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Poetry.

For the Middlebury Register.

Mr. Editor—The subjoined epistle I received some years since, from my highly esteemed friend and correspondent, Periwoo, in reply to one from myself, which was honored with a place in your columns. I placed it on file, as I do all valued communications, not thinking of exposing it to the public eye. But the tendency of things in our day, or as politicians say, "the exigencies of the times," seem to me to require, that so apposite instructions, from so high a source, should not be lost to the community. I therefore commit the letter to your disposal. As you are an editor, and of course wiser than I, you will act rightly.

Very respectfully, College Mace.

Burlington, March 1854.

Periwoo to College Mace.

Dear Mace! a month or two ago,
Perhaps 'twas three, or four, or so,
A letter I received from you,
Addressed to me as "Pollivog."

My name's unusual—I do't that's not rare,
A[illegible]
[illegible]
Wiggle waggle, waggle wiggle.

[illegible]
[illegible]
[illegible]
Wiggle waggle, waggle wiggle.

[illegible]
[illegible]
[illegible]
Wiggle waggle, waggle wiggle.

[illegible]
[illegible]
[illegible]
Wiggle waggle, waggle wiggle.

Born [illegible] of the great—
The great, both in the church and state,
And on their smile doth hang his fate,
Wiggle waggle, waggle wiggle!

The lawyer, with his wit and lore,
Is ever crying, "give me more,"
And, mid his well replenished store—
Wiggle waggle, waggle wiggle!

He seeks a client full of pelf,
Then fleeces well the luckless elf,
To feed and clothe his own dear self.
Wiggle waggle, waggle wiggle!

The doctor with his puke and pill,
And antidotes for every ill,
Contrives his ample purse to fill,
Wiggle waggle, waggle wiggle!

The trader, too, to get his price
About the truth not over nice,
His gains will pocket in a trice,
Wiggle waggle, waggle wiggle!

The belle, to catch a favorite swain,
Will wiggle, twist, and twirl again,
Enough to turn the stoutest brain—
Wiggle waggle, waggle wiggle!

The politician, O how true!
Though strange it may appear to you,
His course doth wiggle through and through;
Wiggle waggle, waggle wiggle!

Of all this tribe I've chanced to see,
Or who have e'er consulted me,
None can like brother E. —— ——,
Wiggle waggle, waggle wiggle!

To-day he wiggles for the slave,
To-morrow wiggles 'gainst the slave,
In politics, a wiggling knave—
Wiggle waggle, waggle wiggle!

Dear Maul! my letter now is done,
Pen'd in sobriety, not fun.
Adieu to you, and every one,
Wiggle waggle! Periwoo.

Quagmire East, 18—.

A Hard Hit.—Some years ago, Roger M. Sherman, and Perry Smith, of Connecticut, were opposed to each other, as advocates in an important case before a court of justice. Smith opened the case with a violent and foolish tirade against Mr Sherman's political character. Sherman rose in a composed manner and remarked:

"I shall not discuss politics before this court, but I am perfectly willing to argue questions of law, to chop logic, or even to split hairs with him."

"Split that, then," said Smith, at the same time pulling out a short rough looking hair, from his head, and handing it over to Sherman.

"May it please the honorable court, retorted Sherman, sarcastically, "I didn't say bristles."

☞ It was a remark of the celebrated Cuvier that "mankind is composed of hammers and anvils, and that it is much better to be a hammer than an anvil."

Miscellany.

Allegri's Miserere.

Gregorio Allegri, who appears to have been a dignitary of the church he long styled the reverend, was a native of Rome; the precise date of his birth is unknown, but facts have taken place within the latter end of the seventeenth century or the beginning of the eighteenth, he was admitted into the Pope's chapel in 1629 as a contralto. He was of the family of Correggio, the celebrated painter, who also bore the name of Allegri; and received his musical education from the famous Nanini, who was contemporary with Palestrina. His vocal abilities were not of a first-rate order, but he was accounted an admirable master of harmony; joined to this, he bore an excellent character for benevolence;—it is said his door was daily crowded by the poor and needy, who never went unrelieved; besides which, he made a practice of visiting the prisons, in order to bestow his alms on distressed and deserving objects.

Among the compositions of Allegri, (which were chiefly confined to the church) is the celebrated *Miserere*, performed in the Sistine Chapel at Rome, on the Wednesday and Friday in Passion week, being, for its excellence, reserved for the most solemn occasions. This *Miserere* is composed in five parts, viz 1st and 2d soprano, alto, tenor and bass, and is written in the key of G minor.—In construction it is of great simplicity, and its appearance does not convey any great intelligence of the wonderful impression made by it, when performed in the Pope's chapel.

The author of a "Tour in Germany," thus relates the manner in which it is performed at Rome, during the solemnities of Lent.

"Allegri's famed *Miserere*, as sung at the Sistine Chapel at Rome, during Easter, justifies the belief that, for purposes of devotion, the unaided human voice is the most impressive of all instruments. If such a choir as that of his holiness could always be commanded, the organ itself might be dispensed with. This, however, is no fair sample of the powers of vocal sacred music; and those who are most alive to the 'concord of human sounds,' forget that, in the mixture of feeling produced by a scene so imposing as the Sistine Chapel presents on such an occasion, it is difficult to attribute to the music only its own share in the overwhelming effect. The Christian world is in mourning; the throne of the Pontiff stripped of all its honors, and uncovered of its royal canopy, is degraded to the simple elbow-chair of an aged priest. The Pontiff himself, and the congregated dignitaries of the church, divested of all earthly pomp, kneel before the cross in the unostentatious garb of their religious orders. As evening sinks, and the tapers are extinguished one after another, at different stages of the service, the fading light falls dimmer and dimmer on the reverend figures. The prophets and saints of Michael Angelo look down from the ceiling on the pious worshippers beneath; while the living figures of his Last Judgment in every curious of infernal suffering and celestial enjoyment, gradually vanish in the gathering shade, as if the scene of horror had already begun on the one, and the other had gathered the darkness of earth for a higher world. Is it wonderful that, in such circumstances, such music as that famed *Miserere*, sung by such a choir, should shake the soul even of a Calvinist?

Although the harmony of this celebrated composition is pure and (for the time it was written) bearing a considerable share of ingenuity and a peculiar kind of beauty, yet it owes its reputation more to the theatrical manner of performance than to the composition itself. The same music is many times repeated to different words, and the singers have, by tradition, certain customs and expressions which produce wonderful effects—such as swelling or diminishing the sounds at some particular words, and singing entire verses quicker than others. Some of the greatest effects produced by this piece, may perhaps be attributed to the time, place, and solemnity of the ceremonies. The Pope and conclave are all prostrated to the ground, the candles of the chapel and the torches of the balustrades are extinguished one by one, and the last verse of the Psalm is terminated by two choirs, and the chapel master beating time slower and slower, and the singers diminishing the harmony by little and little to a perfect point, followed by a profound silence.

The *Miserere* is the 51st Psalm, whence Allegri has selected part of the 1st, and the whole of 2d, 4th, 6th, 8th, 10th, 12th, 15th, and 18th verses, and concludes with part of the 19th. So sacred was this composition at one time held by the Church, that the penalty of a copy was almost tantamount to excommunication; the thunders of the Vatican being hurled against the miserable wretch who dared to disregard its dictates. Padre Martini states, that there were never more than three copies made by authority—one for the Emperor Leopold, another for the King of Portugal, and the third for himself. Respecting the former, the following anecdote is narrated:—

"The Emperor Leopold the First, not only a lover and patron of music, but a good composer himself, ordered his ambassador to Rome, to entreat the Pope to permit him to have a copy of the celebrated *Miserere* of Allegri, for the use of the Imperial Chapel at Vienna; which being granted, a copy was made by the Signor Maestro of the Pope's Chapel, and sent to the Emperor, who had then in his service some of the best singers of the age; but notwithstanding the abilities of the performers, the composition was so far from answering the expectations of the Emperor and his Court, in the execution, that he concluded the Pope's *Maestro di Capella*, in order to keep it a mystery, had put a trick upon him, and sent him another composition.

"Upon which, in great wrath, he sent an express to His Holiness, with a complaint against the *Maestro di Capella*, which occasioned his immediate disgrace and dismissal from the service of the Papal chapel; and in so great a degree was the Pope offended at the supposed imposition of his composer, that, for a long time, he would neither see him nor hear his defence; however, at length the poor man got one of the Cardinals to plead his cause and to acquaint His Holiness that the style of singing in his chapel, particularly in performing the *Miserere*, was such as could not be expressed by notes, nor taught or transmitted to another place but by examples, for which reason the piece in question, though faithfully transcribed, must fail in its effect when performed elsewhere.

"His Holiness did not understand music, and could hardly comprehend how the same notes should sound so different ly in different places; however he ordered his *Maestro di Capella* to write down his defence, in order to send it to Vienna, which was done; and the Emperor, seeing no other way of gratifying his wishes with respect to this composition, begged of the Pope, that some of the musicians in the service of His Holiness might be sent to Vienna to instruct those in the service of his chapel how to perform the *Miserere* of Allegri."

It is well known that the powers of Mozart's memory were truly astonishing; and the manner in which he obtained a copy of the *Miserere* is highly characteristic and amusing.

When in his fourteenth year, Mozart travelled with his father to Rome, and was invited by the Pope to the Quirinal Palace. This happened just before Easter. While in conversation with His Holiness he solicited a copy of the *Miserere*; but was refused, in consequence of the prohibition. He then asked permission to attend the only rehearsal, to which he listened with the utmost attention. On quitting the chapel, Mozart spoke not a word, but hastened home and wrote down the notes. At the public performance, he brought his manuscript carefully concealed in his hat, and having filled up some omissions and corrected some errors in the inner parts, had the satisfaction of knowing that he possessed a complete copy of the treasure thus jealously guarded.—When afterwards this manuscript was compared with the one sent by Pope Pius the Sixth to the Emperor of Germany, there was not found the difference of a single note.

Although Allegri set many parts of the church service with divine simplicity and purity of harmony, yet there does not appear to be a single composition of his, save the *Miserere*, which has withstood the ravages of time. As while he lived he was much beloved, so when he died was he deeply lamented. His death occurred on the 18th of February, 1752, and he was buried in the Chiesa Nuova, before the chapel of St. Philippo Neri, the place of interment for the singers of the Pontifical Chapel, upon the wall of which is engraved the following epitaph:

CANTORES PONTIFICII
NE QUOS VIVOS
CONCORS MELODIA
JUNXIT
MORTUOS CORPORIS
DISCORS RESOLUTIO
DISSOLVERIT
HIC UNA CONG
VOLUERE.
ANNO 1640

—*Musical World.*

Riches and Romance.

A Washington correspondent of the Times narrates a little romance of real life, which results in great good fortune to the wife of Senator Gwin, of California. It is a long story, but the truth of it all is this: The first husband of Mrs. Gwin, a Mr. Logan, was a wealthy mercantile operator, in Texas, who died suddenly, leaving no will. The lands and property of the deceased were all sold, but the widow received little or none of the proceeds. The widow of Mr. Logan, satisfied that she had been wronged, thought of instituting a suit at law for the recovery of her share of the property—but owing to the unsettled condition of Texas at that time, and the presumed difficulty of getting an honest adjudication of the case, the matter was never followed up. Time rolled on, Mrs. Logan became Mrs. Gwin. Some time since an anonymous letter was received by Mr. Gwin, informing him that under a recent division of the Supreme Court of Texas, Mrs. Gwin's title to a very large tract of valuable land lying in Texas, (part of the aforesaid Logan estate,) was clearly established. And on making the proper inquiry, it turns out to be true. The lands in question are not less than 50,000 acres in extent, and it is believed they are quite 200,000, most advantageously located, covered with settlers, and worth from $2 to $20 per acre. But the queerest part of the story remains to be told. We give it in the Times writer's own words:

"Upon inquiry, Dr. Gwin became satisfied that the author of the anonymous letter calling his attention to the right of his wife to this estate, was Richard P. Robinson, of Helen Jewett memory, who, as is well known to many persons, settled in Texas years ago, where he is a respectable and wealthy farmer, enjoying the confidence and respect of the community where he resides. He insists upon it that many years ago, when he was an outcast from the world, which pursued him with scoffings and denunciations, Dr. Gwin, then residing in Mississippi, took him by the hand, and by his counsel and aid taught him to hope.—By a singular coincidence, the lady who is now Mr. Robinson's wife was also indebted to Mrs. Gwin for kindness manifested towards her, when in trouble, years ago. The doctor I understand has no recollection of the circumstances related by Mr. Robinson; but his good deed was not forgotten. The germ of hope implanted by it in the breast of the disheartened outcast has ripened into the fairest fruit. The outcast has become a man among men again; and neither he nor the partner of his life forgot their benefactors. In the prosecution of investigations of their own interests, they became cognizant of the fact that Mrs. Gwin was entitled to the property in question, and adopted the modest mode of promoting her interests already stated."

Eloquent Extracts.

The following authentic illustrations of Southern eloquence we cut from the New Orleans *Crescent*:

In South Carolina, Mr. Eaves, of Chester, was the delight of all the reporters, or (as they may be called) makers of other people's eloquence. Mr. E. was remarkable for his diminutive person, his superlative style of speech, and the fiery valor in which he blazed out, upon all occasions. He was, perhaps, the small original hint of the much subsequent chivalry. At any rate, he stood supreme in all that magniloquence, for which people of pigmean stature often have a huge propensity. We remember two remarkable samples of the tropes in which he indulged.

Upon some occasion when Hugh Legare had made one of his magnificent harangues, Eaves, who was just the Tom Thumb to match himself with a giant, rose, and began his reply as follows:—Mr. Speaker! I will not, like the learned gentleman from Charleston, launch my tiny bark, to scale the walls of Rome, or to invade the ramparts of Italy!"

This flight is perfectly authentic. Another, at the bar—for he was a very successful lawyer—is equally well attested. It was in an action for trepass where damages were claimed for the defendant's cutting down and carrying off certain of the plaintiff's timber. In stating his case, Counsellor Eaves, with his usual pomp, began thus: "Gentlemen of the Jury! The abandoned individual arraigned before you, came, as you perceive, to my client, with the cloak of hypocrisy in his mouth and feloniously picked his pocket of sundry oak trees!"

A Walk in the Arctic Regions.—Dr. Kane thus sketches a morning's walk in the regions of ice:—

"Now let us start out upon a walk, clothed in well fashioned Arctic costume. The thermometer is, say 25 deg., not lower, and the wind blowing a royal breeze, but gently. Close the lips for the first minute or two, and admit the air suspiciously through the nostril and mustache. Presently you breathe in a dry, pungent, but gracious and agreeable atmosphere. The beard, eyebrows, eyelashes, and the downy pubescence of the ears acquire a delicate, white, and perfectly enveloping cover of venerable hoar frost. The mustache and under lip form pendulous beads of dangling ice. Put out your tongue and it instantly freezes to this ice crusting, and a rapid effort and some hand aid will be required to liberate it. The less you talk the better. Your chin has a trick of freezing to your upper jaw by the lining aid of your beard; even my eyes have often been so glued, as to show that a wink may be unsafe. As you walk on you find that the iron-work of your guns begins to penetrate through two coats of woolen mittens, with a sensation like hot water. But we have been supposing you back to the wind, and if you are a good Arcticised subject a warm glow has already been followed by a profuse sweat.

"Now turn about and face the wind! what a change! how the atmospheres are waited off! how penetratingly the coal trickles down your neck, and in at your pockets! Whew! a jack-knife, heretofore, like Bob Sawyer's apple, "unpleasantly warm" in the breeches pocket, has changed to something as cold as ice and hot as fire. make your way back to the ship! I was once caught three miles off with a freshening wind, and at one time feared that I would hardly see the brig again. Morton, who accompanied me, had his cheeks frozen, and I felt that lethargic numbness mentioned in story books. I will tell you what this feels like, for I have been twice "caught out." Sleepiness is not the sensation. Have you ever received the shocks of a magneto-electric machine, and had the peculiar benumbing sensation of "can't let go," extending up to your elbow joints? Deprive this of its paroxysmal character; subdue, but diffuse it over every part of the system, and you have the so called pleasurable feelings of incipient freezing. It seems even to extend to your brain. Its inertia is augmented; every thing about you seems of a ponderous sort; and the whole amount of pleasure is in gratifying the disposition to remain at rest, and sparing yourself an encounter with these latent resistances. This is, I suppose, the pleasurable sleepiness of the story books."

An odd Speculation.—A gentleman—Mr. Harrington—has revived, in a lecture which he has been delivering, the discussion as to the fate of Sir John Franklin and his expedition, insisting that the compass needle indicates that large quantities of electricity are continually travelling towards the poles; that, being condensed, combustion ensues there; and that they are the two hottest portions of the globe. He maintains that this is indicated by the loud cracking noises heard in these regions, and the *aurora borealis*, as well as by a current of water from the north. He insists that there must be a temperate climate between the ice-bound quarter and the fire at the pole, and that it is said that animals in the polar regions migrate to the north during the winter. He contends that Sir John Franklin may be in a genial climate, but that without fuel and steam he may be unable to return, on account of a constant wind rushing towards the pole to feed the fire.—*London Times.*

☞ The eater of the common green lettuce, as a salad, takes a portion of lactuarium, a narcotic substance similar in properties to opium, which it contains; and any one will discover that his head is affected after indulging freely in a lettuce salad. Eaten at night, it causes sleep; eaten during the day, it soothes, calms, and allays the tendency to nervous irritability.

SPEECH OF HON. SOLOMON FOOT,

On the right of the Hon. S. S. Phelps to a seat in the Senate.

Mr. President, at this stage of the debate, and especially after the able speech of the honorable Senator from Indiana, [Mr. Pettit,] who opened this discussion, and after the very able and elaborate speech of my colleague in vindication of his right to a seat here, and in full response to all the points which have thus far been urged against his right, it will hardly be expected of me that I should attempt more than a sort of general summary or recapitulation of the argument, or some portions of it, upon the affirmative side of the proposition before us. Anticipating that this question would come before the Senate, I took occasion, in the early part of the session, to examine the subject with some degree of care. I looked through all the precedents, and read the debates upon the several cases, so far as they have been reported and published. The result of that examination was a confirmed conviction that my colleague was entitled to his seat; that my State was entitled to his services here as one of her Senators. I expressed that opinion to many of my associates of the Senate. Occupying the position I do; representing the State most directly interested in the result of this question, I deem it not out of place, although it may be unavailing, to express to the Senate the general views I entertain upon the question before us, and which have led to the conclusion at which my own judgment has arrived.

I need not say that the question raised in this case, aside from its general bearing and importance, is one of immediate and special interest to the State I represent. An adverse decision leaves the State without is full and equal suffrage in the Senate of the United States, at least during its present session, as a regular session of the Legislature of Vermont does not again convene until the second Thursday of October next. The question is one of construction, not an issue of fact. Its decision is entirely dependent upon the construction of a constitutional provision as applicable to the state of facts existing in the case presented—facts about which there can be no controversy as they are all of public record and of public noteriety, of which the Senate will take notice, and act upon judicially without proof *aliunde*.

The circumstances of the case, and out of which the question arises, are briefly these. The Hon. William Upham, a Senator from Vermont, died in the month of January, at the last session of Congress, and during the recess of the Legislature of that State, leaving vacant the residue of his constitutional term which runs to the fourth day of March, A. D. 1855. Congress being then in session, the Governor of the State, in the exercise of his constitutional power and duty, immediately made a "temporary appointment" of a Senator to the seat which had been thus presidentially vacated. That appointment was conferred upon the eminent citizen whose right to the seat is now in question; who was thereupon sworn and admitted to a seat upon this floor, which he occupied during the remainder of that session, and during the called Executive session of the present Senate which immediately followed. Since that time the regular annual session of the Vermont Legislature has been held, having convened agreeably to the requirement of the State constitution on the second Thursday of October last, and adjourned on the seventh day of the succeeding month of December, without having made an election of Senator to fill the vacancy which had happened by the decease of Mr. Upham.

These are the facts of the case, and they present this question directly to the Senate and for the first time: What is the effect of the failure of the intervening session of the Legislature to fill that vacancy by an election of a Senator, upon the subsisting Executive appointment? My answer is embraced in this general proposition, which covers the whole ground, that an Executive appointed holds to the end of the constitutional term, unless superseded by a legislative election. The correctness of this proposition it is my purpose to endeavor to establish.

The constitutional provisions which relate to the Senate of the United States are contained in the third section of the first article of that instrument; and so much as is material to the point now under consideration, is in these words:

"The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years, and each Senator shall have one vote."

This is the first clause of the section. The next clause, after providing for the classification of Senators, concludes in these words, and which have been repeatedly cited:

"If vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies."

It will be observed, that by the first clause of this section, the sole and exclusive authority to elect Senators, in the first instance, or, in other words, to make an original election, is conferred upon the Legislature. No authority is conferred upon the Executive, in any contingency, to make the original appointment of Senator. In the event, therefore, of the failure of a State Legislature to make an original election at the proper time, a vacancy must ensue, as there is no secondary or provisional authority vested in the Executive or other other agent to make appointments of Senators to succeed the expiration of a constitutional term. There have been at the present session three instances of vacancies in this body in consequence of the failure of the State Legislature to fill them at the appointed time, by original election. These were from Maine, North Carolina, and Mississippi, two of which, we rejoice to say, have recently been filled by legislative elections. There being no secondary authority lodged by the Constitution in the Executive or elsewhere to fill vacancies ensuing the expiration of a term, or even to make temporary appointments to them, it is conceded they must remain unoccupied until, by the exercise of the primary appointing power—the legislative power—election shall be made to fill them.

But it is the latter clause of the section which more directly applies to the case in hand. The framers of the Constitution foreseeing that vacancies in the Senate would be likely to happen from incidental causes, as by death, resignation, &c., which could not be provided against nor anticipated by the Legislature, conferred a provisional or secondary power upon another party to wit: the Executive, to act in the absence of the primary authority, the Legislature. So they provided, that,

"If vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature."

The manifest object and purpose of this provision is to enable the States, at all times, to keep their senatorial representation full, without incurring the inconvenience, the expense, and delay of convening the Legislature in special session to fill these incidental vacancies.

In the case we are now considering, the vacancy happened during the recess of the Legislature. The Executive, then, had authority to make a temporary appointment. It happened while Congress was in session; there was occasion then for the exercise of that authority. The appointment was made. It was a valid, it was a constitutional appointment. The person appointed was clothed with all the constitutional powers, rights, privileges, and immunities, as fully as though he had received his commission under the authority of a legislative election. Now, the question recurs, what is the constitutional limitation of that appointment? Or, in broader terms, if you please, what is the tenure of an Executive appointment? It will not be disputed, that if no legislative session intervene it runs to the end of the constitutional term, as in a recent Georgia case. Mr Charlton, whose recent death we have been pained to learn, was appointed by the Executive of that State to the vacancy which had happened by the resignation of Mr. Berrien; and no legislative session intervening, he held to the end of the term. The Executive appointment in such cases literally and technically *fills* the vacancy, or, in different phraseology, fills the broken term, as completely as a legislative election. But if a legislative session intervene—what then? Why, if they make an election, that supersedes and puts an end to the temporary appointment, we all concede. But if the Legislature adjourn, without making an election—what then? What effect has it upon the temporary appointment? None whatever, I insist, and the temporary appointee continues to hold the office.

This whole question, I apprehend, turns upon the application of the words of limitation in the clause, "until the next meeting of the Legislature." I am aware that the general impression has been upon the first glance, that these words applied to the appointments, that they limited the appointments, the tenure of the office, to the "next meeting of the Legislature," and such is the form of many of the commissions which have been brought here under Executive appointments. And the discussions which have occasionally arisen upon this clause of the Constitution have turned, not so much upon the proper reference of the restrictive words, as upon the import of the word "meeting" in that connection, which I will define presently, according to my view of its true interpretation.—But, I apprehend, that upon a more careful and critical examination, no one can fail to be satisfied that these words of limitation in the Constitution apply exclusively to the appointing power, and not to the tenure of the appointment.—The Constitution, and not the Executive, controls the tenure of his appointments. "The Executive may make temporary appointments." When? Only when vacancies happen during the *recess*, most certainly. How often may he make "temporary appointments?" Just so often, clearly, as vacancies may happen during the *recess*. He may make not only a single appointment, but a succession of appointments, in case of successive vacancies happening during the recess. How long may he continue to make "temporary appointments," in case of vacancies happening in the recess? Until the next meeting of the Legislature," and no longer, evidently, for you would otherwise bring the two separate and distinct appointing agencies into conflict. Why is the Executive authority limited to vacancies happening in the *recess*? Because, when they happen during the *session*, the primary and principal authority is then in a capacity or condition to act, and to fill the vacancy. For the same reason, the Executive has no authority to make appointments to vacancies happening during the *recess* even, unless he exercise it before the "next meeting of the Legislature." The secondary authority is restricted to the absence of the primary. It is restricted to the period of time between the adjournment of one legislative session and the meeting of the next. While the Legislature is in session, from its "meeting" or commencement to its close, it is in a condition to act; and being the primary authority, it necessarily suspends the secondary authority. Will anybody pretend that the Executive authority extends beyond the "next meeting of the Legislature?" I venture to say not—What, then, is the import of the word "meeting," in that connection? Most clearly it signifies the convening, the coming together, the very commencement or organization of the legislative session.—To give it the interpretation which has been often claimed for it as synonymous with *session*, and comprehending the whole period of the legislative term as a unit, *punctum temporis*, a point of time, you carry the Executive authority along with it through the whole session; for that authority being limited to the "next meeting," if "meeting" means the session, and the whole session, then the Executive authority runs *pari passu* through the whole session—a position which, I presume, nobody is quite prepared to admit, much less to defend.

This interpretation is corroborated by the use of the word *meeting* in two other instances in the same article. In the third clause of the first section it is used in the following sentence:

"The actual enumeration shall be made within three years after the first *meeting* of the Congress of the United States."

And in the second clause of the fourth section of this article it is used in this connection:

"The Congress shall assemble at least once in every year, and such *meeting* shall be on the first Monday in December, &c."

In both these connections it is most clear that the term *meeting* is used as signifying the assembling, the coming together of the Congress, and not as synonymous with session. It would, indeed, be absurd to say of the Congress "it shall assemble every year, and such *session* shall be on the first Monday in December."

On the other hand, the word session is employed in three instances in the same article, and clearly as signifying the period of a term of Congress, each term being subdivided into two parts or sessions. In the fourth clause of the fifth section is this provision:

"Neither House, during the *session* of Congress, shall, without the consent of the other, adjourn for more than three days."

Again, in the first clause of the sixth section it is provided, that

"Senators and Representatives shall, in all cases, except, &c., be privileged from arrest during their attendance at the *session* of their respective Houses."

And again, in the third clause of the second section, it declares, that

"The President shall have power to fill up all vacancies, &c., by granting commissions, which shall expire at the end of their next *session*."

In every instance wherein the terms *meeting* and *session* are employed in the Constitution, they are used in entirely distinct and different senses—the one signifying the assembling or convening together of the legislative body, and the other as signifying and comprehending the duration of its term.

It appears to me to be very clear that the restrictive words in this clause of the Constitution have exclusive reference to, and limit the appointing power, and not the tenure of the appointment. If I am right in this view, then there is no limitation upon an Executive appointment, by any words, expressed or implied, that can be drawn from the Constitution, short of the expiration of the term, unless it be superseded by a legislative election. It is called a "temporary appointment," because of its indefinite and uncertain tenure, from its liability to be terminated by legislative action; and even when it runs to the end of the term, as when no Legislature intervenes, it is still called "temporary." The only limitation imposed upon it short of the expiration of the term is, that it is subject to be terminated by the intervening action of the primary power. It will be conceded that the "temporary appointment" continues to the end of the term, unless the primary power meanwhile comes into a condition or capacity to act. If while in that condition it does act by making an election, it is admitted on all hands, that it puts an end to the "temporary appointment." But what if the Legislature fail to elect? How does it affect the subsisting "temporary appointment?—Why should it arrest that? The very act which puts an end to a "temporary appointment" is wanting. It requires the positive act of an election to put an end to it; and if there be no election, does that want of action produce the same effect upon the "temporary appointment" as an actual election, by putting an end to it? Does a failure to elect effect the same result in that regard as an actual election? I confess it strikes me very differently. I would rather say that the practical *inability* of the Legislature, from disagreement or other cause, to make election while in session, was just as ineffectual to terminate a "temporary appointment" as the practical *incapacity* of the Legislature to make an election while not in session.

If it be claimed that when the Legislature, with whom is lodged the primary and original power, shall fail to exercise it by electing a Senator, when the duty devolves upon them, the Executive cannot afterwards come in and supply the omission, I agree to that position fully, and for the reason that the Constitution confers no authority upon him to act in such cases. I agree that if vacancies happen during the *sitting* of the Legislature, and they fail to "fill such vacancies," the Executive has no authority to make appointments to them. And I agree, further, that if vacancies happen during the *recess* of the Legislature, and the Executive omits to make appointments to them until the "next meeting of the Legislature," he cannot thereafter make appointments to "such vacancies," even though the Legislature should fail to fill them; and the reason is clearly that his authority ceases with the convening of the Legislature. The secondary authority then yields to the primary, and cannot be resumed, even though the antecedent vacancy remain unfilled by the action of the Legislature. When the Legislature have had the opportunity to perform the duty enjoined upon them by the Constitution of electing a Senator, either originally or to fill an existing vacancy, and yet fail to perform that duty, there is no authority conferred upon the Executive to meet the contingency by supplying the omission. And that is the full extent of the decisions in the case of Mr Johns, of Delaware, in 1801, and in the case of Lanman, of Connecticut, in 1825, both of whose appointments were overruled by the Senate. And since those decisions, I am not aware that any Executive has attempted to assume the exercise of authority in such instances. So is this case, if no Executive appointment had been made before the meeting of the Legislature, and the Legislature having failed to fill the vacancy when it had the opportunity, the vacancy must have continued until filled by the subsequent action of the Legislature, or until it expired by its own limitation. But *non constat* that an Executive appointment, previously and constitutionally made, and still subsisting, shall cease, or be in any manner affected by such failure of action or omission of duty on the part of the Legislature. The Legislature, when in a condition to act, we admit, has the exclusive jurisdiction of the election, and consequently suspends the provisional power; but its operation upon an appointment previously and duly made, I respectfully submit, depends upon the *exertion* and not upon the mere *existence* of the superior power. Indeed, strictly speaking, the legislative power is a continually existing power, though its condition for exertion is only occasional. When that power is not exerted, though in a capacity for exertion, it is as inoperative upon the act of the Executive as its passiveness when not in a capacity for exertion.

Let us take another view. Suppose the concluding words of the clause "shall then fill such vacancies" which, for the purposes of this argument, we will regard as mandatory upon the Legislature, had been omitted. That would have left the exclusive power with the Legislature, where it now is, to fill vacancies happening during its *sessions*; and with the Executive to fill vacancies happening during the *recess*; and his appointments in that case would unquestionably run to the end of the constitutional term, without regard to an intervening Legislature. How are his appointments any more or otherwise affected when the mandate is in force, but not obeyed? Or, suppose the direction to the Legislature to "fill such vacancies" had left it discretionary with them to "fill the vacancies" or not, as they should think best; and in the exercise of that discretion, they should deem it best not to fill the vacancy in a particular case? Would that discretionary omission to act arrest a subsisting "temporary appointment?" Or would it still continue? Undoubtedly it would continue. How then, tell me, does the neglect or refusal of the Legislature to execute a mandatory order, any more than would their omission to execute a discretionary order, affect the "temporary appointment?" In either case, the very act is wanting which is necessary to arrest and supersede that appointment.

Again: It has been insisted in argument that the "temporary appointment" ceases with the authority which conferred it. According to this theory, the appointment must cease at the very opening, the commencement of the next legislative session; for, beyond all dispute or cavil, that is the limit of the Executive authority. But this construction is opposed to the uniform usage of the Senate for more than forty years. From the time of the case of Mr. Smith, of Maryland, in 1803, to the case of Mr. Winthrop, of Massachusetts, in 1851, and even to the case of Mr. Cathcart, of Indiana, at the last session of Congress, Senators holding under Executive appointments, have been allowed, not merely without question of their right, but by the deliberate and expressed judgment of the Senate, to retain their seats here for weeks and for months after the commencement of the next Legislature, and consequently for weeks and for months after the specific authority which conferred the appointments had ceased. It is enough to say that this theory is inconsistent with the long and settled usage of the Senate. Besides, if it be insisted, as it not unfrequently has been, that the words of limitation apply both to the power and to the appointment, you are then met with this difficulty. The same identical words which apply to the one apply also to the other; and it is clear, beyond all doubt or controversy, that the power ceases at the moment of the meeting of the Legislature; but, by a practical construction too long settled and acquiesced in, established by precedents too often repeated, and too numerous now to treat it as an open question, the appointment runs beyond that period of time and, consequently, beyond the limit of the appointing power. The same words, in the same connection, cannot be applied in a restricted sense to the power, and in a latitudinous sense to the appointment. The theory furnishes but another exemplification of the *argumentum ad absurdum*.

If the fact of the superior authority, the Legislature, coming into a condition to act and to discharge its constitutional functions and duties, *ipso facto*, suspends or annuls the provisional appointment, as the minority of your committee seem to think, then it must do so at the instant of its organization, for at that moment it has assumed its full capacity to act. By what rule of logic, of reason, or analogy, then, may the provisional appointment hold until the superior authority is itself suspended by adjournment of the Legislature, and no longer? This theory must fall, or your precedents are all wrong. To maintain the one is to overrule the other. I invite to the task the logical powers of any man, of any Senator, to reconcile the settled practice of the Senate with the theory that the tenure of the provisional appointment is limited to, and terminated by, the "next meeting of the Legislature."

Again, Mr. President, if the word "meeting," as used in this connection, signifies the opening or beginning of the session, as it manifestly does, then, whenever you have allowed Senators under "temporary appointment" to hold their seats here after the "next meeting of the Legislature," and until they were actually superseded by an election by that Legislature, as you have uniformly done these forty years, you have so far forth given a practical recognition of the construction I contend for, that "temporary appointments" continue until superseded by an actual election; and thus, virtually, if there be no election, that they continue to the end of the constitutional term. One of these events must occur to terminate them. I say, then, that the expiration of the term, or the interposition of a legislative election, is the only limitation upon an Executive appointment constitutionally made; and you have not the authority of an adjudged case upon your Journals adverse to this proposition. These "temporary appointments," by their terms, and from their nature, are not, and cannot be, and were never intended to be, subject, to the law of a fixed limitation. They are analogous to the ordinary cases of *pro tempore* appointments which hold until superseded by the possession of the