

And Senate Bill No. 58, contained in the above report, was placed on the Calendar of Bills on Second Reading.

Mr. Clarke, Chairman of the Committee on Engrossed Bills, submitted the following report:

Senate Chamber,  
Tallahassee, Fla., April 15, 1906.

*Hon. W. Hunt Harris,*  
*President of the Senate.*

Sir:

Your Committee on Engrossed Bills, to whom was referred—

Senate Bill No. 132:

A bill to be entitled an act to amend Section 1727 of the General Statutes of the State of Florida, relating to legal printing.

Beg leave to report that they have carefully examined the same and find correctly engrossed.

Very respectfully,

S. W. CLARKE.

Chairman, Committee on Engrossed Bills.

And Senate Bill No. 132, contained in the above report, was placed on the Calendar of Bills on Third Reading.

Mr. Adams moved that Senate Bill No. 189 be recalled from the Committee on Finance and Taxation and that 200 copies be printed.

Which was agreed to.

Mr. Clark moved that the Senate adjourn until 10 o'clock a. m. to-morrow.

Which was agreed to.

Thereupon the Senate stood adjourned until to-morrow, Wednesday, April 17, at 10 o'clock a. m.

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### WEDNESDAY, APRIL 17, 1907.

The Senate met pursuant to adjournment.

The President in the chair.

The roll being called, the following members answered

to their names:

Mr. President, Senators Adams, Alford, Beard, Broome, Buckman, Canova, Clark, Cone, Cottrell, Crane, Crews, Davis, Girardeau, Henderson, Hudson, Humphries, Jackson, Leggett, McCreary, Massey, Sams, Trammell, Willis. Withers. West (1st District), West (4th District), Zim—28.

A quorum present.

Prayer by the Chaplain.

The Journal was corrected and approved.

### INTRODUCTION OF RESOLUTIONS.

Mr. Leggett offered the following—

Senate Resolution No. 36:

Be it Resolved, by the Senate, that the Committees on Mining and Phosphate and Recorded Proceedings be allowed a clerk.

Which was read.

Mr. Leggett moved the adoption of the resolution.

Which was agreed to.

And Senate Resoultion No. 36 was adopted.

Mr. Henderson offered the following—

Senate Resolution No. 37:

Resolved, That Senate Committee on Education be authorized to employ a clerk.

Which was read.

Mr. Henderson moved the adoption of the resolution.

Which was agreed to.

Senate Resolution No. 37 was adopted.

### INTRODUCTION OF BILLS.

By Mr. McCreary—

Senate Bill No. 195:

A bill to be entitled an act to allow the Board of County Commissioners of the several counties of Florida to offer rewards for the apprehension and conviction of any person or persons charged with criminal offences committed in such counties.

Which was read the first time by its title and referred to the Committee on Judiciary.

By Mr. Willis—

Senate Bill No. 196:

A bill to be entitled an act to amend Section 3148 of the General Statutes of the State of Florida, relating to a claim for death caused by negligence of another.

Which was read the first time by its title and referred to the Committee on Judiciary.

By Mr. Willis—

Senate Bill No. 197:

A bill to be entitled an act to amend Section 3148 of the General Statutes of the State of Florida, concerning the liability of railroad companies.

Which was read the first time by its title and referred to the Committee on Railroads.

By Mr. Crane—

Senate Bill No. 198:

A bill to be entitled an act to cure certain informalities in the execution and acknowledgment of deeds or other instruments conveying or transferring real property or relinquishing dower, made by married women prior to the first day of April, A. D. 1907.

Which was read the first time by its title and referred to the Committee on Judiciary.

By Mr. Crane—

Senate Bill No. 199:

A bill to be entitled an act for the regulation and control of the practice of veterinary medicine, surgery and dentistry, within the State of Florida, and to affix penalties.

Which was read the first time by its title and referred to the Committee on Public Health.

By Mr. Crane—

Senate Joint Resolution No. 200:

A bill to be entitled a joint resolution proposing an amendment of Section 9 of Article 5 of the Constitution of Florida, relating to judicial salaries.

Which was read the first time by its title and referred to the Committee on Constitutional Amendments.

By Mr. Crane—

Senate Bill No. 201:

A bill to be entitled an act to prescribe and define the effect as evidence of notarial copies of instruments in writing, executed in foreign countries, under whose laws notaries are required to preserve the originals.

Which was read the first time by its title and referred to the Committee on Judiciary.

By Mr. Crane—

Senate Bill No. 202:

A bill to be entitled an act to authorize married women who have become free dealers, in accordance with the statutes of the State of Florida, to convey any property belonging to them without joinder in said conveyance of their husbands, and to validate all such conveyances heretofore made.

Which was read the first time by its title and referred to the Committee on Judiciary.

By Mr. Hudson—

Senate Bill No. 203:

A bill to be entitled an act to amend Section 1698 of the General Statutes of the State of Florida, relating to procurement and effect of Writs of Error.

Which was read the first time by its title and referred to the Committee on Judiciary.

By Mr. Beard—

Senate Bill No. 204:

A bill to be entitled an act to authorize Boards of Pilot Commissioners to employ attorneys, providing for the payment of the salaries of said attorneys, and other costs and expenses incurred by the Boards of County Commissioners of the several counties.

Which was read the first time by its title and referred to the Committee on Commerce and Navigation.

By Mr. Beard—

Senate Bill No. 205:

A bill to be entitled an act to repeal an act entitled an act relating to the drainage and reclamation of the swamp and overflowed lands in Florida, to create a Board of Drainage Commissioners, prescribing its powers and duties, authorizing the establishment of drainage districts, establishing a drainage system, the building of canals, levees, dikes and reservoirs for the purpose of drainage, irrigation and commerce, the assessment of lands to be drained and benefited, the collection of necessary funds by assessment of benefits and taxation, providing for the management and maintenance thereof and for the exercise of the right of eminent domain and for the sale and uses of said lands for the purposes of drainage, reclamation and improvements aforesaid, the same being Chapter 5377, Laws of Florida, approved May 27th, 1905.

Which was read the first time by its title and referred to the Committee on Commerce and Navigation.

#### MESSAGES FROM HOUSE OF REPRESENTATIVES

The following message from the House of Representatives was read:

House of Representatives.

Tallahassee, Fla., April 15, 1907.

*Hon. W. Hunt Harris,*

*President of the Senate.*

*Sir:*

I am directed by the House of Representatives to inform the Senate that the House of Representatives has passed—

House Bill No. 48:

A bill to be entitled an act to amend Section 3776 of the General Statutes, relating to "protection of shad during spawning season."

Also—

House Bill No. 34:

A bill to be entitled an act to amend Section 1919 of the General Statutes of the State of Florida, relating to destruction of timber.

**House Bill No. 102:**

A bill to be entitled an act authorizing the city of Tallahassee to acquire by the exercise of the right of eminent domain, the waterworks plant, franchises and other property of Tallahassee Waterworks Company and providing the manner of procedure therein.

And respectfully request the concurrence of the Senate thereto.

Very respectfully,

J. G. KELLUM,

Chief Clerk of the House of Representatives.

**House Bill No. 48:**

A bill to be entitled an act to amend Section 3776 of the General Statutes, relating to "protection of shad during spawning season, contained in the above message, was read the first time by its title and referred to the committee on Fisheries.

**House Bill No. 34—**

A bill to be entitled an act to amend Section 1919 of the General Statutes of the State of Florida, relating to destruction of timber, contained in the above message, was read the first time by its title and referred to the Committee on Forestry.

**House Bill No. 102:**

A bill to be entitled an act authorizing the city of Tallahassee to acquire by the exercise of the right of eminent domain, the waterworks plant, franchises and other property of Tallahassee Waterworks Company and providing the manner of procedure therein, contained in the above message, was read the first time by its title and referred to the Committee on City and County Organization.

Also the following was read:

House of Representatives,  
Tallahassee, Fla., April 16, 1907.

*Hon. W. Hunt Harris,*  
*President of the Senate.*

*Sir:*

I am directed by the House of Representatives to inform the Senate that the House of Representatives has concurred in Senate amendments to—

House Concurrent Resolution No. 6:

Relative to appointing a committee to visit and inspect the convict camps of the State, with the following amendment:

To wit:

Amend by saying "Two on the part of the Senate and four on the part of the House."

And has

Concurred also in Senate amendments to—

House Concurrent Resolution No. 8:

Relative to appointing a committee to visit the Hospital for the Insane at Chattahoochee, with the following amendment:

Strike out the words "One from the Senate and two from the House," and insert in lieu thereof the following Two from the Senate and three from the House.

Very respectfully,

J. G. KELLUM,

Chief Clerk of the House of Representatives.

Also the following was read:

House of Representatives,  
Tallahassee, Fla., April 17, 1907.

*Hon. W. Hunt Harris,*  
*President of the Senate.*

*Sir:*

I am directed by the House of Representatives to inform the Senate that the House of Representatives has passed—

Senate Bill No. 26:

A bill to provide for change of venue in criminal cases in Criminal Courts of Record, with the following amendment:

Amendment to Senate Bill No. 26:

Strike out Section 2 of bill and insert the following:  
 Section 2. When any change of venue is granted in any cause in any such Criminal Court of Record in some adjoining county if there shall be one, but if there shall be no Criminal Court of Record in any adjoining county, the venue shall be changed to the Circuit Court in some adjoining county, and upon such change the original papers in the cause together with a certified copy of the order changing the venue shall forthwith be forwarded by the Clerk of such court from which venue is changed to the Clerk of the Court to which such venue is changed, and shall preserve in his office certified copies of all such original papers so transmitted.

And respectfully requests the concurrence of the Senate thereto.

Very respectfully,

J. G. KELLUM,

Chief Clerk of the House of Representatives.

And Senate Bill No. 26, as amended by the House of Representatives, was referred to the Judiciary Committee with request that they give same early consideration.

#### REPORTS OF COMMITTEES.

Mr. Clarke, Chairman of the Committee on Engrossed Bills, submitted the following report:

Senate Chamber,

*Hon. W. Hunt Harris,*

*President of the Senate.*

*Sir:*

Your Committee on Engrossed Bills, to whom was referred—

Senate Bill No. 72:

A bill to be entitled an act to amend Section 3558 of the General Statutes of the State of Florida relating to owning United States license prima facie evidence.

Beg leave to report that they have carefully examined the same and find correctly engrossed.

Very respectfully,

S. W. CLARKE,

Chairman Committee on Engrossed Bills.

And Senate Bill No. 72, contained in the above report, was placed on the Calendar of Bills on Third Reading.

Mr. Clarke, Chairman of the Committee on Engrossed Bills, submitted the following report:

Senate Chamber,  
Tallahassee, Fla., April 16, 1907.

*Hon W. Hunt Harris,*  
*President of the Senate.*

*Sir:*

Your Committee on Engrossed Bills, to whom was referred—

Senate Bill No. 48:

A bill to be entitled an act to authorize the State of Florida to sue out writs of error or other appropriate writs in criminal cases from the Supreme Court or the Circuit Courts to review the rulings of inferior courts upon questions of law.

Beg leave to report that they have carefully examined the same and find correctly engrossed.

Very respectfully,

S. W. CLARKE,  
Chairman Committee on Engrossed Bills.

And Senate Bill No. 48, contained in the above report, was placed on the Calendar of Biills on Third Reading.

Mr. Sams, Chairman of the Committee on Fisheries, submitted the following report:

Senate Chamber.

*Hon. W. Hunt Harris,*  
*President of the Senate.*

*Sir:*

Your Committee on Fisheries, to whom was referred—

Senate Bill No. 148:

A bill to be entitled an act for the protection of shad in this State to prescribe a close season to prohibit the transportation or possession of such shad during the close season.

Have had the same under consideration and recommend that it do pass.

Very respectfully,

F. W. SAMS,  
Chairman of Committee.

And Senate Bill No. 148, contained in the above report, was placed on the Calendar of Bills on Second Reading.

Mr. Sams, Chairman of the Committee on Fisheries, submitted the following report:

Senate Chamber.

*Hon W. Hunt Harris,*

*President of the Senate..*

*Sir:*

Your Committee on Fisheries, to whom was referred—  
Senate Bill No. 122:

A bill to be entitled an act to amend Section 3765 of the General Statutes of the State of Florida, relating to catching fish with seines, nets, or other set devices, or by shooting or gigging in fresh water lakes.

Have had the same under consideration and recommend that it do not pass.

Very respectfully,

F. W. SAMS,  
Chairman of Committee.

And Senate Bill No. 122, contained in the above report, was placed on the Calendar of Bills on Second Reading.

Mr. Crews, Chairman of the Committee on Canals and Telegraph, submitted the following report:

Senate Chamber.

*Hon. W. Hunt Harris,*

*President of the Senate.*

*Sir:*

Your Committee on Canals and Telegraphs, to whom was referred—

Senate Bill No. 15:

A bill to be entitled an act to prescribe and regulate

rates for the transmission of telegrams, and providing a penalty for a violation of said regulations.

Have had the same under consideration and return same without recommendation.

Very respectfully,

J. B. CREWS,  
Chairman of Committee.

And Senate Bill No. 15, contained in the above report, was placed on the Calendar of Bills on Second Reading.

Mr. Crews, Chairman of the Committee on Canals and Telegraphs, submitted the following report:

Senate Chamber,

*Hon. W. Hunt Harris,*

*President of the Senate.*

Sir:

Your Committee on Canals and Telegraph to whom was referred—

Senate Bill No. 116:

A bill to be entitled an act to provide a penalty for delay in delivery of telegraph and telephone messages within the State of Florida.

The Committee offers the following amendment to Senate Bill No. 116:

Strike out the words "or telephone" in line 1.

The Committee offers the following amendment to Senate Bill No. 116:

Strike out the words "and telephone" in line 2 of title.

The Committee offers the following amendment to Senate Bill No. 116:

Strike out the words "or telephone" in lines 3 and 4.

Have had the same under consideration and recommend that it do pass with the amendments.

Very respectfully,

J. B. CREWS,  
Chairman of Committee.

And Senate Bill No. 116, with committee amendments contained in the above report, was placed on the Calendar of bills on second reading.

## ON THE TABLE SUBJECT TO CALL.

Mr. Adams moved to take up Senate Bill No. 76 on the order, subject to call.

The motion was agreed to and—

Senate Bill No. 76:

A bill to be entitled an act to amend Section 1264, Chapter 22 of the General Statutes of the State of Florida, relating to guaranteed analyses of fertilizers.

Was taken up, together with the amendments of the Committee on Agriculture.

The following committee amendment was read:

After the word "fertilizer" in first line of second paragraph, insert the following: "A cottonseed meal, offered for sale by any manufacturer or importer, or by any agent of any manufacturer or importer."

Mr. Adams moved the adoption of the committee amendment.

Which was agreed to.

The committee amendment was adopted and Senate Bill No. 76 was referred to the Committee on Engrossed Bills.

## SPECIAL ORDERS.

By Mr. Adams—

Senate Bill No. 47:

A bill to be entitled an act to provide for the proper care, maintenance and protection, inspection rules for regulation and control of county prisoners, manner of their discharge, and inspection of county jails, and to pay for the expense of carrying out the provisions of this act.

Was taken up.

Mr. Adams moved that Senate Bill No. 47 be continued as the special order for to-morrow, Thursday, April 18, at 11:30 a. m.

Which was agreed to and so ordered.

By permission Mr. Hudson offered the following—

Senate Resolution No. 38:

Resolved, That the Chairman of the Committees on Commerce and Navigation and Indian Affairs be authorized to employ a clerk to serve said committee.

Which was read.

Mr. Hudson moved the adoption of the resolution.  
Which was agreed to.

And Senate Resolution No. 38 was adopted.

Mr. Willis moved that the rules be waived and that the Senate now take up bills on third reading.

Which was agreed to by a two-thirds vote.

And the Senate proceeded to consider bills on the Calendar on their third reading.

### BILLS ON THIRD READING.

Mr. Trammell in the chair.

Senate Bill No. 84:

A bill to be entitled an act to validate and confirm all grants, privileges and permits heretofore made or given to individuals, firms and corporations by any of the cities or towns of this State, whether done by resolution, ordinance or otherwise, in all cases where the same have been acted upon by the grantee or grantees, their successors or assigns, by the expenditure of money in good faith, and to give the force and effect of ordinances to resolutions heretofore passed by cities and towns in relation to grants, privileges and permits.

Was taken up and read the third time in full and put upon its passage.

Upon call of the roll on Senate Bill No. 84, the vote was:

Yeas—Mr. President, Senators Adams, Alford, Beard, Broome, Buckman, Canova, Clark, Cone, Cottrell, Crane, Crews, Davis, Girardeau, Henderson, Hudson, Humphries, Jackson, Leggett, Massey, Sams, Willis, Withers, West (1st District), West (4th District), Zim—26.

Nays—Neel, Trammell—2.

So the bill passed, title as stated.

Senate Bill No. 114:

A bill to be entitled an act vesting in County Commissioners power to make, grant and give permits for the occupation and use of highways, roads and streets, outside of the corporation limits of cities and towns, by surface street railways, and legalizing and confirming all grants and permits heretofore made and given by County Commissioners in relation to the occupation and use of

such highways, roads and streets by surface street railways.

Was taken up and read the third time in full, and pending its passage

Mr. Cone moved that Senate Bill No. 114 be made special order Friday morning at 10:30, and that 200 copies be printed.

Which was not agreed to.

Mr. Hudson moved that Senate Bill No. 114 be made a special order for tomorrow at 11 o'clock.

Which was agreed to.

#### Senate Bill No. 115:

A bill to be entitled an act to legalize, validate, ratify, confirm and approve all actions of County Commissioners in relation to laying out, grading, constructing, repairing and paving and making contracts with relation to the same of paved, macadamized or rock public highways, roads or boulevards.

Was taken up and read the third time in full and put upon its passage.

Upon call of the roll on Senate Bill No. 115, the vote was:

Yeas—Mr. President, Senators, Alford, Broome, Buckman, Canova, Clarke, Cone, Crane Crews, Davis, Henderson, Hudson, Humphries, Jackson, Leggett, McCreary, Massey, Sams, Trammell, Willis, Withers, West (st District), West (1th District), Zim

Nays—Senators Cottrell, Girardeau.

Yeas—25.

Nays—2.

So the bill passed, title as stated.

Mr. Hudson requested that Mr. Clarke be excused for the remainder of the day on account of sickness.

Which was granted.

#### Senate Bill No. 125:

A bill to be entitled an act to empower Boards of County Commissioners to contract with electric or other passenger railway companies for the joint construction and maintenance of bridges along public highways, and for the construction and maintenance of railway tracks on such bridges, and to validate such contracts heretofore made.

Was taken up and read the third time in full and put upon its passage.

Upon call of the roll on Senate Bill No. 125, the vote was:

Yeas—Mr. President, Senators Alford, Beard, Broome, Buckman, Canova, Crane, Crews, Davis, Henderson, Hudson, Humphries, Jackson, Leggett, McCreary, Massey, Sams, Trammell, Willis, Withers, West (1st District), West (4th District), Zim.

Nays—24.

Nays—None.

So the bill passed, title as stated.

Senate Bill No. 90:

A bill to be entitled an act to provide for compulsory education in the State of Florida, and to provide a penalty for the violation of the same.

Was taken up and read the third time in full and put upon its passage.

Upon call of the roll on Senate Bill No. 90 the vote was:

Yeas—Mr. Speaker, Senators Cone, Crane, Humphries, Withers, West (1st District), West (4th District).

Nays—Senators Alford, Beard, Buckman, Canova, Cottrell, Crews, Girardeau, Henderson, Jackson, Leggett, McCreary, Sams, Trammell, Willis, Zim.

Ayes—7.

Nays—15.

So the bill failed to pass.

The President in the chair.

Senate Bill No. 87:

A bill to be entitled an act to amend Section 12 of Chapter 5382, Laws of Florida, entitled "an act to define the grades of instruction which shall be taught in the uniform system of public schools of Florida; to aid and encourage the establishment of public high schools, to prescribe the conditions, and to make appropriations therefore.

Was taken up and read the third time in full and put upon its passage.

Upon call of the roll on Senate Bill No. 80 the vote was:

Yeas—Mr. President, Senators Adams, Alford, Beard, Broome, Buckman, Canova, Cone, Cottrell, Crane, Crews, Davis, Girardeau, Henderson, Humphries, Jackson, Leg-

gett, McCreary, Sams, Trammell, Willis, Withers, West (1st District), West (4th District), Zim.

Ayes—25.

Nays—None.

So the bill passed, titled as stated.

Mr. Sams, Chairman of the Committee on Enrolled Bills, submitted the following report:

Senate Chamber,  
Tallahassee, Fla., April 17, 1907.

*Hon. W. Hunt Harris,*  
*President of the Senate.*

*Sir:*

Your Committee on Enrolled Bills, to whom was referred—

An act to establish the municipality of Key West, provide for its government and prescribe its jurisdiction and powers.

Also—

An act to amend Section 3851 of the General Statutes of the State of Florida, prescribing the number of Grand Jury.

Also—

An act to provide for keeping the streets of the city of Tallahassee in good repair.

Have examined the same and find them correctly enrolled.

Very respectfully,

F. W. SAMS,  
Chairman of Committee.

Mr. Sams, Chairman of the Joint Committee on Enrolled Bills, submitted the following report:

Senate Chamber,  
Tallahassee, Fla., April 17, 1907.

*Hon. W. Hunt Harris,*  
*President of the Senate.*

*Sir:*

Your Joint Committee on Enrolled Bills, to whom was referred:

An act to establish the municipality of Key West, pro-

vide for its government and prescribe its jurisdiction and powers.

Also—

An act to amend Section 3851 of the General Statutes of the State of Florida, prescribing the number of Grand Jury.

Also—

An act to provide for keeping the streets of the city of Tallahassee in good repair.

Beg to report that the same have been duly signed by the Speaker and Chief Clerk of the House of Representatives, and is herewith presented to the Senate for the signatures of the President and Secretary thereof.

Very respectfully,

F. W. SAMS,  
Chairman of Committee.

#### ENROLLED.

The President announced that he was about to sign,  
An act to establish the municipality of Key West, provide for its government and prescribe its jurisdiction and powers.

Also—

An act to amend Section 3851 of the General Statutes of the State of Florida, prescribing the number of Grand Jury.

Also—

An act to provide for keeping the streets of the city of Tallahassee in good repair.

The acts were thereupon duly signed by the President and Secretary of the Senate and ordered returned to the Chairman of the Joint Committee on Enrolled Bills to convey to the Governor for his approval.

#### Senate Bill No. 80:

A bill to be entitled an act to render valid, until revoked, teachers' certificates.

Was taken up and read the third time in full and put upon its passage.

Upon call of the roll on Senate Bill No. 80 the vote was:

Yeas—Mr. President, Senators Beard, Broome, Cone, Crane, Sams.

Nays—Senators Adams, Alford, Buckman, Canova, Crews, Girardeau, Henderson, Humphries, Jackson, Leg-

gett, McCreary, Trammell, Willis. Withers. West (1st District), West (4th District), Zim.

Ayes—6.

Nays—17.

So the bill failed to pass.

**Senate Bill No. 12:**

A bill to be entitled an act to prohibit discrimination between city and rural schools, where white children are taught, and to require that such schools shall be maintained from the general fund for terms of equal length.

Was taken up and read the third time in full.

Mr. Trammell asked that Senate Bill No. 12 be passed informally.

There being no objection the request was granted.

**Senate Bill No. 60:**

A bill to be entitled an act making appropriation for traveling expenses of the State Auditor.

Was taken up and read the third time in full.

Mr. Beard asked permission to withdraw Senate Bill No. 60:

There being no objection the request was granted.

And Senate Bill No. 60 was withdrawn.

**Senate Bill No. 22:**

A bill to be entitled an act to amend Section 3146 of the General Statutes of the State of Florida.

Was taken up and read the third time in full.

By consent Senate Bill No. 22 was returned to Engrossing Committee.

**Senate Bill No. 133:**

A bill to be entitled an act to authorize Legislative Committees to require any person appearing before such committees to disclose, upon oath, what interests such person or persons represents, authorizing and administration of oath in such cases, and providing a penalty for false swearing in such cases.

Was taken up and read the third time in full and put upon its passage.

Upon call of the roll on Senate Bill No. 133 the vote was:

Yeas—Mr. President, Senators Adams, Alford, Beard,

Broome, Buckman, Canova, Cone, Crews, Henderson, Humphries, Jackson, Leggett, McCreary, Sams, Trammell, (Willis, Withers, West (1st District), West (4th District), Zim.

Ayes—21.

Nays—None.

So the bill passed, title as stated.

**Senate Bill No. 38:**

A bill to be entitled an act to amend Section 219 of the General Statutes of the State of Florida, relative to directions for printing, etc., ballot.

Was taken up and read the third time in full and put upon its passage.

Upon call of the roll on Senate Bill No. 38 the vote was:

Yeas—Mr. President, Senators Adams, Alford, Beard, Broome, Buckman, Canova, Cone, Crews, Humphries, Jackson, Leggett, McCreary, Trammell, Willis, Withers, West (1st District), West (4th District), Zim.

Nays—Senator Girardeau.

Ayes—21.

Nays—1.

So the bill passed, title as stated.

**Senate Bill No. 61:**

A bill to be entitled an act to amend Section 1563 of the General Statutes of the State of Florida.

Was taken up and read the third time in full and put upon its passage.

Upon call of the roll on Senate Bill No. 61 the vote was:

Yeas—Mr. President, Senators Adams, Alford, Beard, Broome, Buckman, Canova, Cone, Crews, Girardeau, Henderson, Humphries, Jackson, Leggett, McCreary, Sams, Trammell, Willis, Withers, West (1st District), West (th District), Zim.

Ayes—22.

Nays—None.

So the bill passed, title as stated.

**Senate Bill No. 70:**

A bill entitled an act to amend Sections 525 and 526 of the General Statutes of Florida, relating to taxation and finance.

Was taken up and read the third time in full and put upon its passage.

Upon call of the roll on Senate Bill No. 70 the vote was:

Yeas—Mr. President, Senators Alford, Beard, Broome, Buckman, Canova, Crane, Crews, Girardeau, Henderson, Hudson, Humphries, Jackson, Leggett, Trammell, Willis, Withers, West (1st District), Zim.

Nays—Senators Adams, Cone, McCreary, West (4th District).

Ayes—20.

Nays—4.

By unanimous consent the Secretary was instructed to amend the title of Senate Bill No. 70 to make "Section" read "Sections."

The title was amended by the Secretary as directed.

So the bill passed, title as amended.

Mr. Zim moved that Senate Bill No. 43 be made a special order for to-morrow at 11:30 o'clock and that 200 copies be printed.

Which was agreed to.

Mr. Trammell moved that the rules be waived and that all bills and resolutions passed by the Senate to-day be immediately certified to the House of Representatives.

Which was agreed to by a two-thirds vote.

Mr. Sams, Chairman of the Joint Committee on Enrolled Bills, submitted the following report:

Senate Chamber,  
Tallahassee, Fla., April 17, 1907.

*Hon. W. Hunt Harris,*

*President of the Senate.*

*Sir:*

Your Joint Committee on Enrolled Bills, to whom was referred—

An act to establish the municipality of Key West, provide for its government and prescribe its jurisdiction and powers.

Also—

An act to amend Section 3851 of the General Statutes of the State of Florida, prescribing the number of Grand Jury.

Also—

An act to provide for keeping the streets of the city of Tallahassee in good repair.

Beg to report that the same have been presented to the Governor for his approval.

Very respectfully,

F. W. SAMS,  
Chairman of Committee.

Mr. Beard moved that the Senate adjourn until 10 o'clock to-morrow.

Which was agreed to.

Thereupon the Senate stood adjourned until to-morrow, Thursday, April 18, 1907, at 10 o'clock a. m.

**SPEECH BY MR. BEARD OF THE SECOND DISTRICT, ON SENATE JOINT RESOLUTION NO. 1: PROPOSING AN AMENDMENT TO THE STATE CONSTITUTION.**

The Senate of the State of Florida, at its session on April 16th, 1907, having under consideration Senate Joint Resolution No. 1, Proposing an amendment to the State Constitution, Senator Beard spoke as follows in support of the resolution:

The provisions of the resolution proposing an amendment to the Constitution of the State of Florida, limiting, as they do, the franchise to the white males, are in direct conflict with the provisions of the fifteenth amendment to the Federal Constitution. If this resolution passes both houses of the Legislature by the requisite constitutional majority, and is ratified by the people at the polls as a part of the State Organic Law, its validity as a part of the Constitution of the State will, of course, depend upon the invalidity of the so-called fifteenth amendment to the Federal Constitution, which will finally have to be determined by the Supreme Court of the United States.

I contend—and I think that I can demonstrate, and believe that the Supreme Court of the United States will hold—that the fifteenth so-called amendment is not a part of the Constitution of the United States; that it was neither constitutionally proposed nor constitutionally ratified. The suffrage or political power was not delegated to the Federal Government by the States in the Constitution which created the Union of the States and established

the Government of the Union. Not only was this power never delegated to the Federal Government, but the reservation of it by the States is rendered more emphatic by express provisions of the Federal Constitution, which adopt the electorate created by the States as the electorate of the elective Federal offices. This is illustrated by the Constitutional fact that:

Representatives in Congress are elected by the electors of the most numerous branch of the State Legislatures. Each State appoints electors of President and Vice President, as the State shall determine, and Senators in Congress are elected by the Legislatures of the States which are elected by constituencies created by the States. These are the only elective Federal offices. The fourteenth and fifteenth amendments do not change these express provisions of the Federal Constitution, but place limitations upon the former absolute political power of the State; the fourteenth by providing for the reduction of the States' representation in Congress, and consequently in the electoral college in proportion to the number of male citizens of the United States, inhabitants of the States, of and over twenty-one years of age, who are denied the right to vote under the suffrage laws of the State; and the fifteenth amendment, which prohibits the United States, or any State, from denying or abridging the right of citizens of the United States to vote on account of "race, color or previous condition of servitude."

It is necessary to consider the proposal and adoption of the thirteenth and fourteenth amendments in order thoroughly to understand the methods employed in the so-called proposal and adoption of the fifteenth. They are, in design, intimately connected, each following the other in a logical sequence. The thirteenth amendment makes the former negro slave a freedman; the fourteenth elevates him to citizenship, and the fifteenth enfranchises him.

Mr. Lincoln, in his first inaugural address, said that "No State, upon its own mere motion, can legally get out of the Union," that "resolves and ordinances to that effect are legally void. I, therefore, consider that, in view of the Constitution and laws, the Union is unbroken."

In July, 1861, Congress adopted with practical unanimity a resolution:

"That this war is not waged, on our part, in any spirit of oppression, nor for any purpose of conquest or subjugation, nor purpose of overthrowing or interfering with

the rights or established institutions of the States, but to defend and maintain the supremacy of the Union, and to preserve the Union with all the dignity, equality and rights of the several States unimpaired; and as soon as these objects are accomplished the war ought to cease."

Again, Congress declared a "fixed determination to maintain the supremacy of the Government and the integrity of the Union of all these United States." This passed the Senate with the opposition of but a single vote.

Again and again, by executive proclamation and by Congressional resolution, the Southern States were assured in every authoritative form that they were States in the Union, and that they had only to lay down their arms in order to resume their old Federal relations; that their seats in Congress were vacant, and they had only to return to take them.

The war closed in 1865 by the surrender of the Southern armies in the field. The terms of surrender were only a repetition of those oft-repeated Congressional and executive assurances. There was absolutely nothing, by act or declaration of the Federal Government prior to or at the time of surrender, to indicate the policy that the Federal Government pursued towards the Southern States after they had surrendered and the remnants of the Southern armies were scattered.

Well and truly did President Davis say, in 1873, in an address delivered before the Southern Historical Society, in Virginia, that, "We were more cheated than conquered into surrender."

The sole issue involved in the war between the United States and the Confederate States was the right of secession. The Southern States contended that they had the sovereign right to withdraw from the Union; the Federal Government contended that they did not, but were still States in the Union. That was the sole issue involved, and the war settled only that issue. When the Southern States surrendered, they accepted in good faith and for all time the contention of the Federal Government that secession was null and void, and that they were States, and States in the Union. I quote from Ben Hill's "Notes on the Situation:"

"The late war was either a rebellion, or it was a civil war, or it was a foreign war. Each name has its advocates; others, again, give the war either or all of these characters by turns, as the giving of either or all can be

supposed to justify some oppression on the unsuccessful party to the conflict. I shall not stop to prove that it was what history can only call it—a civil war. Whether it was the one or the other, there is no question, in all international or municipal law, better settled, or settled on more manifest foundations of natural reason, social justice, and public faith, than is the question of the rights and powers of the conqueror and the rights and obligations of the conquered. All conflicts, whether between a sovereign and his subjects or between two parties in a government or republic, or between two independent nations, are founded on some question, some difference, making an issue between the parties which reason has not been able to settle. The parties take up arms to solve the question and settle the issue between them.

“Every war ends by compromise, or by one party yielding to the other, either on terms or without terms. If the end is by compromise, the terms of the compromise constitute the law of the peace. If one party surrender on terms, the law of peace is the issue of the fight, qualified by the terms of the surrender. If the surrender is without terms, then all the questions involved in the issue are settled in favor of the conqueror; but no question not distinctly involved, is settled or affected.

“Now, two things must be distinctly understood and fixed in the minds of the reader: First, where must we look to find the terms on which the conflict ends, and which makes the law of the peace between the parties? Second, at what time must these terms be made known or agreed upon?

“Wars between independent nations are usually ended by treaty, and, of course, we must look to the treaty of peace to find the terms of peace. What is not found in the treaty is not settled. So also in civil wars. Treaties are sometimes made and have the same force and effect as when made between independent nations. Usually, however, treaties are not made between parties to a civil war or a rebellion, because the sovereign party, claiming to be the legitimate government, will not treat with those whom they persist in calling rebels—because to treat with them is to admit a sort of implied independence or authority. In all such cases, in order to find the terms of the peace, we must look to the causes or difference which actuated the parties in taking up arms—to the declarations and demands of the parties at the time of the beginning

and during the progress of the struggle; to the promises made or assurances proclaimed by the victor to induce the adversary to lay down his arms, and to the negotiations and terms of the surrender. Whatever is not there found is not settled, and forms no part whatever of the terms of peace.

"I need not add that all the treaties, declarations and promises are to be interpreted, not according to the discretion of either party, but in the light and according to the rules of the laws of nations, and the established principles of natural justice and good faith.

"In the next place, it must be stated that whatever either party, in case of a compromise or a treaty, or the victor, in case of a surrender, intends to demand, as a condition of the peace, must be made known before or at the time the treaty is made, or before or at the time the surrender is accepted. No party agrees to what is not made known, or surrenders to what is not claimed. To demand new guarantees after a treaty has been made, is a breach of the treaty, and to prescribe new terms of surrender, after the surrender has been accepted, is deemed infamous by all mankind, and in both cases is held to be a new and just cause of war; and when such conduct is exhibited toward an adversary, who has given up his arms and submitted to the victor, and is thereby unable to renew the war, the party guilty of it has no claim to the confidence or respect of any people, for he brings the faith of promises into disrepute."

Mr. Hill fortifies this opinion by copious quotations from Vattel.

As I have said, the war ended in 1865, with the surrender of our armies in the field. Mr. Lincoln had held that it was the duty of the executive to initiate reconstruction, and had during the war established provisional governments in the States of Louisiana, Arkansas and Tennessee, and had also recognized the so-called "Reorganized" Government in Virginia. After the surrender, the Southern States began to remodel their Constitutions so as to harmonize with the new order of things. Each State had a government, republican in form, and complete in all departments; and these States had been repeatedly assured by the Federal Government that they were States in the Union, but President Johnson, by proclamation of May 20, 1865, stopped this movement.

(Fleming's Documentary History of Reconstruction, 163 and 168.)

This was the first violation of good faith towards the Southern States after surrender, but was followed in quick succession by other more glaring and baser betrayals of confiding confidence and good faith in the terms of surrender.

On May 29, 1865, the President issued his proclamation of amnesty—the first of seven proclamations appointing provisional Governors in seven of the Southern States. With the necessary change of names and dates, these proclamations were alike. The last was for Florida, July 13, 1865. The Amnesty Proclamation was drafted by Mr. Lincoln, and was read and adopted at the first Cabinet meeting held by President Johnson after President Lincoln's death. (Thorpe, Vol. 3. 162.)

In Louisiana, Arkansas and Tennessee, President Johnson recognized the government established during Lincoln's administration and recognized by Mr. Lincoln, generally known as "The Ten Per Cent. Governments."

In Virginia President Johnson also recognized the "Reorganized" Government, recognized by Mr. Lincoln and by Congress. Blaine, in his "Twenty Years in Congress," speaks sneeringly of this Virginia government, and quotes Thaddeus Stephens as having said that this government carried all of its records, archives and effects to Richmond from Alexandria in one ambulance. Both Blaine and Stephens seem to have forgotten that it was this "Reorganized" Government, and only this government, that has ever given consent to the creation of the State of West Virginia out of a part of the State of Virginia, and which ratified the thirteenth amendment to the Constitution of the United States.

The proclamations appointing provisional Governors in the seven Southern States, instructed each Governor, at the earliest practical moment, to call a convention of his State for the purpose of amending the Constitution of the State, so as to restore the State to its "practical relations" to the Federal Government. Every delegate to this convention, and the electors of delegates, by this proclamation were to be qualified under the Constitution and laws of the State prior to the ordinance of secession, which, of course, limited the franchise to the white males, who were to subscribe to the oath of amnesty, which oath was to obey the Constitution and laws of the United States,

and all proclamations and laws of the Federal Government made during the war with reference to the emancipation of slaves; and the Legislatures which were elected under those Constitutions were to prescribe the qualifications of future electors.

For these proclamations, see Richardson, Vol. 6.

From the benefits of this amnesty proclamation fourteen classes of persons were excepted, which was a greater number of proscribed persons than were excepted from the benefits of the proclamation issued by President Lincoln on December 8, 1863, but President Johnson used the pardoning power liberally and extensively.

The provisional Governors of all the States called conventions, which met, framed Constitutions, and did all that was required, viz.: abolished slavery, declared the ordinances of secession void, repudiated all debts contracted in aid of the Southern Confederacy, and established new governments, based on the Constitutions of 1861, minus slavery. Provisional Governors now gave way to those elected by the people. Legislatures elected by the people met and elected United States Senators. Representatives in Congress had been elected when the Governors and Legislatures were.

Having complied with all of the conditions of the so-called reconstruction, would these Southern States be restored to their former Federal relations, and would their Senators and Representatives be accorded their seats in Congress? The President and Congress had assured them that they would. But let us see.

In February, 1865, President Lincoln signed the joint resolution proposing to the States the thirteenth amendment to the Federal Constitution. This amendment was proposed to all the States, including the seceding States, for ratification—and without the ratification of at least five of these seceding States, it would not today be one of the amendments to the Federal Constitution.

(Thorpe, Vol. 3, 229.)

(Tucker on the Constitution. Vol. 1, 341.)

The Southern States were now required to ratify the thirteenth amendment as a condition precedent to their being admitted to representation in Congress.

(Thorpe, Vol. 3, pp. 229, 228.)

The Legislatures of all the Southern States, with the exception of Mississippi and Texas, ratified this amendment.

In his annual message to Congress, on December 4, and in a special message of December 18, 1865 (Richardson, Vol. 6.), the President reported what he had done in the Southern States, and what the Southern States had done, viz., that the thirteenth amendment had been ratified by all of the Southern States except Mississippi, Florida and Texas (Florida ratified the thirteenth amendment on December 28, 1865); that every condition of so-called reconstruction had been complied with, and that the Southern Senators and Representatives should be accorded recognition. Congress, however, refused to admit the Southern Senators and Representatives, notwithstanding the fact that the Southern States, without which the thirteenth amendment would not have received the approval of three-fourths of the States necessary to make it a part of the Constitution, had ratified the amendment, and had complied with all other conditions of reconstruction, with the explicit understanding that by so doing they would be fully restored to their old Federal relations.

(Thorpe, Vol. 3, 239, 297.)

It is true that the Constitution makes each house of Congress the judge of the qualifications, returns and election of its own members; but every authority, including Story, Tucker and Hamilton—in No. 60 of the "Federalist"—and no authority to the contrary that I have been able to find, hold that each house can only ascertain if each member has the qualifications prescribed by the Constitution, which are age, citizenship and residence. There was never a question of doubt raised as to any member elected to either house from either of these States possessing these requisite qualifications; there was never a question raised as to their having been duly elected, and there should have been no question as to their having been elected by States of the Union.

To cite no other evidence: Congress had, within the past few months, recognized each of these States as States in the Union by submitting to them the thirteenth amendment for ratification or rejection. Mr. Lincoln, in the last speech he ever made, April 11, 1865, said that the thirteenth amendment should be submitted to all the States, including the States of the late Confederacy, and should be ratified by the Legislatures of three-fourths of all the States; otherwise "the amendment would always be questioned and questionable."

To ratify or reject an amendment to the Federal Con-

stitution is a high constitutional function, which can be exercised only by States in the Union.

Congress now, however, passed a joint resolution over the President's veto ("Statutes at Large," Val. 14, p. 27; "Fleming's History of Reconstruction," 197), repudiating or refusing to recognize the governments organized under the proclamations of Lincoln and Johnson, and appointed a joint committee of fifteen of which Thaddeus Stephens, on the part of the House, and Wm. Pitt Fessenden, on the part of the Senate, were chairmen, to inquire into the conditions in the late Confederate States; to report which, if any, of these States were entitled to representation in either house of Congress; and refused to admit to either house of Congress a member from any of these States until the committee should report favorably upon such admission. All matters affecting these States were now referred to this committee.

Now began a carnival of crime against Constitutional liberty, disregard and brazen violations of the plainest Constitutional provisions, and of plighted faith to the Southern States, which for turpitude stands unparalleled in history. The Chamber of Deputies of the French National Assembly, in 1798, possessed a high degree of political virtue and morality as compared with the Congress of the United States during this and the immediately preceding and succeeding periods. I quote from an address delivered by Hon. A. Capperton Braxton before the Virginia Bar Association:

"In justification of its action in repudiating the reconstruction governments erected in the South by Presidents Lincoln and Johnson, it behooved Congress to show that those governments were disloyal and dangerous to the Union; that they were but the recrudesence of the rebel element—in short, to discredit them with the Northern people in every possible way. To this task the Joint Committee on Reconstruction addressed itself with vigor; and unfortunately, the chaotic condition of the South, just emerging, as it was, from a devastating war, with nearly five million idle, ignorant, vagabond, newly-enfranchised slaves to be assimilated by the body politic, afforded but too much material for criticism. The Joint Committee on Reconstruction began to take testimony on the condition of the States lately in rebellion, and soon became the mecca of all the dissatisfied elements in the South. The

adventurers, then known as "carpetbaggers," who had followed the Union armies there, were quick to grasp the political opportunity afforded them for office-holding and plunder, if they could but succeed in disfranchising the white native men and enfranchising the negroes, whom they found they could readily control. These "carpet baggers," therefore, at once allied themselves with the Northern negro suffragists, and in the shape of evidence submitted to the Joint Committee on Reconstruction, furnished their Northern allies with ample ammunition for their political war at home.

"Thus the Northern heart was fired, the hands of Congress were strengthened, and the efforts of the President to uphold the Federal Constitution in the South were successfully represented to the country as a traitorous co-operation with 'Southern rebels.' The country was assured that, to all intents and purposes, the negroes were the only loyal element in the South; for Congress knew that it was only to these negroes and their 'carpetbag' allies that it could look in the South for supporters of its policy. The laws adopted in various Southern States to regulate vagrancy and prevent the newly enfranchised slaves from becoming tramps by the hundreds of thousands, were represented as veiled attempts to re-enslave them."

In June, 1866, Congress proposed the fourteenth amendment to the Constitution, which among other things, raised the negro to citizenship and disqualified a majority of the leading citizens of the seceding States, including a large number of distinguished citizens of these States to whom amnesty has been extended by the President's proclamations of May 29, 1865, and of December 8, 1865, with explicit authority from Congress by the Act of July 16, 1862 (12th Statutes at Large, 589), and disqualified others to whom the President had extended pardons in pursuance of his unquestioned constitutional authority.

Meantime the minority report of the Joint Committee on Reconstruction, signed by Reverdy Johnson, Rogers of New Jersey, and Girder of Kentucky, says that the proclamations of amnesty issued by President Lincoln and his successor, with the consent of Congress, were inconsistent with the idea that the parties they included were not to be considered in future as restored to all rights belonging to them as citizens of their respective States.

"A power to pardon is a power to restore the offender to the condition in which he was before the date of the offense pardoned. These amnesties would be but false pretenses if they were to be practically construed as leaving the parties who had availed themselves of them, in almost every particular, in the condition in which they would have been if they had rejected them."

(Thorpe, Vol. 3, 295, 293.)

As to the effect of pardon and amnesty, see *Ex Parte Garland*, 4, Wallace.

This proposed amendment was a violation of good faith on the part of the Government. As to the original purpose and design of the fourteenth amendment, I again quote A. Capperton Braxton:

"That qualifications for suffrage were in the exclusive control of the States were a doctrine of such long standing and so well established that up to this time practically no one had dared to question it. Mr. Sumner, it is true, had ventured to do so in the year before, when in the Senate in February, 1865, he had opposed the readmission of Louisiana unless she would adopt negro suffrage but his colleagues had good-naturedly laughed at him as an extremist, and he had admitted that public sentiment was overwhelmingly against him. How, then, was the Federal Government to secure a satisfactory basis of suffrage in the Southern States? Clearly other amendments to the Constitution were requisite, but to what extent would the North consent to amendments that necessarily would affect them as much as the South? Let us see:

The "Dred Scott" decision, holding free negroes not to be citizens, was always unpopular in the North, and was rendered much more so by the result of the war. It was reasonably sure, therefore, that an amendment conferring citizenship upon them would be practicable. That was one step gained. If he be made a citizen, then that the negro could have protection of his natural and inalienable rights of life, liberty and property was but a natural corollary. The nation, by giving him freedom, had deprived him of the protection of his master. It was therefore but just that it should give him in lieu thereof the protection of the laws. So far, then, the ground was safe. The freedman's civil rights could easily be provided for, and he himself would have been more than satisfied to let matters rest there. It was more than he had ever

hoped for, and all that he desired, at least, so far as ninety per cent. of his race were concerned. For be it remembered that the Southern negroes, as a race, had neither requested nor desired suffrage, and the demand for it in the South had come almost exclusively from the white "carpet baggers." But the negro's Northern friends were vastly more interested in his political than in his civil rights, for these concerned them as well as him. That negroes should ever have been counted in fixing the apportionment of the State's representatives in Congress or the electoral college, was always a bone of contention between the North and the South, and a very sore subject with the former; but if it were unfair that three-fifths of them should be counted when they were slaves, how much worse was it that now as freemen five-fifths of them should enter into the computation. There would be no trouble in the North to pass a constitutional amendment correcting this, but what should that amendment be?

At first it was proposed that the registered vote should be taken as a basis of representation, but New England cried out against this on the ground that the heavy emigration of her young men made her voters abnormally few in proportion to her entire population, especially as compared with the West. Then it was suggested that the white population only be taken as a basis, but this was resisted by all the advocates of negro suffrage, who hoped some day to see it established. What then was to be done?

Some were for giving suffrage to the negro out and out, but they were met not only by the opponents of negro suffrage, but even by those advocates of it who were opposed to depriving the States of their unlimited control of suffrage qualifications. Many men recognized the peculiar conditions and political exigencies, which, in their opinion, called for negro suffrage in the South, but they bitterly opposed it for their own States; in fact, there were not a few who desired it in the South for the identical reason that they did not desire it at home; that is, that the negro might be induced to remain in the South. He had ever been regarded by the free States as an undesirable immigrant, and they were now in more danger of his invasion than ever before, especially if the first clause of the proposed amendment securing him citizenship and the equal protection of the laws, should be adopted and thus nullify all their old laws discriminating against him.

All of the perplexing considerations were weighed and discussed by the Joint Committee on Reconstruction, to whom were referred all bills on the subject, including several for general negro suffrage throughout the Union, and for permanent disfranchisement of the "rebels." Finally it was suggested, as a revelation from heaven, that the difficulty could be solved by so wording an amendment as to induce rather than compel the States to adopt negro suffrage, which it was claimed could be accomplished by cutting down their representation in proportion as they should deny their male citizens the electoral franchise on account of race. This was believed at the time to be almost a divine inspiration.

Under this arrangement, it was said everybody would get what they wanted. The States' rights men would observe that each State was left free to regulate suffrage as it chose; the New Englanders would lose no part of their representation; the free States would be at liberty to continue keeping out negro immigrants by denying them the suffrage, and yet their existing colored population was so small that they would lose absolutely nothing in their Federal representation.

But the Southern States, where the negroes were nearly half the population, could not, it was said, resist the temptation to double their political power by enfranchising their negroes voluntarily, thus satisfying at once those who wished to reward the loyal negro by giving him the elective franchise—those who wished to punish the disloyal States by making them purchase, with negro suffrage, a right they had always enjoyed under the Federal Constitution, and those who wished to perpetuate the power of the Republican party with negro votes."

But the question is—was this amendment constitutionally ratified? Is it, in other words, a part of the Constitution of the United States? Article V. of the Federal Constitution declares that:

"The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to the Constitution."

Not two-thirds of the members present, but "two-thirds of both houses." When the Constitution intends a measure to be disposed of by a majority of those present it distinctly says so, as in the ratification of a treaty:

"Provided two-thirds of the Senators present concur."  
Again, in the trial of impeachments:

"No person shall be convicted without the concurrence of two-thirds of the members present."

And again:

"The yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the Journal."

In the case of amendments the Constitution is equally explicit: It requires the concurrence of two-thirds of both houses—two-thirds of the entire membership. This was the opinion of Senator Thomas A. Hendricks of Indiana and Senator Garrett Davis of Kentucky. This was also the opinion of Lyman Trumbull, B. F. Wade, Charles Sumner and Oliver P. Morton up to the time of the so-called proposal of the fifteenth amendment, on which occasion their opinions underwent a radical change to meet the exigency of two-thirds of the entire membership of the Senate not voting for the proposal of the fifteenth amendment. In fact, the construction for which I now contend of this clause of the Constitution has never been seriously and honestly controverted.

By another express provision of the Constitution each State is to be represented in speech and vote by "two Senators" and "at least one Representative."

By another express provision of the Constitution, "No State, without its consent, shall be deprived of its equal suffrage in the Senate." This last provision of the Constitution is found in the same article and paragraph which requires the proposal to be made by two-thirds of both houses.

At the time the fourteenth amendment was proposed, eleven States of the Union were not represented in either house of Congress—eleven States of the Union were deprived of their equal suffrage in the Senate, not only without their consent, but over their protest—eleven States of the Union were demanding a hearing through their legal and constitutional representatives—demanding their guaranteed constitutional rights, but were arbitrarily and tyrannically denied any part or participation in preparing and proposing this amendment which more vitally affected them than the other States of the Union.

Was this a proposal by two-thirds of both houses? Was this a constitutional proposal? It was absolutely null and void. It was too late to say that the seceding States were not States in the Union. Congress had recognized them as

States in the Union by the resolution of 1861. President Lincoln at all times held that the seceding States were States in the Union, and that ordinances of secession were null and void, and upon this ground alone refused to receive or treat with Confederate commissioners. Congress had again and again recognized them as States, as, for instance, by the Act of July 23, 1866, dividing them into judicial districts.

(Thorpe, Vol. 3, 179, 308, 333.)

Congress had called upon them to act upon the thirteenth amendment, and by their action this proposed amendment was ratified.

Is the thirteenth amendment a nullity? It is if these States were not States in the Union and were not entitled to representation in both houses of Congress.

The fourteenth amendment did not receive two-thirds of the true membership of both houses. There were then thirty-six States of the Union. If the Southern States had been admitted to representation in the Senate, there would have been seventy-two Senators. But the Southern States were arbitrarily excluded from representation in both houses of Congress. The vote upon the fourteenth amendment in the Senate stood: Yeas, 33; nays, 11; absent, 5.

(See Thorpe, Vol. 3, 274, quoting "Congressional Globe" of June 8, 1866, page 3042.)

But two-thirds of seventy-two are forty-eight, so the amendment received many votes less than the necessary two-thirds of the Constitutional and true membership of the Senate. Nor yet two-thirds of the Senate, even as then constituted.

In the House the vote stood: 120 yeas, 32 nays, 32 not voting.

Thorpe, Vol. 3, page 276, quoting "Congressional Globe" of June 13, 1866, pages 3148, 3149.

There were present 184. Two-thirds of 184 are 123, so in the House the proposed fourteenth amendment did not receive two-thirds, even of those present.

By a concurrent resolution the two houses instructed the Secretary to transmit certified copies to the Governors of all the State, to be laid by them before the Legislature for ratification.

("Tucker on the Constitution," Vol. 2, 850.)

(Thorpe, Vol. 3, 277.)

Another recognition of the Southern States, as States of the Union.

Charles Sumner said that the States of the Southern Confederacy had committed "State suicide;" and Thaddeus Stephens, not to be outdone in venomous and original absurdity, said that these States were "conquered provinces." But the fourteenth amendment was submitted to them for ratification or rejection by the Federal Government.

Provinces cannot ratify amendments to the Federal Constitution; only States, and States in the Union, can, and certainly not States which had committed "State suicide"—dead States.

A little later, in 1869, the Supreme Court of the United States (7 Wallace, 700), in the case of *Texas vs. White*, speaking through Chief Justice Chase, says that "The ordinance of secession was absolutely null," and "the obligations of the State as a member of the Union, and every citizen of the State as a citizen of the United States remained perfect and unimpaired;" that, "the State that attempted to secede continued to be a State and a State of the Union."

And still a little later, in 1871, the Supreme Court of the United States, in the case of *White vs. Hart* (13 Wallace) held that "The reconstructed States have never been out of the Union."

Now, we have the executive, legislative and judicial departments of the Federal Government, in the most solemn and authoritative ways, declaring that secession was a nullity; that the States which attempted it continued States and States of the Union; and yet, Congress, in open, notorious and arbitrary violation of the Constitution, refused to admit their Senators and Representatives elected and qualified, to their constitutional seats in Congress.

Naturally and properly, all of the Southern States, with the exception of Tennessee, refused to ratify this amendment which they had had no voice in framing or vote in proposing, and which contained such objectionable and degrading features. Florida in rejecting this amendment said:

"We are in fact recognized as a State for the single and sole purpose of working out our own destruction and dishonor. We are recognized as a State for the highest purpose known to the Constitution, viz., its amendment; but we are not recognized as a State for any of the benefits resulting from that relation."

(Fleming's Documentary History of Reconstruction, p. 236.)

Tennessee, however, ratified the amendment in July, 1866, and was in that month restored to her former practical relations to the Union, and her Senators and Representatives were admitted to seats in Congress.

("Statutes at Large," Vol. 14, 364.)

(Fleming's Documentary History of Reconstruction, p. 202.)

The fourteenth amendment was not ratified. Congress now determined to force the Southern States to ratify the fourteenth amendment and make it a part of the Federal Constitution, and to this end Congress destroyed the existing electorate in the Southern States by disfranchising the majority of the leading white voters and created a false and unconstitutional electorate by enfranchising the negroes. The negro should be the only voter.

Now began what is known as "Congressional Reconstruction." In 1867 Congress passed over the President's veto the Reconstruction Acts. These laws—if such acts of a mutilated Congress, so palpably and avowedly in conflict with the Constitution, can be called laws, taken together—divided ten States of the late Confederacy into military districts, over which military commanders were appointed as Governors. The constitutional and legal Governors in these States were superseded by these military Governors. Citizens were arrested and tried by military commissions. The negroes were completely enfranchised, and a majority of the leading whites were nearly as completely disfranchised by applying the disqualifying features of the proposed but rejected fourteenth amendment both to officials and voters. Each military Governor was given a sufficient military force to enforce his authority. These acts provided that when the people of any of these States should form a Constitution in conformity with these acts enfranchising the negroes and disfranchising the majority of the whites, and when the States had ratified the fourteenth amendment to the Constitution, that such State should be admitted to representation in Congress. The Supreme Court of the United States was deprived of all jurisdiction in cases arising under these acts (see McArdle Cases reported in 6 & 7 Wallace), and a Senator upon the floor of the Senate threatened every Judge of the United States Supreme Court with impeach-

S—24.

ment should the court dare declare any of these "Reconstruction Acts" unconstitutional. The President of the United States, who is the Constitutional Commander-in-Chief of the Army, was deprived of all control over the army. The President, in vetoing these acts, said that they were "bills of attainder against millions of people, not one of whom had been heard in his own defense." The Supreme Court of the United States has, in the case of *ex parte Garland* and *Cummings vs. Missouri*, 4th Wallace, defined bills of attainder and *ex post facto* laws, and these acts of Congress are clearly within these definitions laid down by the Supreme Court. These military acts were clearly unconstitutional under the then recent decision of the United States Supreme Court in *ex parte Milligan*, reported in the fourth Wallace, in that they established military tribunals for the trial of citizens in the Southern States a year after the President had by proclamation declared the war to be at an end in those States, and in which the civil courts were open and civil process enforced at the time that the civil governments were overthrown and military governments and courts established. These acts established absolute military despotism in ten States of the Union. The sole purpose of these acts was to force the people of the Southern States, by military despotism, to adopt measures by an electorate forced upon them by Congress in open, notorious and avowed violation of the plainest provisions of the Constitution.

For a searching analysis of these acts and an unanswerable demonstration of their unconstitutionality, see the President's veto messages in the 6th Vol. of Richardson.

As to the disfranchising features I have already shown that they are in conflict and inconsistent with the amnesty and special pardons of the President. The excuse urged by Congress for this arbitrary and tyrannical action was that these States did not have governments republican in form, established according to the Constitution.

In the first place, this Congressional assertion was in conflict with the notorious facts. In the second place, if this assertion had been true, it was entirely beyond the constitutional duty or power of Congress to establish governments in those States. The Constitutional authority is to "*guarantee*" a republican form of government, which Madison says in the 43d number of the "*Federalist*," "*supposes a pre-existing government of the form which is to be guaranteed.* As long, therefore, as the existing

republican forms are continued by the States, they are guaranteed by the Federal Constitution. Whenever the States may choose to substitute other republican forms, they have a right to do so and to claim Federal guarantee for the latter. The only restriction imposed on them is that they shall not exchange republican for anti-republican constitutions. The authority extends no further than to a guaranty of the republican forms of government."

At the surrender the Southern States all had republican forms of government. The President, by executive proclamation, overthrew these republican forms of government and established other governments which were republican in form, if not in origin. These reconstructed governments of Lincoln and Johnson were now overthrown by Congressional acts, and ten States of the Union for more than a year were military despotisms. Under the supervision of the army this new Congressional electorate, constituted almost entirely of negroes, was enrolled, elections were held, and delegates to constitutional conventions elected by this Congressional military electorate. These conventions, constituted of negroes and "carpetbaggers," convened, while the disfranchised and disarmed white men of the South were held under control by the United States army. These Congressional military conventions framed Constitutions enfranchising the negroes and disfranchising the whites, and in every other way complying with the Congressional plans and demands. The Constitutions framed by these conventions were ratified by this new Congressional-military electorate in all of the States except Virginia, Mississippi and Texas. Representatives and State officials were now elected by this false electorate, and the Legislatures, constituted of negroes and "carpet baggers," elected by this false electorate, ratified the fourteenth amendment which had been formerly rejected by Legislatures elected by true electorates, and these false Legislatures in turn elected United States Senators.

Since these reconstructed States were in this way forced to go through the form of ratifying the fourteenth amendment, it was now declared to have received the ratification by the Legislatures of the necessary three-fourths of the States, and to be a part of the Constitution of the United States.

Can these products of fraud, usurpation and force be palmed off as Legislatures to perform one of the highest Constitutional functions of sovereign States of the Union?

These Legislatures were false, spurious and revolutionary—the products of plain and notorious usurpations by Congress, and which the real constitutional electorate would never have elected, or have permitted to convene or to remain in session one instant had they not been protected by the United States bayonets.

There were now thirty-seven States in the Union. Can it be claimed that there was a constitutional ratification in the Southern States, except, possibly, by Tennessee? The States of Delaware, Maryland, California and Kentucky rejected the amendment. I take no account of those States which withdrew their ratifications, but which were counted as ratifying. These four States, with the ten Southern States, whose ratification was secured in the manner narrated, make fourteen, which have never ratified this so-called amendment to the Constitution, which leaves twenty-three States only which constitutionally ratified the fourteenth amendment. But three-fourths of thirty-seven are twenty-eight. I think that it is conclusively demonstrated that the fourteenth so-called amendment to the Constitution was neither constitutionally proposed by a constitutional Congress nor constitutionally ratified.

Upon this fraudulent, so-called ratification of the Constitution, all of the Southern States, except Virginia, Mississippi and Texas, which three remained military districts, were restored to their former practical Federal relations in June, 1868, and were admitted to representation in Congress—or rather the misrepresentation of negroes and “carpet baggers.”

(See Fleming’s Documentary History of Reconstruction, 476.)

All of this has a most important bearing upon, and an understanding of which is essentially necessary preliminary to the consideration of, the methods employed in the so-called proposal and so-called ratification of the so-called fifteenth amendment.

Before considering the methods of the proposal and ratification of the so-called fifteenth amendment, let us consider the feeling throughout the North on the subject of negro suffrage.

Until the passage of the Reconstruction Acts by Congress in 1867, the Constitution, laws and the public sentiment of thirty-three of the thirty-seven States in the Union, in all of the Territories and in the District of

Columbia were not merely oblivious of the negro, but absolutely hostile to him as a voter. In December, 1865, the question of negro suffrage in the District of Columbia was submitted to the people. In Washington City the vote stood 35 for and 6,521 against negro suffrage. In Georgetown the vote stood one for, and 812 against negro suffrage. The vote in the District was: For negro suffrage, 36; against negro suffrage, 7,333.

In the face of this, Congress passed a bill over the President's veto establishing negro suffrage in the District of Columbia.

(Thorpe, Vol. 3, page 248.)

In 1865 the Territory of Colorado took a vote on the question of negro suffrage. The vote stood: For negro suffrage, 476; against negro suffrage, 4,192. But in spite of this, Congress, by law, established negro suffrage in Colorado and all of the Territories.

The people of the North were getting restive and uneasy. They had seen the radicals, in violation of the plainest inhibitions of the Constitution, establish negro suffrage in the States lately constituting the Southern Confederacy; they had seen Congress in the District of Columbia and in the Territory of Colorado establish negro suffrage, despite the overwhelming wishes of the people as expressed at the polls; they had seen Congress establish negro suffrage in all of the other Territories where there was every reason to believe that negro suffrage was as obnoxious as in Colorado; they had seen, in 1866, Nebraska adopt a Constitution limiting the suffrage to white persons and Congress refuse to admit her as a State until her Legislature, in violation of her Constitution, should establish negro suffrage. In 1866 there was not a State in the Union in which a negro stood on a perfect equality with a white man.

Thorpe, Vol. 3, 251, 252, 242.

The people of the North did not know where this irresponsible conclave would stop. Constitutional limitations and oaths of office, alike, seemed to have no restraint upon them, urged on as they were and led by such men as Ben Wade, Lyman Trumbull, Thaddeus Stephens, Charles Sumner, Oliver P. Morton, and others with less ability but as much venom, and equally as destitute of constitutional morality.

When the Republican National Convention met in 1862, in order to insure the election of Grant, they found it neces-

sary to adopt a plank in their platform that "The guarantee by Congress of equal suffrage to all the loyal men at the South was demanded by every consideration of public safety, of gratitude, and of justice, and must be maintained; while the question of suffrage in all the loyal States properly belongs to the people of those States."

This unconstitutional, cowardly and unfair proposition to continue to impose negro suffrage in the Southern States by Federal power, while the Northern States were to be left their constitutional right to decide the question for themselves, was perfectly satisfactory to the radical majority of the North. But the radical leaders having deceived and betrayed the South, and having violated every Constitutional obligation and restriction, rounded out their infamy when they now deceived their own party and the great mass of the voters of the North; for in a few months they as ruthlessly violated this platform pledge to their own people as they had violated on numerous occasions their oaths to protect, preserve and to defend the Constitution, and had violated their express compact with the Southern people.

In the opinion of the average Northern voter, negro suffrage was good enough for the South, but not for the North; for at that time, of the thirty-seven States which constituted the Union, all save five used "white" as descriptive of the voter; and in one of these five (New York) while the negro was recognized as a voter, such limitations and restrictions were placed upon him, not applicable to the white voter, that it was equivalent to disfranchising the negroes.

Thorpe, Vol. 3, 459.

The Constitution of some Northern States forbade the free negro entering the State. Within the past two years seven Northern States had rejected equal negro suffrage when made an issue at the polls.

Thorpe, Vol. 3, 446.

These seven included the great States of New York and Ohio, and the banner Republican State, Michigan.

When Congress met in December, 1868, the Southern States—except Mississippi, Virginia and Texas, which were still military districts—were misrepresented in the House and Senate by negroes and "carpet baggers," elected by military-Congressional electorates.

I will not now go through the history of the parliamentary progress of the fifteenth amendment, but on

the 23d day of February, 1869, the Conference Committee reported the resolution to Senate and House. This Congress expired on the 4th of March. In vain did Thomas A. Hendricks and other great, good and patriotic men appeal to the fanatic majority to let the next Congress, fresh from the people, dispose of this measure. In vain did Hendricks, Davis, and others in the House and Senate, remind the leaders of the radical party of their platform-pledge to the people upon which they had carried the election.

Under the leadership of Boutwell, Conkling, Sumner, Trumbull, Morton, Wade, and others of that ilk (Stephens had gone, let us hope, to a not too hot reward, in the preceding August), the resolution was pushed to a vote, and rushed to a so-called passage in Senate and House.

These usurpers and tyrants said as plainly as words could say: "It must be now or never. The next Congress will not pass it; we can—the existing Legislatures of a sufficient number of States belong to us. Put it off and it is lost forever. The people do not want it. Had the people known our purpose—had we not misled them by our platform pledge—the Democrats would have carried the election last November."

Under whip and spur the House of Representatives on the 25th of February voted on it. The vote stood 144 yeas, 44 nays, 35 not voting.

Thorpe, 3, p. 445, and Braxton, both citing "Congressional Globe" of Feb. 25, 1869, p. 1564.

The entire membership of the House was then 223. The two-thirds of 223 are 149. So the amendment did not receive two-thirds of the vote of the House.

On February 26th the amendment was voted on in the Senate. There were then thirty-seven States in the Union, which would make the membership of the Senate seventy-four, but Texas, Virginia and Mississippi were arbitrarily held as military districts; that would leave thirty-four States, with a membership in the Senate of sixty-eight, but Georgia, though she had fully complied with the Reconstruction Acts, and her Representatives had been admitted to the House and had there voted on the amendment, was excluded from the Senate over the protest of even Senator John Sherman of Ohio. So there were four Southern States which were not accorded even the misrepresentation accorded to the other seven Southern States. This left thirty-three States represented in the

Senate, with a total membership of sixty-six. The vote stood: Yeas, 39; nays, 13; not voting, 14.

Thorpe, Vol. 3, 445 and Braxton, both citing "Congressional Globe" of Feb. 26, 1869, page 1641.

But two-thirds of sixty-six are forty-four, so the amendment did not receive two-thirds of the Senate, and Senator Garrett Davis of Kentucky and Senator Hendricks of Indiana immediately challenged the announcement of B. F. Wade, President pro tem. of the Senate, that two-thirds had voted for the amendment. Senator Davis of Kentucky said:

"Sir—Your amendments to the Constitution are all void; they have no effect; they are proposed by a mutilated Congress; they are proposed by a mutilated House of Representatives and Senate."

But Wade persisted in holding that thirty-nine was two-thirds of sixty-six, and he was sustained by a radical and conscienceless majority. The so-called ratification of this amendment by the Legislatures of some of the States, and the declaration that it had been ratified by three-fourths of the States, was, if possible, even more infamous and scandalous than its proposal. I quote Braxton again:

"The amendment passed the Senate rather late Friday night, February 26, 1869. The next morning, as soon as the enrolled resolution was signed by the presiding officer, it was telegraphed by Congressman Sidney Clark to the Legislature of Kansas, then on the point of adjournment. This telegram, entirely unofficial, was received by that Legislature during its afternoon session, and that very evening in less than twenty-four hours after the amendment had passed Congress, long before it had been certified to the States for action and before any one in Kansas had even seen it (other than Clark's telegraphic copy) the Legislature of that State ratified it. The people of Kansas at the polls about a year previous had voted against negro suffrage two to one. Senator Stewart of Nevada, was, if anything more anxious than Congressman Clark of Kansas to obtain action by existing Legislatures before the people could make themselves heard. The State of Nevada had very recently adopted a Constitution which restricted suffrage to "white" men. The people of that State, like those of California and Oregon, were overwhelmingly opposed to the extension of the elective franchise to any but white men, not so much

because of the fear of the negro as of the Chinese vote.

"It was generally conceded among the radical press that Nevada would reject the amendment, but they underrated the resources of their own generals.

"Late Friday night, as soon as the presiding officer had announced that thirty-nine votes was two-thirds of a Senate of sixty-six members, Senator Stewart, impressed by the fact just stated by him in the Senate, that 'their Legislature were waiting to ratify the amendment,' and that if it was not done by them, and at once, the whole thing would be lost, caused the Secretary of the Senate, without even waiting for the resolution, enrolled or signed, to telegraph it to the Legislatures of Nevada and Louisiana, to which telegram he and three others added a message urging the immediate ratification by the Legislatures. This remarkable dispatch did not reach Nevada until the next morning, Saturday, when the Legislature at once endeavored to comply with its instructions. But they were not quite so docile as in Kansas, and did not succeed until Monday morning, March 1, 1869, when they ratified the amendment against a strong written protest of the minority, including Republicans and Democrats. This protest, insisted among other things, that the amendment had not received the Constitutional two-thirds majority in the Federal Senate; that the Legislature of Nevada had as yet no official knowledge of the proposed amendment (the telegraphic report of it, as it afterwards transpired, being materially incorrect); that the people of Nevada should be given an opportunity to be heard upon it; and that the people, by voting the Republican ticket for President, had just within a few months past ratified the declaration of the Republican platform of May, 1868—that the control by loyal States of their suffrage laws should not be interfered with. But all this was as baying at the moon, and Nevada was recorded as the second State ratifying the fifteenth amendment.

"On March 17, 1869, the Legislature of New York, whose people were well known to oppose equal suffrage for negroes, ratified the amendment by a majority of two in the Senate. At that time there was pending before the people of that State a proposed amendment to the State Constitution granting equal suffrage to negroes. Later on in the same year the vote was taken, and negro suffrage was defeated at the polls by over 32,000 majority. To give effect to their views, the people of New York at

the same time elected new members of their Legislature, who at once rescinded the former act of ratification and certified their rescinding act to the Secretary of State at Washington. But notwithstanding that three-fourths of the States had not yet ratified, and their votes on ratification were not yet announced, it was held that the repealing act of New York was void, and that the vote ratifying the proposed amendment was irrevocable. Thus New York was counted for the amendment.

"The Legislature of Ohio, on the other hand, voted on May 4, 1869, to reject the amendment, but later on in the year, a change having been effected in the Legislature, that vote was rescinded and the amendment ratified by a majority of one in the Senate, and that action certified to the Secretary of State at Washington. In this case it was held that the repealing act was valid, and that an adverse vote of a State upon the ratification of a proposed amendment could at any time be changed; so Ohio was also added to the list of ratifying States, though the year before the people of that State had at the polls rejected negro suffrage by fifty thousand majority.

"In Indiana the action was still more arbitrary. When news came of the passage by Congress of the fifteenth amendment, the radicals, who had a majority of both houses of the Legislature, attempted to rush through a ratification, as it had been done in Kansas, Nevada and other States. The Democrats protested and insisted that time should be taken to hear from the people on the question, but all in vain. Thereupon, on the morning of March 4, 1869, when according to program, ratification was to have been put through, seventeen Senators and thirty-six Representatives resigned, thus breaking the quorum. It was urged by some that the remnant of both houses proceed to ratify and not let the record show the lack of a quorum, but the Governor would not agree to the fraud. He therefore ordered a special election to fill the vacancies and called an extra session to meet in May. All of the resigned members were returned but one, and in this and other ways the people made their opposition to the amendment so manifest that it was hoped the radical members of the Legislature would not attempt again to disregard their wishes, but they were found to be obdurate, though several of their men finally deserted and came over to the opposition.

"On May 13, 1869, the Senate took a vote on the resolu-

tion to ratify, but less than a quorum voting, those present and not voting were counted to make a quorum, although the presiding officer of the United States Senate, upon the passage of the amendment by that body, had just refused to count as present those not voting, lest it show the affirmative vote to be less than two-thirds even of those present.

"The next day, May 14, 1869, the ratification resolution in the Indiana Legislature was taken up by the House. In order to prevent being counted as present, as was done in the Senate, forty-two members had again resigned the day before, thus reducing the membership to less than two-thirds, which, under the Constitution of Indiana, was necessary to make a quorum. But the Speaker showed himself equal to the occasion by ruling that while the State Constitution of Indiana was necessary to make a quorum for *ordinary* business, it did not follow that more than one-half was necessary for extraordinary business, such as ratifying an amendment to the Federal Constitution. He therefore announced the amendment ratified, and the name of Indiana was duly added to the list of ratifying States."

Those are examples of some of the methods employed to obtain a ratification of the amendment in the Northern States which were counted as ratifying.

In the Southern States this amendment was ratified by the Legislatures elected by electorates created by Congress and the military and protected by the United States bayonets. In these States the question of securing negro suffrage in the Federal Constitution was left almost exclusively to the negroes under the tutelage of their carpet-bag leaders and allies, and the ratification of this amendment was made a condition precedent to the restoration of Mississippi, Texas and Virginia to their practical Federal relations and the admission even of their Senators and Representatives, elected by a false and unconstitutional electorate.

The question, though, is: Was this so-called proposed amendment ratified by the Legislatures of three-fourths of the States of the Union? There were then thirty-seven States of the Union. Three-fourths of thirty-seven are twenty-eight. Six States—California, Delaware, Kentucky, Maryland, Oregon and Tennessee—rejected the amendment. Indiana, as has been shown, never really ratified it. If New York was not allowed to withdraw

her ratification, Ohio should not have been allowed to withdraw her rejection. Surely one of these States should have been recorded against ratification.

In the Southern States the amendment was ratified by Legislatures elected by false, unconstitutional constituencies. It will scarcely be contended even by the most partisan, unscrupulous radical that in any one of these States, in a Legislature chosen by the true constitutional electorate of the State, a single vote would have been cast for ratification.

This leaves only nineteen States which by any possibility could be fairly counted for ratification—nine less than the three-fourths necessary to a ratification. Nor does this take account of the remarkable proceedings in Kansas, Nevada and Missouri. It is a matter of grave doubt if there was an honest ratification in a single State outside of New England, where the love of the negro was and is only equaled by her hatred of the Southern white man. That the radical leaders were fully convinced the people of the North did not want negro suffrage is abundantly evidenced by the plank in their platform in the preceding year, and by their prompt rejection of the proposition made in the Senate to submit the amendment to conventions in the respective States instead of the Legislatures, so that it could be made an issue in the election of delegates to the conventions, and thereby afford the people an opportunity to pass upon the question. Not only was this proposition rejected, but they insisted that the amendment be submitted to Legislatures already chosen, thereby denying the people all opportunity to pass upon this vital matter.

The Constitution contemplates a ratification by a true, valid and constitutional Legislature; nothing else will do. A false ratification by an apparently true Legislature of the State, will not suffice, as in Indiana. An apparently true ratification by a spurious and unconstitutional Legislature, as in the case of the Southern States, is no ratification. The validity of an amendment to the Constitution of the United States depends upon the historic truth of its ratification, as required by the Constitution. The history of this great crime against constitutional government and civilization, perpetrated by the Anglo-Saxon race in one section of the Union against a disqualified and disfranchised minority of the same race in another section of the Union, is revolting and shocking, and were

it not for well authenticated records, would challenge credulity itself. The hypocrisy of the cant of Sumner, et al., of the "equality of man," the "Fatherhood of God, and the Brotherhood of Man," is fully shown by their unwillingness to admit the Mongolian race to citizenship or to the suffrage. With the negro race, which only affected the Southern people, he was worthy of the ballot, however ignorant and vicious he might be. Every third voter in the South was a negro, while in the North was only one negro voter to about eighty-four white voters. I quote again from Mr. Braxton:

"That these men were sincere in their protestations of a compelling sense of justice to the negro as a man and brother entitled to the right to vote as an inalienable natural right, like that of life and liberty, can hardly be accepted when we find them only too willing to exclude from that inalienable right Indians and Chinese, whose political affiliations were not so well ascertained. It is almost shocking to find among those who would exclude these races, the names of Sumner, Morton and Fessenden, who with many others insisted on indiscriminate suffrage for all citizens, regardless of race, yet succeeded in restricting the doctrine to the white and black races by adopting the timely suggestion of Mr. Stewart, that the red and yellow races might, by manipulation of our naturalization laws, be *prohibited from becoming citizens*. Thus they held that although suffrage be a natural right, belonging to man, like that of life or liberty, to deprive them of which were a heinous sin; yet there was no impropriety in restricting this natural right to men who were citizens, *reserving the right to say who might become citizens*. This was not surprising logic in that class of men, who, it is said, had on one occasion declared by a formal resolution: First, That the voice of the people is the voice of God; and, Second, That *we* are the people."

It will be observed that the fourteenth and fifteenth amendments protect only citizens of the United States, while the naturalization laws were made to apply to the white and negro races only, and later extended to Indians of the Indian Territory who had severed their tribal relations.

Hon. Capperton Braxton, from whom I have so extensively quoted, is a lawyer, who in character and ability stands in the very front rank of the Virginia bar, and who

has given much thought and study to the history of the fifteenth amendment.

The thirteenth amendment is clearly distinguishable from the fourteenth and fifteenth, both in the manner of its proposal and in the manner of its ratification. It is true that eleven States were absent from Congress when it was proposed, but in this instance these States were voluntarily absent, and therefore their absence did not affect the constitutionality of its proposal; and while its ratification in the Southern States had its initiation in Presidential usurpation, yet in these States it was ratified by Legislatures elected by constitutional constituencies. There can be no question that the thirteenth amendment was proposed and constitutionally ratified, and is truly a part of the Constitution of the United States; and there can be just as little question that the fourteenth and fifteenth amendments were neither constitutionally proposed nor constitutionally ratified, and are, therefore, not parts of the Constitution of the United States.

Edmund Burke said that he did not know how to frame an indictment against an entire people, but the Congress of the United States, during what is known as "The Reconstruction Period," not only framed an indictment against an entire people, but convicted and sentenced an entire people without trial. Not one of all these proscribed millions in the Southern States was ever heard in his defense.

The Federal Government, in every department, insisted at all times that the ordinances of secession were null and void, and that the citizens of those States which had seceded were in insurrection and rebellion against the Federal Government. If the citizens of the Confederate States were rebels against the United States, they came under the ban of the law, and were subject to indictment and trial by a jury of their peers.

The Reconstruction Acts of Congress were directed against ten States, but no citizen of either of those States was ever tried in any court for treason or rebellion, for the very simple reason that the Federal Government knew that they had committed no crime, and that a trial under the Constitution would result in their acquittal and exoneration.

The Reconstruction Acts of Congress have never been passed upon by the Supreme Court of the United States.

It is, however, universally admitted that they were in violation of the Constitution of the United States. Even those who advocated them at the time of their passage admitted then that they were outside of and beyond the Constitution. If these Reconstruction Acts were unconstitutional and invalid, then the governments established by them and under their authority were usurpations, and the ratifications of the fourteenth and fifteenth amendments by these governments were and are nullities. These acts of ratification were not such acts as to become valid,<sup>6</sup> because performed by de facto though usurping governments.

I am aware of and have considered the Congressional so-called fundamental condition upon which this and the other Southern States were restored to their former Federal relations and admitted to representation in Congress, but this fundamental condition is an unconstitutional, usurpatory act by a fragmentary Congress—a condition which even a constitutional Congress would have had no authority, under the Constitution, to attach. Each State has the absolute right to establish and amend her own fundamental law, controlled and limited only by the Federal Constitution.

I am also aware that it will be contended that as these amendments have not been questioned in the courts for nearly half a century, if invalid at first, that the lapse of time has validated them. To this I reply that both the fourteenth and fifteenth amendments are intended as organic limitations upon sovereign States, and that no time runs against a State, or can render that valid against a State which was originally invalid, whenever the State sees fit to challenge its validity.

I am also aware that it will be urged by some that the move I suggest is both radical and inexpedient. To this I reply that there were some in our midst during the Reconstruction period who were in favor of accepting the military bills and every other unconstitutional act of a radical Congress. These weaklings then said, "We are powerless, and we must accept the situation." If the patriotic manhood of that period had been controlled by such counsel, we would today be under carpetbag rule and negro domination. I deny that this proposed amendment to the Constitution of the State is either inexpedient or radical.

I concede that it would be useless to appeal to the

political department of the Federal Government to inaugurate a repeal of these amendments. In that department of the Government, which is actuated and controlled by sentiment, prejudice, malice, or political interest, or all, our adversaries are in an overwhelming majority; and while a large majority of them may agree with Secretary Root that negro suffrage was an experiment which has proved a failure, they have not the independence, manliness, frankness or political courage to undo these great wrongs by repealing these amendments. My proposition is, not to appeal to the political department and ask for a repeal of these amendments, but to appeal to the judicial department, which is supposed to be controlled only by the law and the facts, upon the ground that these amendments were never constitutionally proposed or constitutionally ratified, and are not now parts of the Federal Constitution.

If to be conservative means to preserve existing conditions, and if it is desirable to preserve existing conditions, then my proposition is both conservative and expedient. Absolute white and democratic supremacy is now maintained in the Southern States by the unity of the white people who settle their political differences by white primary elections. But the growing intensity of antagonism between the two factions in the Democratic party in this and every other Southern State, must indicate to every thoughtful man that issues of such magnitude will arise—and I fear at no distant day—between the two factions that they cannot be determined by primary elections. Both factions will contend for mastery in the primary. The losing factions, unwilling to accept the determination of those issues, by the primary, will appeal to the general and constitutional election. With the white people in this way divided upon these issues, the negro will hold the balance of power, and each faction will bid for this ignorant, venal vote in the general and constitutional election. The negro being again forced by these contending factions into politics, and knowing that he holds the balance of power, will demand and get concessions in consideration of his vote. Political equality under such conditions is inevitable, and a certain amount of social equality an unavoidable corollary. Under such conditions, absolute white supremacy in the Southern States, so essential to the preservation of civilization in those States, will be a thing of the past.

The proposition that I make is conservative, expedient, necessary; and while we stand united, as we are today, possible of attainment; but if we put off until such division as I have indicated, and firmly believe will come, the proposition I now make will then be impossible of attainment.

After much thought, and as thorough an investigation as I am capable of giving to any subject, I firmly believe that the Supreme Court of the United States will sustain my position. If it does not, we will be no worse off than we are today; we will stand exactly where we do today, but with the consciousness of having made a firm and patriotic effort to avert the calamity which I and all of you must see is in the not distant future.

## THURSDAY, APRIL 18, 1907.

The Senate met pursuant to adjournment.

The President in the chair.

The roll being called, the following members answered to their names:

Mr. President, Senators Adams, Alford, Beard, Broome, Buckman, Canova, Clark, Cone, Cottrell, Crane, Crews, Davis, Girardeau, Henderson, Hudson, Humphries, Jackson, Leggett, McCreary, Massey, Sams, Trammell, Willis, Withers, West (1st District), West (4th District), Zim—28.

A quorum present.

Prayer by the Rev. C. C. Carroll, of Ocala.

The Journal was corrected and approved.

The President announced the appointment of Mr. West of 1st District as a committee of one on the part of the Senate to visit and report upon the Reform School at Marianna, as provided in House Concurrent Resolution No. 5.

## INTRODUCTION OF RESOLUTIONS.

Mr. Trammell offered the following—

Senate Resolution No. 39.

Be it resolved, that the committee clerks of the Senate, except the clerk of Judiciary Committee, as far as their S—25.