

all past experience has shown on which side that influence will be arrayed. We deceive ourselves if we suppose that it will ever be found asserting and supporting the rights of the community at large, in opposition to the claims of the few.

In a Government whose distinguishing characteristic should be a diffusion and equalization of its benefits and burdens, the advantage of individuals will be augmented at the expense of the mass of the people. Nor is it the nature of combinations for the acquisition of legislative influence to confine their interference to the single object for which they were originally formed. The temptation to extend it to other matters, is, on the contrary, not infrequently too strong to be resisted. The influence in the direction of public affairs, of the community at large, is, therefore, in no slight danger of being sensibly and injuriously affected by giving to a comparatively small, but very efficient class, a direct and exclusive personal interest in so important a portion of the legislation of Congress as that which relates to the custody of the public moneys. If laws acting upon private interests cannot always be avoided, they should be confined within the narrowest limits, and left, wherever possible, to the legislatures of the States. When not thus restricted, they lead to combinations of powerful associations, to an influence necessarily selfish, and to a fair course of legislation to be sacrificed, rather than to objects that advance public liberty and promote the general good.

The whole subject now rests with you, and I cannot but express a hope that some definite measure will be adopted at the present session.

It will not, I am sure, be deemed out of place for me here to remark, that the declaration of my views in opposition to the policy of employing banks as depositories of the Government funds, cannot justly be construed as indicative of hostility, official or personal, to those institutions, or to repeat, in this form, and in connection with this subject, opinions which I have uniformly entertained, and on all proper occasions expressed. Though not opposed to their creation in the form of exclusive privileges, and as a State measure aiming by appropriate legislation to secure the community against the consequences of their occasional mismanagement, I have yet wished to see them protected in the exercise of rights conferred by law, and have never doubted their utility, when properly managed, in promoting the interests of trade, and through that channel, the other interests of the community. To the General Government they present themselves merely as State institutions, having no necessary connection with its legislation or its administration. Like other State establishments, they may be used or not in conducting the affairs of the Government, as public policy and the general interests of the Union may seem to require. The only safe or proper principle upon which their interference with the Government can be regulated, is that which regulates their intercourse with the private citizen—the conferring of mutual benefits. When the Government can accomplish a financial operation better with the aid of the banks than without, it should be at liberty to seek that aid as it would the services of a private banker, or other capitalist or agents, giving the preference to those who will serve it on the best terms. Nor can there ever exist an interest in the officers of the General Government, as such, inducing them to embarrass or annoy the State Banks, any more than to incur the hostility of any other class of State institutions, or of private citizens. It is not in the nature of things that hostility to those institutions can spring from this source, or any opposition to their course of business, except when they themselves depart from the objects of their creation, and attempt to usurp powers not conferred upon them, or to subvert the standard of value established by the Constitution. While opposition to their regular operations cannot exist in this quarter, resistance to any attempt to make the Government dependent upon them for the successful administration of public affairs, is a matter of duty, as I trust it will ever be of inclination, no matter what motive or consideration the attempt may originate.

It is no more than just to the banks to say, that in the late emergency, most of them firmly resisting the strongest temptations to extend their paper issues, when apparently sustained in a suspension of specie payments by public opinion, even though in some cases invited by legislative enactments. To this honorable course, sided by the resistance of the General Government, acting in obedience to the Constitution and laws of the United States, to the introduction of an irredeemable paper medium, may be attributed, in a great degree, the speedy restoration of our currency to a sound state, and the business of the country to its wonted prosperity. The banks have but to continue in the same safe course, and be content in their appropriate sphere, to avoid all interference from the General Government, and to derive from it all the protection and benefits which it bestows on other State establishments, on the people of the States, and on the States themselves. In this, their true position, they cannot but secure the confidence and good will of the people and the Government, which they can only lose when, leaping from their legitimate sphere, they attempt to control the legislation of the country, and pervert the operations of the Government to their own purposes.

Our experience under the act passed at the last session, to grant pre-emption rights to settlers on the public lands, has as yet been too limited to enable us to pronounce with safety upon the efficacy of its provisions to carry out the policy of the Government in that respect. There is, however, the best reason to anticipate favorable results from its operation. The recommendations formerly submitted to you in respect to a graduation of the price of the public lands, remain to be finally acted upon. Having found no reason to change the views then expressed, your attention to them is again respectfully requested.

Every proper exertion has been made, and will be continued, to carry out the wishes of Congress in relation to the tobacco trade, as indicated in the several resolutions of the House of Representatives and the legislation of the two branches. A favorable impression has, I trust, been made in the different foreign countries to which particular attention has been directed, and although we cannot hope for an early change in their policy, as in many of them a convenient and large revenue is derived from monopolies in the fabrication and sale of this article, yet, as these monopolies are really injurious to the people where they are established, and the revenue derived from them may be less injuriously and with equal facility obtained from another and a liberal system of administration, we cannot doubt that our efforts will be eventually crowned with success, if persisted in with temperate firmness, and sustained by prudent legislation.

In recommending to Congress the adoption of the necessary provisions at this session for taking the next census, or enumeration of the inhabitants of the United States, the suggestion presents itself whether the scope of the measure might not be usefully extended, by causing it to embrace authentic statistical returns of the great interests specially entrusted to, or necessarily affected by, the legislation of Congress.

The accompanying report of the Secretary of War presents a satisfactory account of the state of the public service confided to the superintendence of that officer.

The laws increasing and organizing the military establishment of the United States has been

nearly carried into effect, and the army has been extensively and usefully employed during the past season.

I would again call to your notice the subjects connected with and essential to the military defenses of the country, which were submitted to you at the last session; but which were not acted upon, as is supposed, for want of time. The most important of them is the organization of the militia on the maritime and inland frontiers. This measure is deemed important, as it is believed that it will furnish an effective volunteer force in aid of the regular army, and may form the basis for a general system of organization for the entire militia of the United States. The erection of a national foundry and gunpowder manufactory, and one for making small arms, the latter to be situated at some point west of the Alleghany mountains, all appear to be of sufficient importance to be again urged upon your attention.

The plan proposed by the Secretary of War for the distribution of the force of the United States in time of peace, is well calculated to promote regularity and economy in the fiscal administration of the service, to preserve the discipline of the troops, and to render them available for the maintenance of the peace and tranquillity of the country. With this view, likewise, I recommend the adoption of the plan presented by that officer for the defence of the western frontier. The preservation of the lives and property of our fellow-citizens who are settled upon that border country, as well as the existence of the Indian population, which might be tempted by our want of preparation to rush on their own destruction and attack the white settlements, require that this subject should be acted upon without delay, and the War Department authorized to place that country in a state of complete defence against any assault from the numerous and warlike tribes which are congregated on that border.

It affords me sincere pleasure to be able to apprise you of the entire removal of the Cherokee nation of Indians to their new homes west of the Mississippi. The measures authorized by Congress at its last session with a view to the long standing controversy with them, have had the happiest effect. By an agreement concluded with them by the commanding general in that country, who has performed the duties assigned to him on the occasion with commendable energy and humanity, their removal has been principally under the conduct of their own chiefs, and they have emigrated without any apparent reluctance.

The successful accomplishment of this important object, the removal, also, of the entire Creek nation, with the exception of a small number of fugitives amongst the Seminoles in Florida; the progress already made towards a speedy completion of the removal of the Chickasaws, the Choctaws, the Pottawatomies, and the Shawankees; with the extensive purchases of Indian lands during the present year, have rendered the speedy and successful result of the long established policy of the Government upon the subject of Indian affairs entirely certain. The occasion is, therefore, deemed a proper one to place the policy in such a point of view as will excite the benevolent interest of the United States from the undesired reproach which has been cast upon it through several successive Administrations. That a mixed occupancy of the same territory, by the white and red man, is incompatible with the safety or happiness of either, is a position in respect to which has long since been established by a difference of opinion. Reason and experience have alike demonstrated its impracticability. The bitter fruits of every attempt heretofore to overcome the barriers interposed by nature, have been destruction, both physical and moral, to the Indians; dangerous conflicts of authority between the Federal and State Governments; and detriment to the individual prosperity of the citizen, as well as to the general improvement of the country. The remedial policy, the principles of which were settled more than thirty years ago, under the administration of Mr. Jefferson, consists in the purchase of a fair consideration, of the title to all the lands actually occupied by the Indians within the States and Territories of the United States; their removal to a country west of the Mississippi, much more extensive, and better adapted to their condition, than that on which they then resided; the guarantee to them, by the United States, of their exclusive possession of that country forever, exempt from all intrusions by white men, with ample provisions for their security against external violence and internal dissensions, and the extension to them of suitable facilities for their advancement in civilization. This has not been the policy of particular Administrations only, but of each in succession, since the first attempt to carry it out under that of Mr. Monroe. All have labored for its accomplishment, only with different degrees of success. The manner of its execution has, it is true, from time to time, given rise to conflicts of opinion and unjust imputations, but in respect to the wisdom and necessity of the policy itself, there has, not from the beginning, existed a doubt in the mind of any calm, judicious, disinterested friend of the Indian race, accustomed to reflection and enlightened by experience.

Occupying the double character of contractor on its own account, and guardian for the nation, the dealings of the Federal Government with the Indian tribes would escape misrepresentation. That there occurred in the early settlement of this country, as in all others where the civilized race has succeeded to the possessions of the savage, instances of oppression and fraud on the part of the former there is too much reason to believe. No such offences can, however, be justly charged upon this Government since it became free to pursue its own course. Its dealings with the Indian tribes have been just and friendly throughout; its efforts for their civilization constant and unremitting; its feelings of humanity; its watchfulness in protecting them from individual frauds unremitting; its forbearance under the keenest provocations, the deepest injuries, and the most flagrant outrages, may challenge at least a comparison with any nation, ancient or modern, in similar circumstances; and if in future times a powerful, civilized, and happy nation of Indians shall be found to exist within the limits of the Northern continent, it will be owing to the consummation of that policy which has been so unjustly assailed. Only a very brief reference to facts in confirmation of my assertion can in this form be given, and you are therefore, necessarily referred to the report of the Secretary of War for further details. To the Cherokee, who have the most perhaps excited the greatest share of attention and sympathy, the United States have granted, in fee, with a perpetual guarantee of exclusive and peaceable possession, 13,554,135 acres of land, on the west side of the Mississippi, eligibly situated, in a healthy climate, and in all respects better suited to their condition than the country they have left, in exchange for only 9,492,160 acres on the east side of the same river. The United States have in addition stipulated to pay them five millions six hundred thousand dollars for their interest in and improvement on the lands thus relinquished, and one million one hundred and sixty thousand dollars for subsistence and other beneficial purposes; thereby putting it in their power, to become one of the most wealthy and independent separate communities, of the same extent, in the world.

By the treaties made and ratified with the Miami, the Chickasaw, the Sioux, the Sac and Foxes, and the Winnebagoes, during the last year, the Indian title, to eighteen million four hundred and fifty-eight thousand acres has been extinguished. These purchases have been much more extensive than those of any previous year, and have, with other Indian expenses, borne very heavily upon the Treasury. They leave, however, but a small quantity of unbounded Indian lands within the States and Territories; and the Legislature and Executive were equally sensible of the propriety of a final and more speedy extinction of Indian titles

within those limits. The treaties, which were, with a single exception, made in pursuance of previous appropriations for defraying the expenses, have subsequently been ratified by the Senate, and received the sanction of Congress by the appropriations necessary to carry them into effect. Of the terms upon which these important negotiations were concluded, I can speak from direct knowledge; and I feel no difficulty in affirming that the interest of the Indians in the extensive territory embraced by them, is to be paid for at its fair value, and that no more favorable terms have been granted to the United States than would have been reasonably expected in a negotiation with civilized men, fully capable of appreciating and protecting their own rights. For the Indian title to 116,349,897 acres acquired since the 4th of March, 1829, the United States have paid \$72,560,056, in permanent annuities, lands, reservations for Indians, expenses of removal and subsistence, merchandise, mechanical and agricultural establishments and implements. When the heavy expenses incurred by the United States, and the circumstance that so large a portion of the entire territory will be for ever unalienable are considered, and this price is compared with that for which the United States sell their own lands, no one can doubt that justice has been done to the Indian in these purchases also. Certain it is, that the transactions of the Federal Government with the Indians have been uniformly characterized by a sincere and paramount desire to promote their welfare; and it must be a source of the highest gratification to every friend of justice and humanity to learn that, notwithstanding the obstacles from time to time thrown in its way, and the difficulties which have arisen from the peculiar and impracticable nature of the Indian character, the wise, humane, and undeviating policy of the Government in this, the most difficult of all our relations; foreign or domestic, has at length been justified to the world in its near approach to a happy and certain consummation.

The condition of the tribes which occupy the country set apart for them in the West, is highly prosperous, and encourages the hope of their early civilization. They have, for the most part, abandoned the hunter state, and turned their attention to agricultural pursuits. All those who have been established for any length of time in that fertile region, maintain themselves by their own industry. There are among them traders of no inconsiderable capital, and planters exporting cotton to some extent; but the greater number are small agriculturists, living in comfort upon the produce of their farms. The recent emigrants, although they have in some instances removed reluctantly, have readily acquiesced in their unavoidable destiny. They have found in them a recompense for past sufferings, and an incentive to industrious habits, in the abundance and comforts around them. There is reason to believe that all these tribes are friendly in their feelings towards the United States; and it is to be hoped, that the acquisition of individual wealth, the pursuits of agriculture, and habits of industry, will gradually subdue their warlike propensities, and incline them to maintain peace among themselves. To effect this desirable object, the attention of Congress is solicited to the measures recommended by the Secretary of War for their future government and protection, as well from each other as from the hostility of the warlike tribes around them, and the intrusions of the whites. The policy of the Government, has given them a permanent home, and guaranteed to them its peaceful and undisturbed possession. It only remains to give them a government and laws which will encourage industry, and secure to them the rewards of their exertions. The importance of some form of government cannot be too much insisted upon. The earliest effects will be to diminish the causes and occasions for hostilities among the tribes, to inspire an interest in the observance of laws to which they will have themselves assented, and to multiply the securities of property, and the motives for self-improvement. Intimately connected with this subject, is the establishment of the military defenses recommended by the Secretary of War, which have been already referred to. Without them, the Government will be powerless to redeem its pledges of protection to the emigrating Indians against the numerous warlike tribes that surround them, and to provide for the safety of the frontier settlers of the bordering States.

The case of the Seminoles constitutes at present the only exception to the successful efforts of the Government to remove the Indians to the homes of this tribe, emigrated in 1836, and four hundred in 1837 and 1838, leaving in the country, it is supposed, about two thousand Indians. The continued treacherous conduct of these people, the savage and unprovoked murders they have lately committed, butchering whole families of the settlers of the territory, without distinction of age or sex, and making their way into the very centre and heart of the country, so that no part of it is free from their ravages; their frequent attacks on the light-houses along that dangerous coast; and the barbarity with which they have murdered the passengers and crews of such vessels as have been wrecked upon the reefs and keys which border the Gulf, leave the Government no alternative but to continue the military operations against them until they are totally expelled from Florida.

There are other motives which would urge the Government to pursue this course towards the Seminoles. The United States have fulfilled in good faith all their treaty stipulations with the Indian tribes, and have in every other instance, insisted upon a like performance of their obligations. To relax from this salutary rule because the Seminoles have maintained themselves so long in the Territory they had relinquished and in defiance of their frequent and solemn engagements, still continue to wage a ruthless war against the United States, would not only evince a want of consistency on our part, but be of evil example in our intercourse with other tribes. Experience has shown that but little is to be gained by the march of armies through a country so intersected with inaccessible swamps and marshes, and which from the real character of the climate, must be abandoned at the end of the winter. I recommend, therefore, to your attention, the plan submitted by the Secretary of War in the accompanying report, for the permanent occupation of the portion of the Territory freed from the Indians; and the more efficient protection of the people of Florida from their inhuman warfare.

From the report of the Secretary of the Navy, herewith transmitted, it will appear that a large portion of the disposable naval force is either actively employed, or in a state of preparation for the purposes of experience and discipline, and the protection of our commerce. So effectual has been this protection, that so far as the information of government extends, not a single outrage has been attempted on a vessel carrying the flag of the United States, within the present year, in any quarter, however distant or exposed. The exploring expedition sailed from Norfolk on the 19th of August last, and information has been received of its safe arrival at the Island of Madeira. The boat spirit animates the officers and crews, and there is every reason to anticipate, from its efforts, results beneficial to commerce, and valuable to the nation.

It will also be seen that no reduction of the force now in commission is contemplated. The unsettled state of a portion of South America renders it indispensable that our commerce should receive protection in that quarter; the vast and increasing interests embarked in the trade of the Indian and China seas, in the whale fisheries of the Pacific ocean, and in the Gulf of Mexico, require equal attention to their safety; and a small squadron may be employed to great advantage on our Atlantic coast, in meeting sudden demands for the reinforcement of other stations, in aiding merchant vessels in distress, in affording active service to an additional number of officers, and in visiting different ports of the United States, and in visiting different parts of the world, in a manner which is obviously of the highest importance.

The attention of Congress is respectfully called to that portion of the report recommending an increase in the number of smaller vessels, and to other suggestions contained in that document. The rapid increase and wide expansion of our commerce, which is every day seeking new avenues of profitable adventure; the absolute necessity of a naval force for its protection precisely in the degree of its extension; a due regard to the national rights and honor; the recollection of its former triumphs whenever opportunity presents itself, which we may rightfully indulge from the experience of the past, all seem to point to the navy as a most efficient arm of our national defence, and a proper object of legislative encouragement.

The progress and condition of the Post Office Department will be seen by reference to the report of the Postmaster General. The extent of post roads covered by mail contracts, is stated to be 134,815 miles, and the annual transportation upon them \$4,890,202. The number of post offices in the United States is 12,563, and rapidly increasing. The gross revenue for the year ending on the 30th day of June last, was \$4,262,145. The accruing expenditures, \$4,680,068; excess of expenditures, \$417,923. This has been made up out of the surplus previously on hand. The cash on hand, on the first instant, was \$314,068. The revenue for the year ending June 30th, 1838 was \$161,540 more than that for the year ending June 30th, 1837. The expenditures of the department had been graduated upon the anticipation of a largely increased revenue. A moderate certainty of mail service consequently became necessary, and has been effected, to shield the department against the danger of embarrassment. Its revenue is now improving, and it will soon resume its onward course in the march of improvement.

Your particular attention is requested to so much of the Postmaster General's report as relates to the transportation of the mails upon railroads. The laws on that subject do not seem adequate to secure that service, now become almost essential to the public interests, and at the same time protect the department from combinations and unreasonable demands.

Nor can I too earnestly request your attention to the necessity of providing a more secure building for this department. The danger of destruction to which its important books and papers are continually exposed, as well from the highly combustible character of the building occupied, as from that of others in the vicinity, calls loudly for prompt action.

Your attention is again earnestly invited to the suggestions and recommendations submitted at the last session in respect to the District of Columbia. I feel it my duty, also, to bring to your notice certain proceedings at law which have recently been prosecuted in this District, in the name of the United States, on the relation of Messrs. Stockton and Stokes, of the State of Maryland, against the Postmaster General, and which have resulted in the payment of money out of the National Treasury, for the first time since the establishment of the Government, by judicial compulsion exercised by the common law writ of mandamus, issued by the Circuit Court of this District.

The facts of the case, and the grounds of the proceedings, will be found fully stated in the report of the decision; and any additional information which you may desire will be supplied by the proper department. No interference in the particular cases contemplated. The money has been paid; the claims of the prosecutors have been satisfied; and the whole subject, so far as they are concerned, is finally disposed of; but it is on the supposition that the case may be regarded as an authoritative exposition of the law as it now stands, that I have thought it necessary to present it to your consideration.

The object of the application to the circuit court was to compel the Postmaster General to carry into effect an award made by the Solicitor of the Treasury, under a special act of Congress for the settlement of certain claims of the relations on the Post Office Department, which award the Postmaster General declined to execute in full, until he should receive further legislative direction on the subject. If the duty imposed on the Postmaster General by that law, was to be regarded as one of an official nature, belonging to his office as a branch of the Executive, then it is obvious that the constitutional competency of the Judiciary to direct and control him in its discharge, was necessarily drawn in question. And if the duty so imposed on the Postmaster General was to be considered as merely ministerial, and not executive, it yet remained to be shown that the circuit court of this District had authority to interfere by mandamus such a power having never before been asserted or claimed by that court. With a view to the settlement of these important questions, the judgment of the circuit court was carried, by a writ of error, to the Supreme Court of the United States. In the opinion of that tribunal, the duty imposed on the Postmaster General was not an official executive duty, but one of a merely ministerial nature. The grave constitutional questions which had been discussed were, therefore, excluded from the decision of the case; the court, indeed, expressly admitting that, with powers and duties properly belonging to the Executive, no other department can interfere by the writ of mandamus; and the question, therefore, resolved itself into this: Has Congress conferred upon the circuit court of this District the power to issue such a writ to an officer of the General Government, commanding him to perform a ministerial act? A majority of the court have decided that it has, but have founded their decision upon a process of reasoning which, in my judgment, renders further legislative provision indispensable to the public interests and the equal administration of justice.

It has long since been decided by the Supreme Court, that neither that tribunal, nor the circuit courts of the United States, hold within the respective States, the power in question; but it is now held that this power, denied to both of these high tribunals, (to the former by the Constitution, and to the latter by Congress,) has been, by legislative enactment, vested in the circuit court of this District. No such direct grant of power to the circuit court of this District is claimed; but it has been held to result, by necessary implication, from several sections of the law establishing the court. One of these sections declares, that the laws of Maryland, as they existed at the time of the cession, should be in force in that part of the District ceded by that State; and by this provision,

the common law, in civil and criminal cases, as it prevailed in Maryland in 1801, was established in that part of the District.

In England, the Court of King's Bench—because the sovereign, who, according to the theory of the Constitution, is the fountain of justice, originally sat there in person, and is, still deemed to be present, in construction of law, alone possesses the high power of issuing the writ of mandamus not only to inferior jurisdictions and corporations, but also to magistrates and others commanding them, in the King's name, and others what their duty requires them, in cases where there is a vested right, and no other specific remedy. It has been held, in the case referred to, that, as the Supreme Court of the United States is, by the Constitution, rendered incompetent to exercise this power, and as the circuit court of this District is a court of general jurisdiction in cases at common law, and the highest court of original jurisdiction in the District, the right to issue the writ of mandamus is incident to its common law powers. Another ground relied upon to maintain the power in question is, that it was included, by fair construction, in the power granted to the circuit courts of the United States, by the act to provide for the more convenient organization of the courts of the United States, passed 12th of February, 1801; that the act establishing the circuit court of this District, passed the 27th day of Feb. 1801, conferred upon that court and the judges thereof the same powers as were by law vested in the circuit courts of the U. States and in the judges of the said courts; that the repeal of the first mentioned act which took place in the next year, did not divest the circuit court of this District of the authority in dispute, but left it still clothed with the powers over the subject which, it is conceded, were taken away from the circuit courts of the United States by the repeal of the act of the 12th February, 1801.

Admitting that the adoption of the laws of Maryland for a portion of this District, confers on the Circuit Court thereof, in that portion, the transcendent extra-judicial prerogative powers of the Court of King's Bench, in England, or that either of the acts of Congress mentioned in its common law, authorize the former court to issue a writ of mandamus to an officer of the United States to compel him to perform a ministerial duty, the consequences are, in one respect, the same. The result in either case is, that the officers of the United States, stationed in different parts of the United States, are, in respect to the performance of their official duties, subject to different laws and a different supervision; these in the States is one rule, and those in the District of Columbia to another and a very different one. In the District, their conduct is subject to a judicial control, from which in the States they are exempt. To what effect in the States they are exempt to control, and as Congress alone can provide the remedy, the subject is unavoidably presented to your consideration.

M. VAN BUREN.  
Washington, December 3, 1838.

Twenty-Fifth Congress—Third Session.  
Monday, December 3, 1838.

IN SENATE.—At 12 o'clock, the Senate was called to order by the Hon. W. R. King, of Alabama, President pro tempore, when thirty-one Senators appeared in their seats.

On motion, the Clerk of the Senate was directed to inform the House of Representatives that a quorum of the Senate was ready for business. On motion, Mr. Wright, of New York, and Allen, of Ohio, were appointed a committee of the Senate, to join a committee on the part of the House to visit upon the President of the United States, and inform him that a quorum was assembled and ready to receive any communication which he might think proper to submit.

On motion of Mr. McKean, the usual resolution was adopted in relation to the supply of three daily newspapers.

The Senate adjourned to meet at 12 o'clock on Tuesday.

HOUSE.—At 12 o'clock, the Speaker called to order, and a quorum was found to be present. Several members elect appeared, qualified, and took their seats.

Mr. Cray, of Michigan, presented the certificate of election of Mr. J. D. Doty, as Delegate elect from the Territory of Wisconsin, and moved that he be qualified and take his seat.

Mr. Jones, of Wisconsin, contested the right. He said that he did not ask to be again qualified, as he had himself been already heretofore qualified as Delegate from Wisconsin. He claimed to have been duly elected, and, having served but one term, he claimed to retain his seat under the Act of Congress of March 3d, 1817, which declared that all Territorial Delegates should be elected for the same term as members from the States. The subject was laid on the table till Thursday next.

A communication was received from Samuel Burch, Esq., Principal Clerk in the Office of the Clerk of the House of Representatives, announcing the death of WALTER S. FRANKLIN, Esq., late Clerk of the House.

It was then agreed to proceed forthwith to the election of a Clerk *vice vac.* The following gentlemen were nominated candidates:

By Mr. Bronson, Edw. Livingston, of N. York; Mr. Corwin, M. St. Clair Clarke, of the District of Columbia; Mr. Dring, Hugh A. Garland, of Virginia; Mr. Sargent, Samuel Schock, Jr. Pennsylvania; Mr. Wagner, Henry Buehler, of Ohio; Mr. Clark, Reuben M. Whitney, of D. C.; Mr. Milligan, Amold Naudain, of Delaware; Mr. Papp, James H. Birch, of Missouri; Messrs. Hanson, Corwin, Dring, Sargent and Wagner were appointed tellers to superintend the election. On the first ballot the result was as follows, 106 being necessary for a choice: Mr. Clarke had received 55 votes; Garland, 48; Livingston, 31; Schock, 21; Naudain, 20; Buehler, 16; Birch 9; Bigler 8; Whitney, 2.

On the second count there were for Mr. Clarke, 88 votes; Garland, 59; Livingston, 26; Schock, 13; Buehler, 13; Bigler, 6.

On proceeding to a third count, Messrs. Bigler, Livingston, Buehler, Naudain and Schock were respectively withdrawn, leaving only Messrs. Clarke and Garland as candidates in nomination.

The whole number of votes given was 210; necessary to a choice, 106; of which, Hugh A. Garland received 106, and Matthew St. Clair Clarke 104.

Mr. Garland was thereupon declared duly elected. The house soon after adjourned.

NAVAL.—The U. S. ship Levant, H. Paulding commander, arrived at Pensacola on the 15th ult. The sloop of war Vandalia, Commodore Dallas, arrived the same day from Vera Cruz. Captain Joseph Smoot had reached Pensacola, to take command of the Erie.

SHOCKING.—On Thursday afternoon, a daughter of the Rev. Ebenezer Gay, of Bridgewater, Mass., about nine years old, was so dreadfully burnt by her clothes taking fire, that she survived but a few hours.

THE NEW CONSTITUTION.—Memorials to the Legislature are in circulation, for signatures, asking for an investigation of the votes for and against the new Constitution, and expressing the belief that many thousands of illegal votes had been polled; especially in the Western countries.