims.

The motion was agreed to.

J. C. BEALES AND ANITA ESETER.

Mr. COX, by unanimous consent, introduced a bill (H. R. No. 3193) for the relief of John Charles Beales and Anita Eseter, citizens of the United States and residents of the city of New York; which was read a first and second time, referred to the Committee on Private Land Claims, and ordered to be printed.

FREEDMAN'S SAVINGS AND TRUST COMPANY.

Mr. DOUGLAS. I now call up the special order for to-day, being the bill (H. R. No. 2828) to amend the act entitled "An act amending the charter of the Freedman's Savings and Trust Company, and for other purposes," approved June 20, 1874.

The bill was read, as follows:

Be it enacted, &c., That in case of the resignation, death, or disability of any of the commissioners of the Freedman's Savings and Trust Company, selected and qualified under the provisions of section 7 of the act entitled "An act amending the charter of the Freedman's Savings and Trust Company, and for other purposes," approved June 20, 1874, their survivors or survivor and successors shall be invested with the possession and legal title to all the property of said company for the purposes of this act and the act of June 20, 1874, and shall have all the rights, prerogatives, and privileges, and perform all the duties that were conferred and enjoined upon the three commissioners mentioned in said act of June 20, 1874: *Provided*, That, if all of said commissioners shall resign, die, or become disabled before the final execution of their trust, then the Secretary of the Treasury shall appoint a commissioner to perform the duties imposed by this act and the act to which it is amendatory, who, upon giving a bond for the amount of $100,000, in the manner and form provided for in the next succeeding section, and taking an oath honestly and faithfully to perform his duties, shall be clothed and invested with the same rights, powers, privileges, and prerogatives, and shall perform the same duties that were conferred and enjoined upon the three commissioners mentioned in the act of June 20, 1874, and upon their survivors or survivor and successors by this act: *And provided further*, That no change hereafter made of said commissioners, or any of them, shall in any way impede or delay any case or cases instituted by or against said commissioners or commissioner, but every such case shall, upon suggestion of such change, and due entry thereof on the dockets of the respective courts in which they may be pending, be proceeded with in the same manner as if such change had not been made.

SEC. 2. That, in case of vacancy by the resignation, death, or disability of any of the present commissioners, the same shall be filled by the Secretary of the Treasury, and the survivors or survivor and new commissioners or commissioner shall give new and separate bonds to the United States, with good sureties, in the penal sum of $100,000, conditioned for the faithful discharge of their duties as such commissioners, and shall take an oath faithfully to perform their duties, which bonds shall be executed to the satisfaction of the Secretary of the Treasury, be approved by him and filed in the office of the First Comptroller of the Treasury, and shall operate as a discharge or cancellation of the joint bond of said present commissioners as to any and all subsequent acts of said survivors, survivor, and successors.

SEC. 3. That the Secretary of the Treasury is hereby authorized and directed, if in his judgment not detrimental to the trust imposed upon them, to accept the resignation of any of the commissioners of the Freedman's Savings and Trust Company which may be tendered to him; and if all said commissioners shall resign he shall appoint one to succeed them and to complete the work of closing up the business and affairs of the Freedman's Savings and Trust Company: *Provided*, That such sole commissioner so appointed shall not be one of the former commissioners nor a trustee of said savings and trust company, and shall not be vested with any powers, rights, or privileges as such until he has executed bond with good security in the penal sum of $100,000, as provided for in section 2 of this act.

SEC. 4. That said commissioners or commissioner, with the approval of the Secretary of the Treasury, shall have the right and authority to compound and compromise debts due to and liabilities of the company.

SEC. 5. That whenever said commissioners or commissioner shall be prepared to make a dividend to the depositors, the United States Treasurer shall, at their or his request, place in one of the depositories of the United States, located in each of the cities where the several branches of the Freedman's Savings and Trust Company were located, an amount sufficient to pay the depositors of said branch, and for the purpose of securing the safe-keeping and proper disbursement of said funds so placed, they are hereby declared to be public moneys of the United States; and the officers of said depositories shall pay the depositors, or their assignees, and take receipts from them in such way and manner as shall be prescribed by said commissioners or commissioner, and approved by the Secretary of the Treasury: *Provided*, That where there are no depositories of the United States, then said commissioners or commissioner may, with the advice and consent of the Secretary of the Treasury, pay the depositors in said localities in such way as they or he may deem best.

SEC. 6. That said commissioners or commissioner, with the approval of the Secretary of the Treasury, may prescribe such forms as they or he may deem right and proper for the depositors to transfer their claims; but no assignment of such claims shall be valid unless it is signed by the depositor, or, if dead, by his legal representative, and is accompanied by the pass-book or other evidence of the company's indebtedness, and sworn proof to the satisfaction of the commissioners or commissioner that the assignment was executed by the proper person in good faith and for valuable consideration: *Provided*, That in case the person making the assignment is unable to write, a sworn statement of two witnesses, setting forth that they witnessed the execution of the assignment, and know the person who executed it to be the depositor, the execution of the assignment of whose account they witnessed: *And provided further*, That no commissioner shall be directly or indirectly interested in any assignment or purchase of any depositor's claim or interest on pain of immediate dismissal by the Secretary of the Treasury, forfeiture of salary or arrears of salary due him, and also shall be deemed guilty of misdemeanor, and punishable by fine and imprisonment as other cases of misdemeanor are punished by law.

SEC. 7. That said commissioners or commissioner shall make payments to those depositors only whose pass-books have been properly verified and balanced, unless said pass-books have been lost or destroyed; then, upon satisfactory proof of such loss or destruction, and the amount due them, they or he may pay as though they had pass-books; but all claims not presented to the commissioners or commissioner for examination and audit within two years from and after the passage of this act, as well as all dividends declared upon audited accounts not called for within two years from the date of their declaration, shall be barred, and their amounts shall inure to the benefit of the other depositors of the company.

SEC. 8. That said commissioners or commissioner are hereby authorized and directed, by consent and approval of the Secretary of the Treasury, to employ some suitable and proper attorney-at-law to look into and investigate the manner in which said company has been managed by its trustees and others having control of the same; and if, in the judgment of said attorney, the affairs of said company have been mismanaged, or managed fraudulently and corruptly, then, upon the advice of the said attorney, and with the approval of the Secretary of the Treasury, they or he shall cause such civil and criminal proceedings to be instituted in the courts against those participating in said mismanagement, or fraudulent and corrupt management, as they or he shall deem right and proper to attain the ends of justice. They or he shall pay fees and costs of suits and all other proper expenses out of the funds in their or his hands as commissioners or commissioner aforesaid.

SEC. 9. That said commissioners or commissioner shall, by the fifteenth day of each annual session of Congress, make a written report to Congress of the progress made by them up to the first day of said session; and, upon the final execution of their trust, they or he shall render an account of their receipts and expenditures to the Secretary of the Treasury, who shall cause the same to be examined by the accounting officers of the Treasury, and, if found correct, the bonds or bond of said commissioners or commissioner shall be surrendered to them.

SEC. 10. That the Secretary of the Treasury is hereby authorized and directed to pay to said commissioners or commissioner, out of any public money not otherwise appropriated, interest, at the rate of 5 per cent. per annum, on their average monthly balances in the Treasury of the United States, accounting from the time they commenced to make deposits; which interest shall, by said commissioners or commissioner, be accounted for in the same manner as the other assets of the Freedman's Savings and Trust Company.

SEC. 11. That the compensation of said commissioners shall not exceed the sum of $6,000 per annum, and shall be apportioned among them by the Secretary of the Treasury according to the services rendered and time given by each; but no one commissioner shall at any time receive more than $4,000.

Mr. DOUGLAS. It is not my desire to enter into any extended discussion of this bill at this time; but the committee reporting it not having been unanimous, and a desire having been expressed by my colleague on the committee from Alabama [Mr. BRADFORD] to move some amendments to this bill, I will yield the floor to him.

Mr. BRADFORD. I move to amend the bill by striking out the first three sections and inserting in lieu thereof that which I send to the Clerk's desk to be read.

The Clerk read as follows:

That the Secretary of the Treasury be, and he is hereby, authorized and required to select and appoint, without unnecessary delay, a good and competent man to take charge of and wind up the affairs of the Freedman's Savings and Trust Company; and the person so appointed shall be styled commissioner of the Freedman's Bank, and before entering upon the duties of his office he shall be required to execute a bond, in the penalty of $100,000, with good and sufficient sureties, payable to the United States, and conditioned that he will well and faithfully perform all the duties required of him by law, which said bond shall be approved by the Secretary of the Treasury, and filed in the Office of the Comptroller of the Treasury.

SEC. 2. That the said Secretary shall have and retain supervision over the conduct of said commissioner, and for malfeasance, incompetency, or other cause, to the said Secretary seeming sufficient, he shall remove the said commissioner and appoint another in his stead, who shall qualify in like manner as is hereinbefore prescribed, and shall succeed to all the rights, powers, duties, and liabilities attaching to the office of commissioner under this act. And the appointment and qualification of the said commissioner shall operate the removal from place of the present commissioners of the said company, who shall, upon the demand of the commissioner herein provided for, make immediate settlement with him and give him a full and circumstantial account of their management of the affairs of said company and of the condition of its assets and liabilities, and shall deliver to him all the property, books, papers, conveyances, evidences of debt, and other things belonging to said company, and shall thereupon be discharged from all liability upon their bond, except for breaches thereof theretofore committed.

SEC. 3. That for the purposes of this act the title to all property, real and personal, all rights, credits, equities, and powers heretofore belonging or attaching to said company or to said commissioners shall vest in the said commissioner instantly upon his qualification as aforesaid; and in his name as such commissioner he shall institute and defend any and every suit or legal proceeding which may be necessary to enforce or protect the rights of said company or of the commissioners thereof; and any and every pending suit or legal proceeding to which said commissioners are a party shall be reviewed in favor of or against said commissioner, as the case may be, upon motion of the party seeking the revivor; and no such proceeding shall be abated or delayed by the removal of the said commissioners herein declared.

Mr. HURLBUT. I rise to a parliamentary inquiry. The last I knew of this bill it was in Committee of the Whole, and I would like to know by what process it has got out of Committee of the Whole into the House.

The SPEAKER *pro tempore*. The Chair was informed by the gentleman from Virginia [Mr. DOUGLAS] that this bill was not in Committee of the Whole.

Mr. DOUGLAS. That was a mistake in the journalizing of the proceedings of that day, which I had not observed until my attention was called to it. There was no necessity for its going to the Committee of the Whole.

Mr. HURLBUT. It is so stated on the Calendar.

Mr. DOUGLAS. That is a mistake in the Calendar, which I hope will be corrected.

Mr. HURLBUT. The gentleman states that the Clerk informs him that there was a mistake in the Journal or the Calendar, one or the other. We ought to have that corrected before we go on with the bill.

The SPEAKER *pro tempore*. The Chair is informed by the Clerk that this bill is in Committee of the Whole on the state of the Union.

Mr. HURLBUT. In that case any further discussion of it in the House is out of order.

The SPEAKER *pro tempore*. Then the motion of the gentleman from Virginia [Mr. DOUGLAS] should be that the House resolve itself into Committee of the Whole for the purpose of considering this bill.

Mr. DOUGLAS. Very well. So that we get at the bill, I do not care whether it be considered in Committee of the Whole or in the House.

Mr. DUNNELL. I would inquire whether there is any intention to bring this bill to a vote to-day——

Mr. DOUGLAS. Not at all.

Mr. DUNNELL. Or whether we are to gain anything by the continuance of the session?

The SPEAKER *pro tempore*. Does the gentleman from Virginia move that the House resolve itself into Committee of the Whole on the state of the Union?

Mr. DOUGLAS. Yes, sir.

Mr. DURHAM. Before that motion is put, I desire to give notice to the gentleman in charge of this bill that at the proper time I shall move to strike out one of the sections of the bill.

The SPEAKER *pro tempore*. No discussion on the bill is in order in the House. The bill is in Committee of the Whole.

Mr. DURHAM. I supposed we had the right to give notice in the House of intended amendments.

Mr. HOLMAN. I wish to inquire whether it is proposed to take any final action on this bill to-day?

The SPEAKER *pro tempore*. The Chair is not informed on that point.

Mr. HOLMAN. If it is not proposed to act finally on the bill to-day, I would suggest to the gentleman from Virginia the propriety of permitting the Committee on Appropriations to proceed with the legislative appropriation bill for an hour or an hour and a half, and then have an early adjournment. [After consultation with several members.] I will make no further suggestion on the subject.

Mr. HURLBUT. Before the House goes into Committee of the Whole on this bill, I wish to be informed distinctly by the gentleman in charge of it whether any action is to be taken upon it to-day?

Mr. DOUGLAS. None whatever.

The motion of Mr. DOUGLAS was agreed to.

The House accordingly resolved itself into Committee of the Whole on the state of the Union, (Mr. HOSKINS in the chair,) and proceeded to the consideration of the bill (H. R. No. 2828) to amend the act entitled "An act amending the charter of the Freedman's Savings and Trust Company, and for other purposes," approved June 20, 1874.

The CHAIRMAN. The Chair is informed that this bill has already been read in the House. If there be no objection, the first reading of the bill in Committee of the Whole will be dispensed with.

There was no objection, and it was ordered accordingly.

The CHAIRMAN. The Chair is informed that the gentleman from Alabama [Mr. BRADFORD] desires to submit certain amendments. These amendments will not be in order until the general debate on the bill is terminated. When the bill comes up for amendment and discussion under the five-minute rule the amendments can be offered.

Mr. DOUGLAS. I suppose the gentleman's amendments can be read as part of his argument.

The CHAIRMAN. The Chair is informed that the amendments have already been read before the House went into Committee of the Whole. The gentleman from Alabama [Mr. BRADFORD] is entitled to the floor for one hour.

Mr. BRADFORD. Mr. Chairman, there is a duty devolving upon Congress to provide by appropriate legislation for the honest and competent marshaling and administration of the assets of the Freedman's Savings and Trust Company. This duty we owe to more than 70,000 poor and ignorant colored people, principally of the South, who are creditors of this institution. It is a duty that this Congress ought not to shirk. It is a duty that arises not only out of the general supervision of matters of this sort which inheres in this body, but it is a duty that springs also out of the fact that Congress is to some extent responsible for the losses that have been occasioned to the numerous depositors of this bank.

True, there is legislation now in the statute-books of the country affecting this question. Provision is already made by law to collect and distribute the assets of this concern. But, Mr. Chairman, it seems to me that further remedial legislation is needed in order that these poor colored people may realize all that they are entitled to receive from these assets.

There has been a disagreement in the minds of members of the committee as to what legislation is needed. That disagreement has sprung from a doubt of the constitutional competency of Congress to remove from place the three commissioners who now have charge of the bank and to substitute in their place a single commissioner. The majority of the committee concur with me in the propriety of doing such a thing, if they could believe that Congress has the power to do it. The doubt is simply as to the law—not a doubt as to the propriety of the measure. So far as I know all concur in the propriety of reducing the number of commissioners to one, and giving him the sole management of the entire concern.

Now, Mr. Chairman, what are the objections to this change? It is said by the chairman of the committee, [Mr. DOUGLAS,] who does not concur with me in opinion upon this matter, that the amendment which I propose at the proper time to offer is retroactive in its effect, and therefore would be unconstitutional and void should it ever ripen into a law. Sir, I cannot assent to this proposition for various reasons. The position which I assume in regard to this matter is founded in law as well as in reason, and judging from the testimony which has been adduced before the Committee on the Freedman's Bank, it would be wrong, grievously wrong on the part of Congress to leave the affairs of this bank longer in the hands of these commissioners. To this matter I shall call attention directly and to all the facts in the history of the concern that reflect any light upon the character of the legislation proposed.

Now, what sort of an organization is this? It was instituted by an act of Congress approved March 3, 1865. Divers persons, men eminent for various services, for high character, and all that sort of thing, were selected from different parts of this broad land as trustees of this institution. One would think that these were the persons who were to have controlled the institution, the persons into whose management it was to be committed. In the charter of the company there is a section which indicates the purposes for which this great, this colossal banking institution was organized.

SEC. 5. *And be it further enacted*, That the general business and object of the corporation hereby created shall be to receive on deposit such sums of money as may be from time to time offered therefor by or on behalf of persons heretofore held in slavery in the United States or their descendants, and invest the same in the stock, bonds, Treasury notes, or other securities of the United States.

Now, Mr. Chairman, some time in the year 1874, after millions of money had been gathered into the coffers of this institution, Congress amended that charter. It is an amendment to that amendment which I propose, and which I think the circumstances of this institution imperatively demand.

Ah! as soon as it was ascertained that it was possible for the officers of this bank to gain the control of many millions of money, that very moment they applied to Congress for more liberal measures in regard to the investment of its funds. Too narrow, far too narrow for those who were thus interested in this matter was the field of investment prescribed to them by law. It will be observed that, by the section I have just read defining the scope and purpose of this institution, investments were limited to United States securities. If that section had continued to be the charter of the rights, privileges, and duties of this bank, it would, under competent management, have been the grandest and most beneficent fiscal institution ever es-

tablished upon this continent. But, sir, its plethoric coffers were too tempting to those who were its managers. They wanted an opportunity to loan out its money upon some sort of insufficient security, and to disburse it without restraint from any safeguards of the rights of those who were interested in it. Therefore, I say, they applied to Congress to have enacted into a law the amendment which is found in the act approved the 20th of June, 1874.

Mr. DOUGLAS. It was in 1870.

Mr. BRADFORD. No; I allude to the amendment of 1874.

Mr. DOUGLAS. The first amendment was in 1870.

Mr. BRADFORD. I am informed that the first amendment was made in 1870, and it was the second amendment that was approved on the 20th of June, 1874, as shown in the Statutes at Large of that year.

Now, Mr. Chairman, what was the effect of that law, and in what condition did it leave that institution? Just here there occurred a most anomalous thing, an unprecedented thing in legislation of this sort; that, at a time when this institution had control of millions of money, application was made, as I have already stated, to enlarge the field of its investment, and, sir, the very law made in pursuance of such application, foreshadowing the doom that has overtaken this company, provided that it should go into liquidation, and in a short while thereafter it did go into liquidation. This remarkable law is the bone of contention between the members of the committee in reference to the needed legislation in this case.

But before I read the section, which is section 7 of the amended charter——

Mr. DOUGLAS. My colleague on the committee has inadvertently fallen into a mistake, and unless it be corrected his remarks will necessarily be somewhat confused and his argument not as intelligible as it should be. The fifth section of the act of 1865, under which this savings and trust company was incorporated, has been correctly stated. The first amendment to that act was approved May 6, 1870; and it was under that provision of the amendment of the charter that the trustees proceeded to invest in real-estate securities, instead of confining themselves, as previously, to United States securities. Then the next amendment was in 1874, which provided for the institution going into liquidation.

Mr. BRADFORD. My recollection was that they were all incorporated into one act. But it does not matter, so far as the argument is concerned. I hold that it is competent for this Congress now to remove by direct enactment the three commissioners who have charge of this institution, and to replace them by a single commissioner.

The third section of the act approved June 20, 1874, contains this language:

> And whenever it may be deemed advisable, or when so ordered by Congress, the general business and affairs of the corporation shall in like manner be closed up by the trustees of the corporation, as provided in section 7 herein.

Now, the previous part of the third section provides for winding up the affairs of certain branch banks that were established all over the country. Then this part of the same section declares that whenever Congress may so order, or whenever the trustees themselves shall deem it advisable, the whole institution shall be put into liquidation and placed in charge of commissioners, as provided for in the seventh section of the same act. The seventh section provides that three persons, to be selected by the trustees and nominated to the Secretary of the Treasury, I believe, and approved by him, shall take charge of all the assets of the institution, upon the execution of a bond by them in the sum of $100,000, duly secured, and on the taking of an oath faithfully to discharge the duties of their office.

Now, sir, if that act was constitutional itself, if it was binding, why then the control over the affairs of this institution at that time determined so far as the trustees themselves were concerned. I doubt myself, if the trustees had never assented to the act, whether it would have been binding upon the corporation, because there is a provision of that seventh section which says that all title to the property, rights, credits, and assets of that institution shall vest absolutely in the commissioners. Now, direct legislative enactment taking out of one person title to property and vesting it in another of course would be unconstitutional. But, sir, the trustees assented to the act. They nominated the persons who were to be commissioners, and therefore accepted this amendment to the charter, and it became binding upon them just as if incorporated in the original charter. Therefore, the very moment they nominated to the Secretary of the Treasury three persons as commissioners of that institution, that moment they became *felo de se*. They decreed their own death, and turned over the affairs of this institution to these three commissioners, who were mere agents and employés of the Government to wind up its affairs. Here are men acting by and with the consent of the trustees or original corporators, acting I say by and with their consent, the mere agents of the Government, acting under a bond payable to the United States, and upon which no power can sue except the United States. And I am sure, sir, it would not be competent, in any event, for any court of equity to give relief to the numerous creditors of this institution upon any proceeding instituted in reference to this bond. It has a good and important purpose, but does not compass such a thing as general indemnity in the premises.

But why may not Congress remove these commissioners? Gentlemen who hold opinions adverse to mine say the law would affect the vested right to hold office on the part of each one of the commissioners, and that inasmuch as it would do this it would be objectionable constitutionally. Now what right do the commissioners hold to be affected by law; what interest in property that is theirs, or interest in office that is theirs? What vested right of property of theirs is to be divested by the amendment I have proposed to this bill? The property is said to pass to them by the very terms of the act, "for the purposes of this act;" that is, they are mere commissioners in liquidation. They stand as assignees in bankruptcy. They took charge of these assets, and entered into bond with the United States to discharge their debts faithfully.

Now, I say that office is not property. In this country I cannot conceive that any office can be property. No doubt there are adjudications, some of them plain, distinct, and emphatic, declaring that office is property. But I see a tendency on the part of recent adjudications to abandon this theory altogether, and to declare that public office is a trust held for the benefit of the people. Chancellor Kent says that no such thing as a private office, such as was known at the common law as an incorporeal hereditament, does or can exist in this country. This relation created in this statute is not an office in any sense of the word. These commissioners are mere employés holding no office, and I say they have no beneficial interest whatever in the land, rights, credits, privileges, or franchises of the original corporation, and therefore they have nothing of which they are divested by this act. True they have a duty to perform; true they have a power to execute; but the commission of this duty can be revoked at any time, and this power to do certain things can be withdrawn at any time. That is the very thing I propose in this amendment to do. I propose to withdraw this power and relieve them of their duty, and their obligation upon their bond. I propose to divest them of nothing more than a power, and to vest it in others, and to have another bond upon which these freedmen can rely with greater security. Now what is a retroactive law? Mr. Sedgwick, in his treatise on constitutional law, says:

> A statute which takes away or impairs any vested right acquired under existing law, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations, already past, is to be deemed retrospective or retroactive. * * * And we have already noticed that the obligation of contracts does not include the remedy. With these modifications, however, the power of the Federal tribunals has been steadily exercised, and State laws of a criminal nature having a retroactive effect, or laws in any way impairing the obligation of contracts, are held to be void, and their operation arrested by the Government of the United States. It is, however, equally well settled, that a law is not unconstitutional under the Constitution merely because it is retrospective in its terms. A conflict arose in the State of Pennsylvania as to lands held under what were called Connecticut titles; and in 1825, on a case growing out of this question, the supreme court of Pennsylvania held that the relations between landlord and tenant could not exist between persons holding under such a title. Immediately after this decision the Legislature of Pennsylvania passed an act by which it was enacted that the relation of landlord and tenant should exist, and be held as fully between Connecticut settlers and Pennsylvania claimants as between other citizens of the Commonwealth; and this act the supreme court, in a subsequent case, held to be retrospective in its effect. A writ of error was taken to the Supreme Court of the United States; but the judgment was affirmed, the court saying that the act did not impair the obligation of the contract. "It is said to be retrospective. Be it so; but retrospective laws which do not impair the obligation of contracts or partake of the character of *ex post facto* laws, are not condemned or forbidden by any part of the Constitution."

Now, to the same effect, I will read a clause from the first volume of Kent's Commentaries:

> A retrospective statute, affecting and changing vested rights, is very generally considered in this country as founded on unconstitutional principles, and consequently inoperative and void. But this doctrine is not understood to apply to remedial statutes which may be of a retrospective nature, provided they do not impair contracts or disturb absolute vested rights, and only go to confirm rights already existing, and in furtherance of the remedy by curing defects and adding to the means of enforcing existing obligations.

Now, Mr. Chairman, I contend that the law which I propose is simply remedial in its nature; that its object is to enforce more fully a duty already imposed. Its object is to afford a remedy for a numerous class of creditors that have not now under the law an adequate remedy. It does not come within the purview of such a decision, for instance, as that which was rendered by the Supreme Court of the United States in the case of Dartmouth College *vs.* Woodward, in 4 Wheaton. There the State of New Hampshire undertook to change altogether the name and character of a corporation. It transferred all the rights, powers, and privileges of the old corporation to a totally new one, and made provision for the substitution of new trustees for the old. In other words, it was a decision as if on *quo warranto*, forfeiting all the rights of the old corporation and vesting them in an entirely new and distinct one. All the law bearing upon this branch of the subject is exhaustively stated in that opinion; but that opinion does not controvert my view of this case; on the contrary, it tends to strengthen the position I have taken.

As I stated a while ago, the corporation is now defunct. It has no longer an existence; but this Congress has declared these commissioners shall hold together and keep *in esse* the rights of the creditors, because these commissioners are empowered to sue and be sued.

Now, have we not the right to remove these commissioners and substitute one commissioner instead of three? It may be said, why not have the three that are there now instead of the one I propose; would it not be just as beneficial to the interests of these colored creditors of this institution? I answer no, and I say that the report of the commissioners themselves, when it is read in the light of the circumstances and the history of this banking institution, declares that they cannot enforce the proper remedies on behalf of those for whom they

act. Why, these commissioners have been in existence a year and a half, and have already expended about $150,000 in winding up the affairs of this concern, while they have declared a dividend of only 20 per cent. There are three commissioners to take charge of the affairs of this Freedman's Bank on behalf of these poor people, and yet, Mr. Chairman, two of these commissioners discharge no duty whatever. I am informed that two of them pay out of their share of the salary $500 apiece to Mr. Leipold, the acting commissioner. He is the man who discharges all the duties of the three commissioners, and to his conduct in the premises I shall presently invite the attention of the committee. If Congress should not interpose on behalf of these poor colored people in the way I propose, they are not likely to realize more than half of that to which they are entitled.

Now, what is the history of this institution? At the time this bank was organized—so it was stated by one of the witnesses, one of its principal projectors, before the committee—it was known that the colored soldiers of the Union were receiving pay which they were not competent to take care of, and out of which they were swindled by speculators and other evil-disposed persons. It was said this institution was organized for the purpose of gathering together and hoarding the payments made to these Union soldiers; and also that it was incidentally intended and designed that such others of the colored population as desired might put their little savings into the coffers of this bank and have them preserved. Now I say that since 1865, when the colored people were emancipated, there never has been an institution which might have been made so beneficial as this might have been. It was the very contrivance that was needed by these people above all others. And if, sir, an intelligent philanthropy had given birth to this thing and presided over it from that time down, it would have been a tribute to the memory of every single man who had any connection with its original establishment; it could have been made so useful, so beneficent to these people, who had so recently been liberated from slavery, who knew not how to take care of their little earnings and were encouraged to deposit them in the coffers of this bank. And although one would be led to suppose from the language of the charter upon its face that it was instituted for such a purpose as this, the history of the bank from its organization down to the present time forbids that we take any such view of the matter. I make this assertion upon the facts and history of the case, that since this Government was organized no such stupendous fraud has ever existed under its protection. And, sir, it seems to me wonderful that such a fraud should or could have existed in the District of Columbia and city of Washington and pass unchallenged by the authorities, and especially by those who had taken the colored man under their especial supervision and care.

The first witness brought before the committee was Aaron M. Sperry, the inspector of the Freedman's Bank and its branches. When called upon to testify he made such disclosures as I will proceed to read to this committee. He says:

It is proper for me to state that I was an employé of the company as an agent for the colored Twenty-fifth Army Corps until 1867, and after that as a cashier of the company until I was made inspector.

* * * * * * *

Question. Did you, upon your inspections, cause the accounts to be checked with the ledgers, and were the records sent to the principal office, showing the errors and omissions?

Answer. So far as possible I sent them.

Q. Were these duties omitted anywhere where inspections were made?

A. Yes, so far as it was possible. It was not possible literally to comply with these instructions, because I had come into the business three or four years behind time, and to carry out literally the instructions was almost an impossibility. I caused the ledger balances to be taken off, and it was to this point that I referred just now. In many cases, finding the ledger widely different from the original entries as returned to the principal office, I made improvements. To illustrate, take the case of the Washington branch, where in 1870 I found a difference between the ledgers and the general account of some $80,000, and by our best endeavors and the employment of additional expert force, we were never able to reduce this difference below, say, $40,000. I speak from memory.

It was to this point I referred just now. Then the witness, proceeding to tell something about the general management of the institution, further deposes:

Now, as to the want of conformity to law, or to the violation of prudent commercial usage, I confess that I hardly know what to say—

Remember, this is a statement in regard to the character of the management of that institution by one of its original foster-fathers, by its inspector, by one who remained close by the institution from the time it was founded down to the present time. By attention to his testimony you can form some idea of the peculiar character of this remarkable banking institution—

Now, as to the want of conformity to law, or to the violation of prudent commercial usage, I confess that I hardly know what to say. There is no branch where loans were made, that I am aware of, where those principles were not violated more or less. At Jacksonville, Florida, where I cannot charge fraud, I am sure that I never knew a grosser or more ingenious violation of prudent commercial usage. But I mean by fraud a case of a man stealing or sharing in the profits. There is a thousand-dollar item at Jacksonville which I cannot prove to be fraudulent, but which looks wonderfully like a steal, and is carefully covered into the books. This case illustrates the difficulty of bank inspection. It is the work of months to check off the accounts. In that case (where I suspect fraud, but am not able to prove it) the day's work had been extended, $1,000 short. The thing was very simple, but very ingenious. For instance: from Tom, Dick, and Harry, say that $3,300 had been received during the day and extended on to the margin, which went into the cash-book and then into the ledger; but, instead of extending it as $3 300, it was extended $2,300. That enabled $1,000 cash to be disposed of and no questions asked; and it was impossible to discover it except by going over the original footing, which involved a work of months. We struck it accidentally. In that case I always supposed fraud. The cashier was responsible under his bonds, but they were good for nothing. Then, again, loans in defiance of the authority of the principal office were made to wholly irresponsible parties. The cashier, W. L. Coan, was particularly reckless. The latest report from the commissioner's agent, Mr. Lockwood, is that at Jacksonville the company will probably lose $100,000 out of the $150,000 or $160,000 that was put out there. Coan was removed and that was all that could be done; his bond was good for nothing. At Beaufort, in addition to the frauds above mentioned, for which Mr. Seavel was prosecuted, he had made loans to a large extent, most of them without the knowledge of the principal office, and he had made false statements with reference thereto. The amount of loans, I think, was between $135,000 and $145,000, of which $100,000 may safely be set down as lost. At Memphis, the cashier, acting on his own responsibility, made loans involving some $60,000. His doing so did not involve any fraud, for it does not appear that he was to profit personally by them; but it certainly cannot be called much in accordance with prudent commercial usage, nor do I think it was in conformity with law.

I will now read further extracts from the testimony of this same witness before the committee. Here is a statement in regard to the management of the affairs of the bank in this city:

Q. Do you know anything of this deficit or fraud of $40,000 in the Washington branch?

A. That there is fraud in it I do not know. The thing simply cannot be explained. There have been so many blunders in the accounts; so many duplications of balances; so many wrong postings in the ledgers that the books are utterly and wholly unreliable. If that be fraud then it is fraud. When you find the book-keeping so bad that the debits and the credits are not always distinguished, and that, when the account is carried forward, the reference marks are left off, and so a number of duplications have crept in, what are you going to do about it? It may be fraud, and if the man was smarter I should say it was fraud, but I think that he was too dull for fraud. Still, when you come to a plain statement, I am unable to explain it, and I do not know anybody who is able. I never have had any reason to believe that there was stealing in the Washington branch office. I am the only man, too, who has ever preferred charges against the officers of the branch, but it was in confidence.

I now call the attention of the Committee of the Whole to another signal fact. These statements made by this witness have reference simply to the general management of the affairs of the bank and the condition of its books. He was asked with regard to a particular transaction:

Q. Do you know of any case occurring at the principal office here in Washington where there was an attempt to cover up the real nature of a previous transaction for the purpose of concealing it?

A. The Seneca Stone Company was undoubtedly such a case.

Q. Give us a history of the transaction.

A. I never knew anything about it until after the bank was closed. It was a concealed transaction.

Q. I see your name signed as witness to the transaction.

A. No, sir; my name is simply attesting the original papers; simply for the commissioners.

Q. I took it for granted that you knew something about the transaction.

A. Never, in the least. Those papers were merely copies of papers sent to my house, and were attested by me as true copies only.

Q. What state of facts do those papers disclose?

A. They disclose this: that a loan of $50,000 was made to Hallet Kilbourn and John O. Evans at a certain time, with certain collaterals attached—which are described in the agreement—and that a secret agreement was drawn up between the actuary, the finance committee, and these gentlemen, that, in case the note was not paid at maturity, the note and all the securities, except the bonds of the Maryland Mining and Manufacturing Company, should be surrendered to the makers of the note, and that the bonds in question—that is, the Seneca Stone Company bonds—should be taken in full payment of the note.

Q. Was not that agreement, between Kilbourn and Evans on the one hand, and the officers of the bank on the other, (with a secret article stipulating that on certain contingencies Kilbourn and Evans were to have their note returned and all the other securities except the Seneca Stone bonds,) an expedient to cover up a transaction between the actuary and the Seneca Stone Company of a date prior to that agreement?

A. No; I think it was something better than that. It was an effort to pay an old loan by a new loan which was larger. In other words, there had been on the books of the company a previous loan for some $35,000 to the parties representing the Seneca Stone Company. This loan was ordered paid, and so far as the books of the company show, it was paid.

Q. Ordered by whom?

A. By the board of trustees. Mr. Edgar Ketchum, of New York, who is an honest and faithful trustee, told me that he stuck to that until he got that loan paid.

Q. What loan?

A. The first loan to the Seneca Stone Company, $35,000. You will find it in the minute-book ordered paid, and that it was paid, so far as the books showed. About that time a loan of $50,000 was made to Kilbourn and Evans, the gentlemen referred to before. Among the collaterals was $75,000 of the Seneca Stone bonds, but there were other collaterals to make it pecuniarily a good loan.

Q. What was the worth of the other collaterals, with the stipulation that all the collaterals, except the Seneca Stone bonds, should be surrendered?

A. There were enough other collaterals with the loan to make it a good one, besides the names of the parties. The note did not mature, say for a year. When it did mature and was not paid, the then actuary demanded payment; and the parties stuck at him this secret agreement. He refused to give up the papers and was threatened with suits, and there was some wrangling about it; and finally the note and the other papers were given up and the Seneca Stone bonds retained.

By Mr. FARWELL:

Q. Who was the actuary who made this agreement?

A. Colonel Eaton. This thing did not come to light of course, because the agreement was in the nature of a secret agreement, till the maturity of the loan, when the actuary then in charge, Mr. Stickney, informed them that they had to pay the note or sacrifice their collaterals, and then they came forward with that secret agreement.

To a question by the chairman he says:

By the CHAIRMAN:

Q. Do I understand you to say that the return of the note of Kilbourn and Evans, and of the securities (other than the Seneca Stone bonds deposited by them) was not made till twelve months after the transaction?

A. It was not made until after the note matured, and until payment was demanded.

Q. Did you not say that that was twelve months afterward?

A. I think so. It was after the maturity of the note.

Q. That is what you mean to say?

A. It was not till the maturity of the note, whatever time that may have been, and until payment had been repeatedly demanded.

Q. And you think that that was twelve months after the date of the secret agreement?

A. Yes; I think so, or whatever may have been the term of the note. I say twelve months, because a year is the usual time.

Q. Do you now say that the transaction with Kilbourn and Evans had no relation whatever to the old transaction with the Seneca Stone Company, but that it was a new and good loan, as of the date when it was made?

A. So far as appearances went, it was; in other words, so far as the books of the company showed; and until the secret agreement was brought to light, there was no reason to suppose otherwise. In my opinion it was an attempt to foist the Seneca Stone bonds on the company.

Q. I read from the report of the commissioners of December 11, 1874, the following:

"Received, Washington, D. C., November 15, 1873, of the actuary of the Freedman's Savings and Trust Company, the within-mentioned securities, with the exception of the $75,000 bonds of the Maryland Freestone Manufacturing and Mining Company, with the understanding that our note for $50,000 is to be returned to us on or before the 18th instant.

"HALLET KILBOURN.
"JOHN O. EVANS."

Then—

"Received note as agreed upon.

"JNO. O. EVANS."

What is this transaction? The same thing is in the report of the commissioners and is also a part of the public records. The Seneca Sandstone Company, a Maryland mining and manufacturing company, was a bogus institution so far as the testimony discloses. The property was put in as part of the stock, say $500,000, and what money was invested by the stockholders was secured by a first mortgage on the property, which prevented the second-mortgage bonds from having any value whatever. They issued $100,000 of the second-mortgage bonds. And these are the bonds referred to in the testimony of Sperry as being the bonds in reference to which the trade was made with Kilbourn & Latta. I would like to know if this transaction is not one of the most fraudulent that ever occurred in connection with an institution of this character? And yet it occurred in a high place and between gentlemen who had the management of millions of money, the property of others. Kilbourn gives his own statement in regard to it. I would be willing to take his own evidence, without reference to anything else said in this whole testimony, to show what was the character of this transaction. This bogus company, of which distinguished gentlemen of the United States were the stockholders, beginning with the President of the United States and ending with Caleb Cushing, I believe—I say these distinguished gentlemen constituted this Maryland mining and manufacturing company, and it was contrived that this company should have so much money belonging to the Freedman's Savings and Trust Company. It was loaned upon the securities that have been referred to by Sperry. About that time the fact transpired publicly, and it was made known in a newspaper published in Savannah that this loan had been made and that it was an imposition upon the creditors and depositors of the bank. Now Mr. Kilbourn says that the actuary of the bank told him (and I give but the substance of this testimony fairly interpreted, as I think) that the company were in a close place and that the public must be deceived in regard to this transaction; that it must appear upon the face of the books, lest the company should be further involved in trouble, that that loan had actually been paid and that the note of Kilbourn and Evans was held and owned by the company, so that they might challenge the inspection of the public and that upon such inspection it might appear that the story which had been told upon them by the Savannah newspaper was wrong; that they had never done any such thing as was charged and that this money was properly secured by the promissory note of Kilbourn and Evans and by collaterals deposited at the same time the note was given. But here is a secret agreement—secret, as two of the witnesses declare, between the parties which in legal effect says on its face that Kilbourn and Evans were indebted to the company in the sum of $50,000—in which they state that they pledge and deposit with that company a certain number of collaterals, enumerating them, and these collaterals are deposited here for the protection of the company in order that they may recover this $50,000. But that secret agreement goes on to say further that at the time of the maturity of the note Kilbourn and Evans shall have—what privilege? The privilege of taking up the note by which the loan was secured and also the solvent collaterals, and leaving with the company only the $75,000 of the second-mortgage bonds of the Seneca Sandstone Company, which, according to the testimony, were not worth four cents a bushel at that time. That was the transaction between these parties.

Now, I think this is about of a piece with all the other transactions of this company from the beginning down to the close of its career. This is but a sample. Those high in authority here, those owning a vast amount of real estate in Washington—respectable gentlemen, putatively, and standing high in the republican party, the professed guardians and protectors of the colored people—those are the men who were the beneficiaries of this unfortunate concern, the Freedmau's Bank.

Now, I desire to call attention to further testimony of this same witness. When he comes to speak of the various branches of this bank (and it should be remembered that there were thirty-four of these scattered all over the land) he says:

At Atlanta, where the defalcation occurred of which I spoke in my last testimony——

The CHAIRMAN. Was that one of the banks authorized to grant loans?

The WITNESS. No, sir; this is a clean steal, not an error of judgment. It is the case where the cashier was convicted of embezzlement.

Then he comes to testify about the Lexington branch:

The CHAIRMAN. Is Lexington the point where this pious young man, this missionary from Oberlin, acted as cashier?

The WITNESS. Yes; that is a good description, I think. His name is Hamilton; he graduated, and became an Indian agent. It is a singular coincidence that the man who robbed us at Atlanta begged off that he might accept an Indian agency, whereby he could pay us the sooner, and that Mr. Hamilton went off from the bank and took an Indian agency. He is an Indian agent now.

He had been stealing from the Freedman's Bank, and he wanted to be put in the employ of the Government that he might steal enough from the Government to pay back these unfortunate colored people whom he had robbed at the branch bank at Lexington.

As to the deficit referred to at Lexington, the entries on the books were so successfully managed as to have defied detection by any ordinary inspection. It would only have been by good fortune, in striking the particular pass-books, that any differences would have been discovered. To illustrate: the ledger showed that we owed a man $200, but when we got hold of his pass-book we found that we owed him $1,600. Hamilton picked his men, the men who would not come near the bank for a year perhaps. The man at Atlanta did better than that, for he ran duplicate pass-books.

These were the pass-books given to depositors. At one of the branches, one of the cashiers selected his depositors from away off, thinking they would never get home again; but the Atlanta man beat him; he had duplicate pass-books. He manipulated one pass-book while the colored man had the other.

Says the witness further:

I should be very loath to reflect upon the clergy, and certainly not upon religion, but I must say that Mr. Corey, at Atlanta, was also a Congregational minister.

Now those who are curious in regard to the history of this Freedman's Bank may wish to know what the opinion of this witness is as to the causes, proximate and remote, that led to the failure of the Bank. He gives in a nutshell the causes which gentlemen have perhaps been able to gather from the statements I have been compelled to make hurriedly in these extemporaneous remarks in regard to the transactions of the bank.

Hear what the witness says on this subject:

Q. State in a general way all the causes, proximate or remote, which appear to have been the most prominent in bringing about the failure of the bank, as far as you have been able to form an opinion from such examination as you have given to its affairs.

A. Had there been scrupulous conformity to law in every particular, and carefulness in selecting investments, such as men fully conscious of the sacred nataré of their trusts ought to have exercised, I do not think the company would have failed, for the reason that its franchises were most valuable. It had, as it were, *carte blanche* in reaching four millions of persons who were prudent, industrious, and ever-increasing economical depositors, so that whatever the expenses might have been in originating the company, its increase in depositors would have been in greater ratio than its expenses, and ought, before the time the company failed, to have brought it into a condition of solvency, even supposing that the current rate of expenses actually incurred had been kept up. I regard the first fatal departure from sound policy to have been the erection of the banking-house in Washington. For whatever may be said of the amendment of the charter, judicious investments in real estate are as good securities as such a savings-bank need to have in part. There got to be around the principal office of the company an unwholesome savor of connection with what is popularly known as the Washington "ring," of the existence of which ring I have no knowledge. At any rate, the management was first opened to criticism by the politicians. In addition to that, there were violent and unjustifiable partisan attacks on the bank. The immediate causes of the failure of the institution were undoubtedly the panic of 1873, and the ostensible, though not the real, connection of the bank with the house of Jay Cooke & Co. This led to such a reduction of the balances held by depositors that, even if nothing further had transpired, the institution would have been closed by its expense account.

Q. Was the unwholesome savor which hung around the skirts of the bank a cause of the partisan attacks upon it of which you have spoken, or were the attacks the result of the knowledge that such savor existed?

A. It was the immediate cause. I believe that had the bank been as immaculate as it ought to have been it would have suffered these same attacks.

The CHAIRMAN. That is a mere assumption.

The WITNESS. Then I will say that had the bank been as immaculate as it ought to have been and had suffered these same attacks, it could have resisted them without loss. I could have gone to our depositors, and simply said, "These things are not so," and I would have been believed.

Mr. RIDDLE. But you could not say that.

The WITNESS. No, sir; I had to make so much of a clean breast of it that I spoiled all that I said. I have been waiting two years, Mr. Chairman, to say this. I can prove to you that for two years I have been working to get a congressional investigation.

Here is this witness who for two years knew that this colossal banking institution was robbing nearly a hundred thousand of the colored population of the country; for two years he had pronounced against it in the councils of this corporation; for two years he had sought congressional investigation. Yet nothing was ever done so far as the protection of these people was concerned except amending the charter, the result of which was not to benefit them but to injure them.

Now, Mr. Chairman, I desire to call the attention of the committee to the characterization of the conduct of this concern and of the individuals connected with it by a colored man, C. B. Purvis, one of the most intelligent and cultivated colored men I have ever met in my life. He is a physician, practicing his profession in this city. He was one of the original trustees. He is devoted to his race. He did what he could, I have no doubt, to protect his people from the spoliation and robbery committed in this bank; but he was unable to accomplish his good wishes in the premises.

Question. State your residence and profession.

Answer. I reside at 1118 Thirteenth street, Washington City. I am a physician, and am a professor at the medical school of the Howard University.

Q. State what connection you had, if any, with the Freedman's Savings and Trust Company.

A. I have been trustee of that bank since March, 1868. Just before it closed I was its first vice-president and a member of the finance committee. I was for one week, I believe, a member of the finance committee. I was put in on the day of the resignation of Cooke, Huntington, and Brodhead, and I resigned at the next meeting of the committee, I believe.

* * * * * * *

Q. And at that time—

Witness had just spoken of a particular time in reference to which he had been questioned—

Q. And at that time there had been an investment in the bonds of the Northern Pacific Railroad Company to the extent of $50,000.

A. Yes. Jay Cooke & Co. wanted the Freedman's Bank to take an agency to sell some of these bonds, and they also had borrowed $50,000 from the bank and had given some of these bonds as collateral security, giving us their guarantee to take them back on five days' notice. Both these cases came up at the same meeting of the trustees, and that was my first knowledge of irregularities in the bank. Henry D. Cooke was a member of the firm of Jay Cooke & Co., and was chairman of the finance committee of the Freedman's Bank, and was permitted at that time to exercise unlimited control of its finances.

This man occupied the double position, I believe, as was stated by this witness, of chief manager of the Freedman's Bank and chief manager of a bank in this city that was the property of Jay Cooke & Co. Besides that, this remarkable fact is disclosed in the testimony that this Henry D. Cooke was a stockholder in that Seneca Sandstone Company which obtained so much of the money of this banking institution upon the flimsy security of $75,000 of its second-mortgage bonds.

The question is further asked of Purvis:

Q. The second-mortgage bonds of the Maryland Freestone Mining and Manufacturing Company were given to the bank as collateral security for certain loans?

A. Yes. The first loan to the Seneca Stone Company was given on first-mortgage bonds as collateral. That was a comparatively small loan, and it was afterward increased from $20,000 to $50,000; and how the securities were converted from first-mortgage into second-mortgage bonds I never found the mortal being who knew anything about. The trustees always supposed that that loan was called in until after the bank closed, and we did not know what had become of the first-mortgage bonds until Kilbourn and Evans sent their attorney, Mr. E. L. Stanton, to us to prosecute us for certain securities which they had given us. Then Mr. Stickney, the actuary, or Mr. Alvord, the president, laid before the trustees the nature of this demand, which was that we return to Kilbourn and Evans their note and securities. None of the trustees had ever heard of the circumstances before, unless it may have been the members of the finance committee, and they never let on that they knew it; they all denied emphatically that they knew it, at least those of them who were present. Messrs. Cooke, Huntington, and Brodhead were out of the finance committee at that time. Kilbourn and Evans demanded the return of their securities and that our guarantee to them be carried out, which was that, if the Seneca Stone Company did not pay the loan within a certain time, (I think ninety days,) we would remit as security for it $95,000 of second-mortgage bonds, (which bonds were already in the possession of the bank.) That was the first I ever heard of the Seneca Stone Company's loan not having been paid; and it came up in that form. We were a good many months considering that matter.

Now I want to call attention to the manner in which this concern was induced to do what Mr. Cooke wanted to have done in the premises, to make that exchange of good for insufficient securities. This witness explains, so far as it was possible for him to do so, the circumstances under which the secret agreement was entered into:

Q. Did the board authorize this to be done?

A. We allowed them to take back the note and securities. The securities were worthless things. They were the stock of the Metropolis Paving Company, I think. There was a good deal of dispute in the board about the matter, but it was carried by a majority vote.

Q. Was there any paper or any order signed by any person authorizing the exchange of first-mortgage bonds to second-mortgage bonds?

A. Never. Mr. Tuttle says that Mr. Cooke had a hand in getting them exchanged; that he came to him one day when he was busy signing bonds and said, "I wish you would sign this paper in reference to the Seneca Stone Company." Cooke said that it was carrying out the wish of the board of trustees. Tuttle didn't know what it was, and he said, "Mr. Cooke, I have not time to read it. I am busy now signing bonds." Cooke asked him whether he would not believe what he said. "Well," said Tuttle, "you have been the financial agent of the Government and have had a great many millions pass through your hands. I have no doubt of what you say, and I will take your word. So he just signed his name to the paper, and Cooke went away with it. And that is the way Tuttle says that the first-mortgage bonds were exchanged for second-mortgage bonds. I met Mr. Tuttle on the street yesterday and he told me this story and says that Cooke will not deny it.

Q. Then it was done by the order of Tuttle, on the representations of Cooke?

A. Yes. When the actuary laid before us the demand of Mr. Stanton, we learned tha this agreement had been signed and hidden away by Mr. Eaton, the actuary, and by the finance committee, Cooke, Huntington, Clephane, Tuttle, and Brodhead. It seems they had all signed it, but had never reported it to the board of trustees. The only reason why we returned the note to Kilbourn and Evans was that there was a considerable run on the bank at that time, and we did not want it to go out to the public that the bank had been sued. Mr. Langston was appointed to investigate the matter, and he unearthed the facts after a long investigation of some weeks; and yet the members of the finance committee who were present when the thing was first reported denied emphatically having ever signed that agreement or having had anything to do with it.

[Here the hammer fell.]

The CHAIRMAN. The time of the gentleman from Alabama [Mr. BRADFORD] has expired.

Mr. HOOKER. I hope that by unanimous consent of the committee the gentleman will be permitted to conclude his remarks.

The CHAIRMAN. The present occupant of the chair has often ruled that the Committee of the Whole, under the rules, has no power to extend the time of any gentleman. Still the Chair does not feel himself bound arbitrarily to cut the gentleman off if he wishes to proceed and no one makes objection. The Chair will inquire of the gentleman about how much time he desires?

Mr. BRADFORD. Half an hour, I think, will be enough.

Now I wish to call attention to another statement of this witness, showing the loose and careless manner in which the affairs of this bank were administered. Loans were made at the request of individuals whom the managers met upon the street; but these, we are bound to infer from the testimony, were that class of individuals who generally controlled the financial affairs of the bank. Throughout the testimony you will find that a few individuals, some of whose names I have already mentioned, were the real personages who controlled this institution and who, so far as we are able to discover, were large beneficiaries by their manipulation of the bank.

Q. Was there not another loan made on the representations of Mr. Alexander R. Shepherd?

A. It appears in the report of the commissioners that Mr. Vandenburgh owes a large amount. These loans never came directly before the board of trustees, or, at least, a very few of them did. The actuary, in reading his report to the board, would say, "City securities, (naming the class,) so much invested." Some members of the finance committee, including Moses Kelly, the sinking-fund commissioner, were very earnest in the defense of these securities, and Mr. Kelly invested largely in that kind of security for his own bank, (the National Bank of the Metropolis.) I was very much opposed to it, as I was opposed to everything connected with the board of public works.

Well, he was sensible.

Stickney staid at my house, and, talking with me one day, he said that he had never done a wrong thing in the bank except letting Vandenburgh have a large sum of money one night. I asked him how much. I think he said $30,000. That perfectly astonished me, so I "went into" him and questioned him very closely, thinking that I would have occasion to recollect it and use it. He said that Vandenburgh came to him wanting some money to pay off his hands that night, and that Shepherd said, "Vandenburgh's accounts are approved, but look what a crowd. (This was on Saturday night.) I will pay you on Monday, if you let him have the money."

There were the employés on the outside, hungering and clamoring for their money. It was after bank hours; and this hungry crowd were desiring to have their pay.

Stickney said that he would let him have the money, and he did let him have it. Afterward he went day after day to see Mr. Shepherd, and could not see him. When he did see him, Shepherd was more forcible than polite, and told him that he was in a damned hurry to get that money. Subsequently Shepherd said to him, "If you do business in that kind of a loose way, you are a damned fool;" and that time he told the truth. This is what Mr. Stickney says about the matter, and I presume he is to be believed on that point.

Now, inasmuch as I propose by the amendment which I design to offer to remove these commissioners, I shall read what this witness says about the conduct of Mr. Leipold as a reason why he should be removed. Remember he is the acting commissioner, the man who manages the affairs of the bank. The other two commissioners have turned the matter over to him, and allow him, I am informed, a part of their salaries, respectively.

This man, Leipold, is the custodian of all the property these 70,000 creditors of this institution have as security for their deposits. Now, this man I want to remove and put another in his stead, a man selected by the Secretary of the Treasury, a man over whose conduct the Secretary of the Treasury shall keep and maintain supervision, with the power of removing him and putting another in his stead whenever he detects any failure to comply with the law or prudent commercial usage. But let me read again from the testimony:

Q. Had you a conversation with Mr. Leipold, in presence of the other two commissioners, in reference to the employment of a Mr. Cook?

A. Yes. Mr. Leipold was recommended to us as a trustee by Mr. Ela, the Fifth Auditor, and by some others, as being a very fine accountant, and we elected him on that recommendation. He was then a clerk in the Treasury, getting just as much salary as he gets as commissioner of the bank; that is, $3,000. The other two commissioners were Mr. Creswell, who was elected because he had been a Cabinet officer, &c., and my father. Just before the bank went into liquidation, Mr. Cook, a young colored lawyer, a young man of marked ability, was employed by us as our solicitor, and when we went into liquidation he still wanted to retain the position. I told him that if he would write a letter I would take it to the commissioners and would tell them all about him. He wrote the application, and I went in with it and with an application from another young man who wanted to be an auctioneer for the bank. The commissioners read Mr. Cook's application, and I instantly saw Leipold get angry. I went on and gave my reasons why I thought that he should get the appointment. I said that this was a bank for the colored people, and that, as they would have had a large number of deeds of release executed and as this young man was a notary public, it would be well to let him have the appointment. Leipold got up and said, "We will not do it." His manner was very offensive. He said, "I came here, not for this paltry $3,000 a year, but for my reputation. I intended to do all this legal work myself; to go into the court and to make a reputation as a lawyer. I want to get out of this Government employment, and I want to receive the fees in these cases myself. I do not see any reason why I should not take these deeds of trust and release and make them out myself at home, and receive the extra fee for the business." To which I replied, in a very straightforward way, "If I had known for one minute that you came here to make this a stepping-stone out of which you could make money, I would not have voted for you." Some compliments passed between us, and I retired.

Now then I come to another statement of this same witness in regard to other officers of this banking institution:

The commissioners had been in existence some two months or more, and we had turned over to them everything belonging to the bank, but Mr. Stickney had not turned over this note until it was discovered in this way.

That is a particular note which had been hid away by this man Stickney for a long time and only became known to the officers of the bank in the way described in this testimony, but which I will not now take time to read. I read again from the testimony:

The affairs of the Freedman's Bank ought to have been wound up long before, because it was a very unwieldy and unmanageable institution, and I had been trying for a year or two to have it wound up. The cashiers at most of the branches were a set of scoundrels and thieves; I mean particularly those at Beaufort, Jacksonville, Florida, Mobile, and Vicksburgh. These fellows were all thieves and scoundrels, and made no bones about it. The cashier at Jacksonville took $6 000 from the bank and loaned it to his son-in-law, without security, in order to make up a deficit which the son-in-law had in his account as tax-collector in one of the counties.

This man's son-in-law had been a tax-collector in the State of Florida and had stolen a sum of money from the people of that State. And when he was appointed an officer of the branch bank at Jacksonville he got into the institution and stole money enough from the poor negroes to refund what his son-in-law had stolen from the people of Florida; and to this he was driven because he was afraid his son-in-law would otherwise be punished. I will read further:

They were all thieves and scoundrels, but they were all pious men and some of them were ministers. The cashier at Jacksonville is a minister, and to-day he has a large Sunday-school; almost all of them are ministers. I think that Mr. Beecher, the cashier at Montgomery, acted dishonestly. He may pay every dollar of it back, but he took the money of the bank without authority.

Now, Mr. Chairman, it is shown by this testimony that there was as cashier of the bank in the city of Washington a man by the name of Boston, who was not only guilty of the general practices of his fellows upon which the testimony I have read throws so much light, but he was also guilty of the mean transaction of fraudulently appropriating the money deposited in the bank by a colored man who lived in the city of Alexandria. When this colored man went to the bank and asked him about the transaction, he began to shed tears and owned he had forged the colored man's name and drawn out his money. This man was the cashier, as I have stated; one of the trusted officers of the bank. Now, why was it that in this large banking institution in the city of Washington—the parent institution, located here, controlling all these branch banks—why was it, I say, that in all the ramifications of this bank, with thirty-odd branches scattered throughout the whole southern country, there were employed, without a single exception, none but dishonest and incompetent men? It was never contemplated, perhaps, at the outset that this parent bank in the city of Washington should extend itself throughout the country through the agency of branch banks. But this contrivance was adopted in order that all the money which could be hoarded by the colored people of the South might be gradually drained into the city of Washington and into the parent bank, so that it might be manipulated and controlled by this particular ring alluded to by Mr. Sperry. Why, they went out as missionaries all over the land, and declared to the colored people of the southern country that this bank would take care of their funds for them; that this bank was solvent, well and ably managed, and that it not only had the support and countenance of the General Government but the General Government guaranteed the full and faithful repayment of every single dollar deposited by them. These things were printed on the pass-books which were handed to these poor and deluded colored people of this country.

By this sort of contrivance all this money was collected from the various banks, and not one single set of books, not a single set of books at any branch bank, not one set of books at Washington, not any books anywhere could give you any more than an imperfect idea in regard to the transactions either of the parent bank or any of its branches. Somewhere about $60,000,000 of the hard earnings of this poor people passed at one time or another into the hands of such men as I have alluded to and such men as have been alluded to in the testimony of Mr. Sperry and Mr. Purvis. They would not select competent men; they would not select honest men, because, I suppose, they believed that such men would protect these innocent depositors. They got men into office as tools in order that they might manipulate them.

And the rest of the testimony, Mr. Chairman, is in keeping with that which I have already detailed. I will not undertake to analyze it at all. I do not pretend to have done more than to call the attention of the House to the salient facts in the history of this most nefarious business.

Now, Mr. Chairman, I know that it is an unpleasant task for one occupying the position I do to bring such a matter as this to the attention of the country. It will not be believed that I, coming from the particular region from which I do come, am really a friend to the colored people; that I have any desire to protect them in the premises. But I would put the conduct of myself and of the committee who have been charged with this investigation into comparison with the conduct of those who have been deputed as guardians of the colored people and who have managed the finances of this great banking institution. Sir, the administration of this bank has been like the administration of everything connected with the Government since 1868 in the southern country. All the affairs of this Government have been administered in the South, or at least in the State in which I reside, in the same way in which the affairs of this bank have been managed. A desire has existed simply to get hold of and control the political power of the country. It was expected that the South would be tied and fastened to the republican chariot. Since 1868, since the so-called rehabilitation of the State of Alabama, there never has been a time when the laws of this country were enforced there according to the Constitution and the law of the land; there never has been a time when justice was judicially administered in that country; there never has been a time when the liberty of the citizen of that country was safe from molestation on the part of those who assumed to be officers of the Government. It is to bring this matter, in connection with what has been revealed in the testimony in regard to the affairs of the Freedman's Bank, to the attention of the country, that I say what I do on this occasion.

Now, Mr. Chairman, I for one hope that this state of things will not longer continue. I can see no reason why justice should not be done in this particular case to the immense number of colored people whose all may be involved in the settlement of the affairs of this bank. I do not see any good reason why a wholesome administration should not prevail in the country from which I happen to come. Since 1868, as I have already stated, we of the South have been brought in contact with just such persons as those who have managed the Freedman's Bank, and whose characters have been unfolded to you, not by democratic witnesses, not by men who have come from the South, but by republicans, by men who have been intimately associated with the republican party and with the control of the colored people of the country. Now, just as these people are are all the employés and agents of the Government with whom the people in my country come in contact daily. And this fact I think cannot be recognized fully in the country, else I believe an effort would be made on the part of the people of the North to rescue their southern brethren from the tyranny under which they are groaning.

Affairs have improved a little in our country, but I say they must improve wonderfully before we can get into a condition in which it can be said that civil liberty prevails in that land. The circuit and the district courts of the United States in and for the State of Alabama have absolute control almost of all the conduct of the people of Alabama, or at least have exercised that control until a comparatively recent period, when the opinion of the Supreme Court of the United States was delivered in reference to certain acts under which they claimed the right to control these people. Now, sir, in these courts there was not that regard for the liberty of the citizen, there was not that regard for the property and rights of the citizen, that you see exemplified or rather illustrated in other tribunals of the land. I myself have been a witness, Mr. Chairman, of the manner in which the people of that country have been controlled and tyrannized over by these judges, until their conduct calls aloud for the condemnation of Congress and for the reprobation of all the people of this country.

I do not, sir, come here to complain of the Government of the United States, because I believe that the Government of the United States is beneficent and means protection for these people. I do not here to-day say aught of complaint about any of the measures which have been inaugurated in this country for the purpose of re-organizing the Union and restoring to the South its political privileges in the Union. These measures are now historical measures. They are approved by the people from whom I come, and I stand here myself to-day to approve them. We have been reviled in Congress and out of it and charged with rebellious sentiments and a desire to injure the Government. I say we entertain no such desire to-day and have never entertained any such desire. It is the wish of our people to be as faithful to the Union and as true to every obligation to this Government—and it is our purpose so to be—as the citizens of any other part of the country. Alarms are spread all over the country that it is the purpose of the South to do something wrong with reference to the great obligations imposed upon them growing out of the late unfortunate struggle between the two sections of the country.

There lurks not in the breast of any single man south of Mason and Dixon's line any such purpose as has been charged upon our people. We have pledged ourselves solemnly, we have pledged in every way that it is possible for us to do so, that we will abide by the adjustment of 1868, or at least so far as the people of Alabama are concerned. I know we have promised and pledged ourselves to abide by the adjustment of 1868, whereby a constitution was framed and put upon the people of the State of Alabama and a new civilization instituted there. We expect to discharge all our duties to this Government, no matter what they may be; and, no matter whether some persons may consider that they are onerous or not, we will discharge them all faithfully.

There is a great debt hanging over this country, and we know it. How far we have been responsible for it is a matter which pertains to history alone, and is not now and here to be discussed. But I say here, in the presence of the House, that the southern people desire and intend to pay and to contribute to the utmost of their ability to pay every single dollar of the national debt according to the tenor of the bond, not in such money as might be made by Congress, but in such money as is the legal money of the commercial world. No party harbors any intent or purpose to do anything but that. That debt to-day is a national debt; it is the debt of the North, the debt of the South, the debt of the whole nation. It is slanderous to say that southern people contemplate in any conceivable way the impairing of the obligation of that debt or contemplate paying it in any other way than that contemplated by the people of the North.

In addition to that, there is an obligation resting upon the whole country to take care of and make provision for the soldiers of the late war. The southern people, as the conduct of their Representatives on this floor has demonstrated, will be as forward as the people of any section of this Union in providing for the maimed soldier. They regard it as the highest obligation of the Government, an obligation higher and greater than that of the public debt, to pay to the soldier any bounty or any compensation that was promised him when he enlisted and became a soldier of the United States.

No dislike exists anywhere in the mind of any single man who belongs to my party I believe in the South—certainly in the State in which I reside—of any other man simply because he was a Union soldier and fought to maintain the Union. We regard him as a sol-

dier of the Union of which we are now members. We are no longer confederate citizens, the confederacy is dead, long ago dead, and nobody ever thinks about it except as something that is connected with an unfortunate portion of the history of the United States. And I renew what I have already stated to be the pledge of the people of the South, to do justice to the soldier as fully I will say—yes, we will go further, for fear of a suspicion attaching to us in this case, than the people of the North—in providing the soldiers with such support as may be found in the pension laws of the United States.

It is said, too, that we want the rebel debt paid, or some other debt or obligation of some sort, I hardly know what, to which it is said we lay some sort of claim, There is nothing more ungenerous than the charge that there lurks in the mind of any of the southern people any desire that any obligation assumed by the Confederate States, or by any of the Southern States during the war, shall be discharged in whole or in part by the United States, by any means whatever.

Ah! it is said, however, that while we cannot do these things, for they would be flagrant violations of our duty and would meet the universal condemnation of the people of the North, yet we seek to accomplish by indirection that which we do not desire to do directly. What is that? It is that we mean to get even for the losses incurred during the war and immediately after the war, and for the imposition of the tax of three cents a pound upon cotton by reprisals upon the Government of the United States in the form of claims for spoliation. I say that the people of the South have never been and cannot to-day be considered hypocritical in any respect whatever. They do not expect to be paid any of these losses, and no more think of them now than if they had occurred a hundred years ago. The fact that a few southern people have presented claims to this House for its consideration is no evidence of a concentrated attempt on the part of the people or their representatives to press the allowance of these claims or of any others that might be set up by these same people. These claims have never yet been considered by this House as a body. What action may have been taken in regard to them by the committees of the House I do not know and the character of them I do not know. But this I say, that these claims, growing out of spoliations that occurred during the war or immediately afterward by acts of soldiers of the Union, never will be supported by democratic members upon this floor from the South.

If cases of severe hardship shall receive the favorable consideration of this Congress, no matter what may be the views of particular members, those individual instances will be rare and extraordinary, and there will be no system of claims, no concentrated action, no desire to get even for losses by any form of reprisals whatever.

This it seems to me ought to set matters right everywhere in this country, so far as we are concerned. There is an effort being made now on the part of the republican party to gain power, by saying that such are the unhallowed purposes of southern members in this Hall, and of the southern people generally. But I do not believe that the American people as a mass, or even a majority of the republican party, will ever give credence to any such unfounded insinuations against us.

The republican party themselves cannot afford to trust to such people as I have alluded to already the management of this Government even in the South. They cannot afford to trust the management of this Government to such people as have been the cashiers, the actuaries, the managers of the Freedman's Bank in the South. It would require a despotism in this country to keep up such a Government as this. It would require such a strain upon the country, such an onerous taxation to maintain the internal-revenue system conducted by such people, that this people could not stand it. But the effort is being made to frighten them by these bugaboos and scarecrows in reference to the purposes and conduct of the southern people.

I am satisfied that the true republicans of the North will no longer regard these things. I am satisfied that the republican party of the North, at least the most of them, will no longer believe that such is the purpose of any democrat upon this floor, whether he come from the North or the South, simply because of charges of fraud such as have been made in the newspapers of the day, and at the other end of the Capitol, by men prominently connected with the Government. I cannot persuade myself that the people will believe this.

[Here the hammer fell.]

The CHAIRMAN. The additional half hour given the gentleman has expired.

Mr. RAINEY. I ask unanimous consent that the time of the gentleman be extended for fifteen minutes.

Mr. DUNNELL. When the time of the gentleman was before extended for a half an hour, there was no objection, for he was still engaged in the legitimate discussion of the bill before the committee. But he has evidently run out of that matter, and is now making a general political speech.

Mr. RANDALL. And a very good one, too.

The CHAIRMAN. Is there objection to extending the time of the gentleman for fifteen minutes?

There was no objection, and the additional time was granted accordingly.

Mr. BRADFORD. The gentleman says I have got off the legitimate line of my argument. In reply to that I say that the administration of the affairs of this Freedman's Bank is so intimately connected, as I have been able to show by the testimony which I have read, with the administration of public affairs in the city of Washington and all over the South, that I cannot avoid alluding to the particular subjects to which I was calling the attention of the Committee of the Whole when my time expired. It is all one vast concern.

The character of the administration of the affairs of this Freedman's Bank is the character of Federal administration in many parts of the United States; I will not say "Federal administration;" I mean republican administration. It is not worse here in the Freedman's Bank than in the internal-revenue service in Saint Louis. It is not worse in this bank than it is in the internal-revenue service or the administration of justice in the South. Therefore I say that they are all of the same character, and so intimately connected that a discussion of one involves the discussion of all.

And I believe it is not the deliberate purpose of all the members of any party in the North longer to keep the southern people in bondage; I believe that the almost universal desire of the people is to have a perfectly restored Union and an honest and economical administration of public affairs. I think they are now satisfied that it is impossible to keep the Government incorrupt and pure in one part while it is absolutely corrupt and impure in another part; that the impure part will finally infect the other, and general and universal corruption will ensue.

I appeal to those who may hear me now, and to everybody who may hear anything in regard to the matters which have been discussed here to-day, to do justice to the South, and no longer to believe that we are the outlaws and the hypocrites our enemies may please to term us, may charge us with being.

Give us good government at home, give us a wholesome administration of justice, and we shall be, as we declared and pledged ourselves we would be, as true friends to the colored people as any that are to be found on this continent, and as fast and never-failing friends of the Union.

Sir, I have felt myself called upon to make these statements in regard to these matters by charges and accusations that were made not long ago by a Senator from Massachusetts, I believe, in the other end of the Capitol. I believe it was said by him that it was not right to trust those who had been bred in slavery times with the care of the colored people or with any part of the political power of this country; and I might say he went so far as to declare that it would be perilous to trust them with seats in Congress, and branded them with the very things to which I have alluded. Hence I have felt called upon to review these charges and answer them as well as I could.

But I repeat, Mr. Chairman, there can be no higher, no more solemn assurances of our devotion to the Union and our purpose to keep in good faith all the obligations that now rest upon us than have been given in a thousand ways by the people of the South. We have had what some people have regarded as sufficient provocation to arouse what would have been declared a rebellious spirit on our part; and I have no doubt that these acts were intended to provoke us to a display of such rebellious spirit. But in the years that have intervened since 1868 there has never been, except in single sporadic cases here and there, any display by the people of the South of any such sentiment. And making this avowal as I do, making this appeal as I do to the sense of justice of the people of the North, I declare that I have confidence in those people; I have confidence even in the mass of the republican party. I do not believe that it is the deliberate purpose of any considerable portion of that party to perpetuate either upon the whole country or upon the South their rule as it has existed since 1868. It would be a catastrophe for the whole country; it would be, I confess, an especial calamity to the unfortunate and in some sense unhappy South for another administration of the same sort to control this Government for four years to come. A distinguished gentleman of Massachusetts, in alluding to this Administration more than a year ago, in a published letter addressed by him to the Harvard club of the city of San Francisco, declared in substance that the leading spirits of the dominant faction of this country had lost their moral polarity, and no longer steered their course with reference to the great cardinal principles of public virtue. He then conjured the alumni of Harvard to come forth from their classic retreats and rescue the imperiled honor of their country. Sir, when these sentiments are uttered by distinguished members of the republican party, (and this was the language of no other than Charles Francis Adams, of Massachusetts,) I cannot but believe that there is a leaven of patriotism at work in the ranks of that party which will to some extent purify it, and prevent such a visitation as a third advent to power of the Administration which has controlled this Government for eight years.

This is the centennial year; and I believe the great American people mean to make it the lustral year. I believe they are resolved that all the departments of their great Government shall be swept clean of fraud and peculation and the purity of their earlier administration restored; and when the material contributions of their genius and enterprise shall have passed under review of the nations at the commemorative exhibition soon to open at Philadelphia, I believe that next November they will close the grand ceremonial by a display of conservative electoral power that will repress all the agencies of evil that now menace the life of the Republic, and vindicate the divine wisdom that intrusted them with the sovereignty of this country.

Mr. DOUGLAS. There are other gentlemen, I am informed, how desire to participate in the general debate on this bill; and as it is now late I move that the committee rise.

The motion was agreed to.

The committee accordingly rose; and Mr. SPRINGER having taken the chair as Speaker *pro tempore*, Mr. HOSKINS reported that the Committee of the Whole on the state of the Union had, according to order, had under consideration the Union generally, and particularly the bill (H. R. No. 2828) to amend the act entited "An act amending the charter of the Freedman's Savings and Trust Company, and for other purposes," approved June 20, 1874, and had come to no resolution thereon.

ELECTION CONTEST—LEE VS. RAINEY.

The SPEAKER *pro tempore* laid before the House testimony in the contested-election case of Lee *vs.* Rainey, from the first congressional district of South Carolina; which was referred to the Committee of Elections.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted to Mr. BEEBE for one week; to Mr. TURNEY for four days, on account of important business; to Mr. EGBERT for one week from Tuesday next; to Mr. MILLS for two weeks; and to Mr. CABELL for one week from Monday next.

DISTRICT BOARD OF HEALTH.

Mr. STEVENSON, by unanimous consent, introduced a bill (H. R. No. 3194) to abolish the present and to establish a new board of health for the District of Columbia; which was read a first and second time, referred to the Committee for the District of Columbia, and ordered to be printed.

Mr. COCHRANE. I move that the House adjourn.

The motion was agreed to; and accordingly (at four o'clock and fifteen minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following memorials, petitions, and other papers were presented at the Clerk's desk under the rule, and referred as stated:

By Mr. CALDWELL, of Tennessee: The petition of the officers of the lodge of the Independent Order of Odd Fellows of Trenton, Tennessee, for compensation for the building belonging to said lodge destroyed by fire while occupied by the United States Army, to the Committee on War Claims.

By Mr. CANDLER: The petition of M. H. Dooly and others, against changing the tariff laws, to the Committee of Ways and Means.

By Mr. EGBERT: Remonstrance of workingmen of Erie County, Pennsylvania, of similar import, to the same committee.

By Mr. HOAR: The petition of G. Henry Whitcomb and others, envelope manufacturers, for relief against injurious competition by the Government, to the Committee on the Post-Office and Post-Roads.

By Mr. HOLMAN: The petition of Albert Grant, preferring additional charges against Andrew Wylie, an associate justice of the supreme court of the District of Columbia, to the Committee on the Judicary.

By Mr. KETCHUM: The petition of citizens of Danville, Pennsylvania, that aid be granted to a southern Pacific railroad, to the Committee on the Pacific Railroad.

Also, the petition of citizens of Luzerne County, Pennsylvania, for the retirement of national-bank circulation and the substitution therefor of greenbacks, receivable for all dues and convertible into Government bonds, to the Committee on Banking and Currency.

Also, the petition of citizens of White Haven, for the release of Edward O'M. Condon, to the Committee on Foreign Affairs.

By Mr. MAGINNIS: A paper relating to the establishment of post-routes from Boulder to Butte City, from Fort Shaw to Camp Baker, and from Old Agency to New Agency, Montana Territory, to the Committee on the Post-Office and Post-Roads.

By Mr. MAISH: Papers relating to the petition of Mary Wade for a pension, to the Committee on Invalid Pensions.

By Mr. OLIVER: The petition of citizens of Northwestern Iowa, for the law to be so changed as to permit the McGregor and Missouri River Railroad to make its junction with the Sioux City and Saint Paul Railroad on the forty-third parallel north latitude, to the Committee on Railways and Canals.

By Mr. POTTER: The petition of citizens of Washington City and Maryland, for a change in the license laws of the District of Columbia, to the Committee for the District of Columbia.

By Mr. SAMPSON: The petition of E. S. Sampson, for the extension of a post-route from Webster to Williamsburgh, Iowa, to the Committee on the Post-Office and Post-Roads.

By Mr. WALKER, of Virginia: Memorial of the Chamber of Commerce of Richmond, Virginia, relative to the metric system of weights and measures, to the Committee on Coinage, Weights, and Measures.

By Mr. WALDRON: The petition of Samuel Andrews, for a pension, to the Committee on Revolutionary Pensions.

By Mr. WELLS, of Missouri: The petition of merchants and wholesale dealers in distilled spirits of Saint Louis, for the definition of the powers and duties of officers of the internal revenue, and to further provide for the collection of the tax on distilled spirits, to the Committee of Ways and Means.

By Mr. WHITE: Papers relating to the petition of Sarah Maynard, for a pension, to the Committee on Invalid Pensions.

By Mr. WILLIAMS, of Indiana: The petition of citizens of Indianopolis, Indiana, for the release from an English prison of E. O'M. Condon, an American citizen, to the Committee on Foreign Affairs.

IN SENATE.

MONDAY, *April* 24, 1876.

Prayer by the Chaplain, Rev. BYRON SUNDERLAND, D. D.

The Journal of the proceedings of Thursday last was read and approved.

EXECUTIVE COMMUNICATION.

The PRESIDENT *pro tempore* laid before the Senate a letter from the Secretary of the Interior, transmitting, in response to a resolution of the Senate of the 18th instant, a copy of a report from the Commissioner of Indian Affairs, together with chapters 5, 6, and 7 of the final report of the exploration of the Black Hills country made by Professor Jenney; which was referred to the Committee on Printing.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. G. M. ADAMS, its Clerk, announced that the House had passed the following bills; in which the concurrence of the Senate was requested:

A bill (H. R. No. 2677) to transfer the Office of Indian Affairs from the Interior to the War Department;

A bill (H. R. No. 2954) concerning corporations engaged in the business of distilling; and

A bill (H. R. No. 3192) for the relief of William Wheeler Hubbell.

The message also announced that the House had passed the bill (S. No. 760) to protect the public property, turf, and grass of the Capitol grounds from injury.

The message further announced that the House had concurred in the amendments of the Senate to the following bills:

A bill (H. R. No. 1052) to correct an error in the Revised Statutes of the United States, and for other purposes; and

A bill (H. R. No. 1345) revising and amending the various acts establishing and relating to the Reform School in the District of Columbia.

The message also announced that the House had agreed to some and disagreed to other amendments of the Senate to the bill (H. R. No. 3128) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1876, and for prior years, and for other purposes.

The message further announced that the House had disagreed to the amendments of the Senate to the bill (H. R. No. 1594) making appropriations for the consular and diplomatic service of the Government for the year ending June 30, 1877, and for other purposes.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President *pro tempore*:

A bill (H. R. No. 700) to incorporate the Mutual Protection Life-Insurance Company of the District of Columbia;

A bill (H. R. No. 1052) to correct an error in the Revised Statutes of the United States, and for other purposes;

A bill (H. R. No. 726) to change the name of the steamboat Charles W. Mead; and

A joint resolution (H. R. No. 85) to authorize the Secretary of War to issue certain arms to the Washington Light Infantry of Charleston, South Carolina, and the Clinch Rifles, of Augusta, Georgia.

PETITIONS AND MEMORIALS.

Mr. INGALLS presented a petition of physicians and dealers in drugs in the city of Atchison, Kansas, praying that quinine may be placed upon the free list; which was referred to the Committee on Finance.

Mr. CHRISTIANCY presented resolutions of the Michigan State board of health, in favor of the permanent organization of the United States Signal Service Bureau, and increasing its efficiency; which were referred to the Committee on Commerce.

Mr. MAXEY. I present the petition of C. M. Wilcox, of Maryland, praying for the removal of his political disabilities. I will state that Mr. Wilcox was my class-mate at West Point, and I have known him for thirty-odd years. He is an honorable gentleman and a worthy citizen. I move the reference of his petition to the Committee on the Judiciary.

The motion was agreed to.

Mr. CONKLING presented a memorial of citizens of Schenectady, New York, remonstrating against the passage of any law granting an American register to foreign-built vessels; which was referred to the Committee on Commerce.

He also presented the petition of Daniel Houlihan, late sergeant Company I, Eighty-second Regiment, New York Volunteers, praying to be allowed a pension; which was referred to the Committee on Pensions.

The PRESIDENT *pro tempore* presented a memorial of the encampment of the Grand Army of the Republic, department of Pennsylvania, in favor of the enactment of a law giving the same pension to soldiers of the Army and Marine Corps who have lost an arm below the elbow or a leg below the knee as is now given to soldiers who lost an arm above the elbow or a leg above the knee; which was referred to the Committee on Pensions.

He also presented the petition of John Willett, H. Patterson, and