THE ELECTORAL COUNT BILL.

It is difficult to realize that it has required a discussion of eighty-six years' duration to secure the passage, by both houses of Congress, of a simple law regulating the official counting by those houses of the Presidential vote. Yet such is the fact The need of such a law was felt early in the history of the Government, and the first electoral-count bill was introduced by Senator Ross of Pennsylvania in the year 1800. It provided for a committee of six Senators, six Representatives, and the Chief Justice, who should decide all disputed returns. It will be seen that this was the germ of the Electoral Commission of 1876. The bill passed the Senate, but was so amended by the House that the Senate refused to concur, and it failed between the two. A second attempt was made by Mr. Van Buren in the Senate in 1824. His bill provided that if a return were objected to, it should be counted unless the two houses, voting separately, concurred in rejecting it. The bill passed the Senate, but it was not acted upon by the House.

In 1875 Senator Morton introduced a bill which provided that, if objection were made to any return, it should be counted unless it was rejected by the concurrent vote of both houses, and that, in case of double returns, that one should be counted which the two houses acting separately should declare to be the true one. In case of failure of the two houses to agree, the vote of the State would be lost. This bill passed the Senate by a party vote, the Democrats voting in the negative. A motion to reconsider was entered, but never finally disposed of. When the controversy of 1876 began over the Hayes and Tilden votes, the Democrats discovered all too late that, if they had passed the Morton bill, nothing could have prevented their seating Tilden under its provisions. It will be remembered that, in the election of 1876, 184 electoral votes had without question been cast for Tilden, or just one less than a majority of the Electoral College. Of the remaining 185 votes at least 20 were disputed. In three Southern States, Florida, South Carolina, and Louisiana, the Legislatures had directed the popular vote to be counted by returning boards, with plenary powers to cast out the entire vote of any county or parish in which fraud or force had vitiated the election. By exercising this power, the returning boards of Florida and Louisiana had converted an apparent Democratic popular majority into an apparent Republican majority, and given certificates to Republican electors. Double returns were sent to Congress by Democratic and Republican electors from these two States and from South Carolina and Oregon. Under the Morton bill, the votes of nearly all these States would have been lost, for the two houses would have inevitably failed to agree about their acceptance and Tilden would have been seated. Under the twenty-second joint rule, which had prevailed in other counts, he would have been seated also, for under that the Democrats could have thrown out all the doubtful States and thus given their candidates a majority, but the Republican Senate had repealed that rule on January 20 of that year. Under these circumstances the Electoral Commission was created, whose decisions could only be reversed by the concurrent vote of both houses. Its Republican majority decided invariably in favor of Republican electors, and as the House voted to reject its decisions and the Senate voted to accept them, they all stood, and Mr. Hayes was seated.

The Electoral Commission was a makeshift which nobody desired to see become a permanent method for deciding upon disputed returns. In 1878 Senator Edmunds introduced a bill which provided that each State might establish tribunals for the trial of electoral contests, and that their decision should be final; that, if there should be any dispute as to the lawfulness of the State tribunal, or if there should be double returns from a State which had not provided such a tribunal, only those returns should be counted which the two houses, acting separately, should concur in receiving, and that any single return should be counted unless rejected by both. This bill passed the Senate, but was not acted upon by the House. Several attempts have since been made with similar results. The bill which the House has now passed was introduced by Mr. Edmunds in the Senate at the last session, and was passed then by that body.

While the House has made some amendments, the general scope of the bill is the same as it was originally, and there is, therefore, every reason to think that the changes will receive the approval of the Senate. In brief, it provides that in those States where a tribunal has been established for the determination of electoral contests, and such tribunal has decided what electors were duly appointed, the determination of the tribunal shall be conclusive; that when there is but one return from a State, the vote so returned shall be counted; that when there are two or more returns, and the question arises which of two or more State tribunals or authorities is the lawful one, that return shall be counted which the two houses, acting concurrently, shall accept; that when there is one State government and two sets of returns purporting to be the vote of the State, that return shall be counted which is supported by the certificate of the Executive of the State, unless both houses, acting separately, shall concur in deciding that it is not the lawful vote of the State. The purport of the measure is thus summed up by the committee which reported it:

> "The two houses are, by the Constitution, authorized to make the count of the electoral votes. They can only count legal votes, and in doing so must determine from the best evidence to be had what are legal votes; and if they cannot agree upon which are legal votes, then the State which has failed to bring itself under the plain provisions of the bill, and failed to provide for the determination of all questions by her own authorities, will lose her vote. Congress having provided by this bill that the State tribunals may determine what votes are legal coming from that State, and that the two houses shall be bound by this determination, it will be that State's own fault if the matter is left in doubt. The power to determine rests with the two houses, and there is no other constitutional tribunal. Congress prescribes the details of the trial, and what kind of evidence shall be received, and how the final judgment shall be rendered."

This is so clear and simple, and so obviously not only constitutional but in the interest of peaceable and orderly government, that the wonder is we have been so long in reaching it as a solution. It puts an end for ever to electoral disputes and to the great peril to which they subjected our institutions.

THE BANCROFT TREATIES AGAIN.

The President tells us that there has been "much correspondence" with Germany "in relation to the privilege of sojourn of our naturalized citizens of German origin revisiting the land of their birth." This statement is immediately followed by the assurance that our relations with that country have lost nothing of "their accustomed cordiality."

As things stand, this utterance is unexpectedly calm and good-tempered. The correspondence of which the President speaks has turned on the significance of the "two-years clause" in the naturalization treaties of 1868. The clause in question provides that if a naturalized citizen returns to the country of his original allegiance and remains there two years, he shall be deemed to have renounced his naturalization. The dispute as to its interpretation began in 1878, when the Prussian Government expelled a naturalized American of German birth, named Bäumer, a few months after his return to Germany. From that time the controversy seems to have slumbered until 1885, when new expulsions aroused fresh debate. During the past two years the dispute has been incessant. Our State Department has uniformly insisted that the clause in question impliedly guarantees an unmolested residence of two years; the German Foreign Office has uniformly denied our interpretation, and the German Governments have continued to expel naturalized Americans whenever they saw fit. But until recently these expulsions have been the exceptions, and undisturbed residence during the two years the rule. Now all this is changed. The Prussian Ministry has recently instructed the local authorities that naturalized Americans who return within the military age —*i. e.*, before the completion of the thirty-first year—are to be permitted to remain in Germany for "weeks or months" only, or are not to be permitted to remain at all, according to the circumstances of each case. The Saxon Minister of the Interior has issued a similar ordinance, and it is probable that the other German States will follow Prussia's lead.

This is Germany's answer to the American agitation of the last two years. We have protested against exceptional expulsions, basing our protests not on grounds of comity, but on claim of right, and the German Governments decree that expulsion shall be the rule. A more emphatic rebuff could hardly be given to our diplomacy; and it seems at first glance surprising that our diplomacy, speaking through its constitutional chief, the President, should take the rebuff so calmly.

The tone of the President's utterances probably indicates that his advisers have at last convinced themselves that the ground of controversy was ill-chosen. It was ill-chosen. The two-years clause will not bear the construction which our State Department has tried to make it bear. The treaties make certain results dependent upon a two-years' residence, but they

do not guarantee a two-years' residence. They do not give our naturalized citizens any right to live in Germany without the consent of the German Governments. That is a right which native Americans do not possess, and it was the intention of the treaties that our naturalized citizens should be regarded and treated in all respects like native Americans. It was intended that Germans naturalized in America should be regarded by Germany as aliens. But the right to expel aliens is a right of every sovereign government. Comity demands that the expulsion shall not be made without cause, and that the cause shall be made known to the State whose citizen is expelled. The causes are known to us. Germany puts its case substantially as follows:

"The German Empire is situated in the midst of an armed Europe. Three of the greatest military Powers of the Continent edge on its territory. One of these Powers is smarting under the fresh memory of a great defeat, and is preparing with tireless energy and inflexible purpose for a war of revenge. A second Power is ruled by a friendly dynasty, but its people is far from friendly. To maintain its existence, the German Empire must arm itself to the teeth. It must demand from every German that he sacrifice several of the best years of his life in training himself for war, and that he sacrifice life itself, if need be, when war comes. Germany does not demand that aliens shall enter its army, but it does demand that no one who is really a German—who was born on German soil of German parents, and who wishes to live in Germany—shall be exempted from this universal duty. The German people itself resents such an exemption of any German as a wrong to itself, as a violation of the democratic principle of equality. And when, as often happens, the Germans who return with American naturalization papers make a boast of their exemption, call it 'liberty,' and commiserate or revile those who are doing their duty to the State, as 'serfs' or 'tools of tyranny,' they become intolerable.

"The Bancroft treaties were intended to protect bona-fide Americans of German birth, but not to protect sham Americans. Those Germans who go to America simply to avoid military service at home, and who come home as soon as they have obtained American naturalization papers; who take their five years in America instead of their three years in the German army, but who have no intention of living and dying in that country; who, on the contrary, mean to die in Germany if they can do so without the risk of having to die *for* Germany — those Germans, though they be legally American citizens, are no Americans."

Twenty-two or twenty-three years ago these arguments would have appealed to the American mind more strongly than they do now. During our civil war the United States Government was obliged to resort to conscription. The draft acts made liable to conscription those resident aliens who had declared their intention of becoming American citizens. They were not technically citizens, of course, but (our legislators argued) they were really members of our body social; they had abjured all allegiance to every foreign prince and potentate, and had become "inchoate citizens" of the United States. They could not in honor refuse to aid their adopted country in its peril. To the great disgust of the authors of the act and of the American people, very many of these aliens refused to honor this over-draft upon their loyalty, and appealed for protection to the very potentates whose allegiance they had forsworn. The protection they demanded was legally due them, and it was granted; but it struck all Americans as an eminently just and proper retaliation when the Government gave these "inchoate citizens," who had resisted conscription, sixty-five days in which to leave the country.

Whether the present Administration does or does not recognize the force of Germany's arguments, it probably realizes that it will be useless to press the conflict—unless it is prepared to sacrifice the Bancroft treaties. There is, in fact, no possible answer to the last act of the Prussian Government except a notice that we desire to withdraw from the compact of 1868. Do we desire this? That depends upon the probability of our getting a better treaty from the German Empire in 1887 than we got from the North German Confederation in 1868. The treaty we have is a good one. It gives full recognition to bona-fide American naturalizations. It carries the effect of naturalization back to the moment of emigration, so that no naturalized American citizen of German birth can be punished for illegal emigration. If sentence has been rendered against him in his absence for illegal emigration, or for failure to perform military service, the sentence is quashed as soon as he produces his American naturalization papers. If a fine has been levied by seizure and sale of his property, the money collected is returned to him.

The clamor of certain German-Americans who appear to want the earth, and refuse to be satisfied with any section of it, has been taken for much more than it is worth. These are the same persons whose "ignorant and overweening assumption of rights," as Bayard Taylor wrote to the State Department, has caused most of the friction in the working of the treaties. Over against their opinions may be set those of two distinguished German publicists—Kapp and Von Martitz—who ten years ago demanded that the German Governments should terminate the naturalization treaties at the earliest possible moment, because in them Germany had yielded every point and the United States nothing.

Are we likely to get anything better if we let the present treaties go? No one who knows what a favorable conjunction of circumstances was required to secure the North-German treaty, will advise risking it. In 1868 Bismarck had just won his first great fight, and Prussia was flushed with triumph and full of confidence and generosity. The United States was represented at Berlin by a famous historian who had always believed in Prussia and predicted her greatness; whose faith had not waned even during the dark days of her humiliation at Olmütz twenty years before; whose words of encouragement, written at that time to his friend Bunsen, had become known all over Germany, and had earned him the grateful affection of all Prussians. Prussia was in a "giving humor," and Bancroft was of all Americans the man to urge and carry our claims.

THE PRACTICAL SILVER MAN.

Our esteemed contemporary the *Financial Chronicle* is afflicted with a kind of color-blindness in its view of the silver question, which is more to be regretted since its vision is in general very clear. In some remarks that it makes on Secretary Manning's report, it begins by saying that the bimetallist view must be the view of "every practical man," and that "only a rigid doctrinaire can advocate gold monometallism—one who, in pursuing his theories, loses sight of the conditions to which they are to be applied." It would appear from this that there are a lot of doctrinaires, agitators, theorists, and impracticable people who are stirring up the world to adopt an exclusively gold currency, and that this is the reason why bimetallism has been discarded in Europe, and why the bimetallists have such hard work in getting their eminently practical views carried into effect. We were under the impression that the agitators were all on the other side. There is no such thing as a monometallist society or organization in the world. There are, however, plenty of bimetallic leagues. There is one in this country, another in England, another in Germany, and if there is not one in France, still, the chief agitator of all, Mr. Henri Cernuschi, is more diligent than any organization, for he, in the main, keeps the rest of them going. These societies or leagues make all the racket on the subject that any one hears. If there were any corresponding collection of theorists on the other side, they could be pointed out, but there is none such. Those who are called monometallists are a few persons in each country, for the most part unknown to each other, who now and then take some notice of the stream of talk which Mr. Cernuschi and his affiliated societies are for ever pouring out. It is quite clear, then, that, whether the one or the other is best entitled to be called doctrinaires, the bimetallists are the only agitators. They are the only ones who are in a constant stew and splutter. To be called a doctrinaire is of no moment anyway. If the phrase signifies a man who has a doctrine or an opinion, it is equally applicable to both. If it signifies one who is seeking diligently and methodically to get his doctrine embodied in legislation, then the bimetallists are the fittest to wear the title.

But there is a class of monometallists, not doctrinaires in any sense, whose joint and concurrent action for ever thwarts and confounds the other side and brings all their plans and their Paris conferences to naught. They are the business world. It will hardly answer to say that they are not practical men, because practice is the only thing that they fully understand. If the business world were called upon to give a reason why they prefer gold instead of silver, or why they prefer one metal instead of two, they would not in general be able to give any reason, they would perhaps not fully understand the question, yet they would go on acting at all times as though gold was the right thing for them. Even those who are bimetallists in theory are monometallists in